AGRICULTURAL PRODUCE COMMISSION AMENDMENT BILL 2021

Committee

Resumed from 22 June. The Deputy Chair of Committees (Hon Dr Sally Talbot) in the chair; Hon Alannah MacTiernan (Minister for Agriculture and Food) in charge of the bill.

Clause 4: Section 3 amended —

Progress was reported after the clause had been partly considered.

The DEPUTY CHAIR (Hon Dr Sally Talbot): Members, if I can just update you on the current situation, we are considering the Agricultural Produce Commission Amendment Bill 2021. We are in committee, and we are considering clause 4. It is my understanding that supplementary notice paper 1, which you will already have in your possession, will very shortly be superseded by supplementary notice paper 2, which will contain an amendment to clause 4.

Hon Alannah MacTiernan: A very small amendment.

The DEPUTY CHAIR: A very small amendment to clause 4. My proposition, should the chamber agree, is that we continue debate on clause 4, and I give the call to the minister.

Hon ALANNAH MacTIERNAN: The purpose of the amendment that I am proposing is to pick up a concern that came out of the debate on clause 1. Concern was expressed that with the change to limit the exclusion to activities on pastoral lands, if a person were to move a car or livestock from the Pilbara down to Dandaragan, for example, would that be captured, and how would they account for that. We did not necessarily think that it would be a problem, but that issue has been taken up with parliamentary counsel, and the advice was that we propose an amendment to insert after the word "enterprises" the word "generally".

Clause 4 currently seeks to amend section 3(1) of the act by inserting the words —

> … other than an industry that concerns livestock enterprises conducted on land under a pastoral lease;

The proposed amendment would mean that it would read —

> … other than an industry that concerns livestock enterprises generally conducted on land under a pastoral lease;

So long as the main part of the person's operation was conducted on a pastoral lease, the fact that the person might from time to time conduct some of their enterprise on another property would not make that part of the enterprise subject to the Agricultural Produce Commission Act.

Hon COLIN de GRUSSA: Minister, I have obviously only just been given a copy of this amendment. In the briefing that we had on the bill, I raised the issue that under the government's proposed amendment, an enterprise could be captured if a person were to move animals from their pastoral property to the southern part of the state to fatten them. I am not clear. The minister is proposing to insert after "enterprises" the word "generally". I want to be certain that if a person were to regularly—annually or semi-annually, or whatever the case might be—bring animals down south to a property that was not a pastoral property, to fatten them or enable them to grow out, that enterprise would definitely be excluded under this proposed amendment.

Hon ALANNAH MacTIERNAN: Our intention is that if a person had a pastoral lease in the Pilbara, for example, and for three months of the year brought those animals to background on a property in the agricultural zone—the three-monthly bringing down of animals that had largely been reared up in the Pilbara—it would not bring the business conducted on that pastoral lease into the purview of the Agricultural Produce Commission. It might be a bit more complex, obviously, if that same person were to own both the pastoral lease and the property in Dandaragan, because the property in Dandaragan would then certainly be subject to the purview of the commission, and, depending on how the levy was rated, some of the value of that cattle might be included. However, if a pastoralist was using the facility as effectively a backgrounding or finishing-off facility in the agricultural zone, that would not bring them within the purview of the commission.

Hon COLIN de GRUSSA: Just to get this clear, if a person were to own both the pastoral property and the property in Dandaragan, to use that example—they are owned by the same business that is conducting the pastoral enterprise—and that person were to bring animals down, they could be excluded from the purview of the APC act, but other enterprises on that farm could be included?

Hon ALANNAH MacTIERNAN: I think we are getting down to some very fine points here. I am not arguing that. I am saying that if a person is the owner of an enterprise in Dandaragan, it may well be that all the activities that they do on that property in Dandaragan are captured by this. However, bear in mind that this would come about only should the industry decide that it wanted to go down this particular path. This is purely an enabling thing. If part of the business of an operator in Dandaragan was to bring their animals down, those animals might in fact be captured in some way in a scheme, but if they were a pastoralist and their enterprise was in the pastoral region, the fact that they might background their cattle on another property would not bring that enterprise into the purview of the act.

Hon STEVE MARTIN: I am reminded of John Hewson working out which bits of birthday cake would have GST placed on them. I appreciate the minister's efforts to try to put into this bill what we have asked for. When we put the word "generally" into part of a bill and then talk about the "main" part of an operation, that will surely lead to some confusion. I might add to that confusion by asking about the point of sale. If a pastoralist's steer were to be brought to Dandaragan and then sold at Muchea, would the point of sale be relevant at all in that discussion?

Hon ALANNAH MacTIERNAN: No; it would not. This is a classic problem. We see it every time a piece of legislation comes forward in the agricultural or pastoral sectors, and this is why nothing ever happens in legislative reform. It is a chronic problem in these industries. We are now dealing with the problem that Murray Criddle tried to deal with in 1999. He tried to get the bill through even when the warring green and blue parties were in ascendancy. Even then, he could not get the legislation through, in its proper form, which would have allowed any player in the agricultural field to come under the Agricultural Produce Commission Act 1988. Therefore, various compromises had to be made and he made those compromises. In 2006 there was a review. Since then nothing has happened. Various attempts have been made at getting this bill up. We introduced it into the house. There was argy-bargy between the Western Australian Farmers Federation, which wanted pastoral activities and broadacre agriculture to be included, and the Pastoralists and Graziers Association of WA, which did not want that. Some people were more PGA aligned. It went on and on and we could not get a resolution.

To deal with the warring factions, we said that we would take the pastoral lands out of it. Do we want the pastoral lands out of it? No; we do not. However, we will do this because we made that commitment before the last election because we did not expect to have control of this house and we wanted to get this legislation through. It will be complex. We need to focus on the vast majority. A statement in law states that hard cases make bad law. In framing legislation, we need to look at the majority situation, not find instances of "What about this unusual case? How will that play out?" We will just continue to go around for another 16 years trying to resolve this problem. Bear in mind that this is enabling legislation. Nothing happens. This is just to allow various groups of agricultural enterprises to come together and have a system in which they can raise some money for the common and industry good. It is a positive enabling thing. If a cow crosses a rabbit-proof fence or a dog sneaks through a hole in a fence, does it suddenly become subject to the act? I do not think so! That is not where the main game is.

We are talking about agricultural enterprises. At this particular point in time, the predominant body that purports to represent the majority of pastoralists—we do not know because no-one ever discloses their membership numbers—wants to take itself out of this legislation. We agree to that. I do not want this bill to be delayed for another couple of years while we go back to renegotiate with the PGA or the pastoralists, because that is what always happens. That is why none of the pastoral land reforms legislation or agricultural reforms or the Veterinary Practice Bill 2021 ever gets up. Nothing happens for piece after piece of legislation because nitpicking and agri-politics goes on between the WA National Party and the Liberal Party.

We are making our best fist of it. We outlined the problem to members in the briefing on the bill and the outline of clause 1. We put that to the Parliamentary Counsel's Office and it was comfortable that the insertion of the word "generally" would deal with the issue. As we know, if there is a dispute about something and it is litigated, statements made by the minister during the parliamentary debate can be taken into account.

Hon COLIN de GRUSSA: I understand where this is coming from. As I said, during the briefing, the point was raised that there could be concerns around this. I would say, though, that I do not think it is unusual that businesses operate in both pastoral and freehold circumstances. The attempt to clarify that a bit is good.

I turn to recommendation 1 of the Standing Committee on Legislation's report on the Agricultural Produce Commission Amendment Bill 2019. Recommendation 1 requests an explanation of why clause 4(2) inserts "prescribed for the purposes of this definition". Why are the relevant industries not referred to in the act but are referred to in regulations? The government's written response to the committee's recommendation was two lines that basically stated that it allows flexibility and for future industries to be captured without having to amend the act. Is that the only reason we need to prescribe those industries in regulations rather than having them in the bill?

Hon ALANNAH MacTIERNAN: That is the main reason. The bill has a general definition of "agricultural industry", which creates the general framework. Agricultural industries have to come within that specific definition to be eligible to come under the legislation. The definition states that an "agricultural industry" means a horticultural industry and such other agricultural industry. The reason for that is that new industries will emerge. We have seen that happen and we do not want to give a definitive list. When we started drafting this piece of legislation, there was no such thing in this state as a truffle industry. New groups are growing new products. There was no hemp industry. Growing hemp was not even allowed when this bill was first introduced. New industries will emerge. If those industries want to be an agricultural industry, they have to come within the purview of the legislation. Part of that idea is to give another layer of protection because within industry there is always concern about more levies. Therefore, the idea is that before a particular sector of the agricultural industry can be brought into the fold, there has to be a regulation, which will give another layer of protection. The bill is set up so that before that regulation

is created, an industry has to get support. The Agricultural Produce Commission will look at how much support that industry has, and, if it is confident that the industry has over 50 per cent support, it will seek the approval of the minister to introduce a regulation.

Of course, being a regulation, there is an ability to disallow. If the Agricultural Produce Commission has got this thing totally wrong and the wine industry, the beekeepers or some of those others that have been more recently introduced actually do not really want it and there is a groundswell against that, this can be disallowed. I think that the whole way this has been structured is an attempt to deal with the angst that some players in the industry have that this is just a grab for more levies, making this a more layered approach so that the commission or the minister cannot unilaterally declare that an industry is brought in—it has to be done by regulation. If we just said "any agricultural"—we could take out "prescribed" altogether and just leave it as any "other agricultural sector"—that would give less power to Parliament and fewer layers of protection.

The DEPUTY CHAIR: I draw members' attention to the fact that you now have supplementary notice paper issue 2 in front of you. On pointing that out, I invite the minister to move the amendment standing in her name.

Hon ALANNAH MacTIERNAN: I move —

> Page 2, line 25 — To insert after "enterprises" —
>
> generally

Amendment put and passed.

Hon COLIN de GRUSSA: The minister will be aware that I have an amendment on the supplementary notice paper to insert new clause 24A. The reason for that amendment is representations from the broadacre industry, in particular WAFarmers. It has said that it wanted to see an opt-out provision within the legislation and that its support for being covered under the APC act was contingent on that opt-out provision being included. I am not sure what the process is here, but I will do what I think is right and ask that we defer consideration of clause 4 until we have dealt with that amendment.

The DEPUTY CHAIR: I am getting quite a definitive no from the ether on that question. Could the member bear with me for one moment? Member, you are invited to move that motion, which I will then put to the chamber.

Hon COLIN de GRUSSA: I move —

> That consideration of clause 4 be deferred until the consideration of new clause 24A, as on supplementary notice paper issue 2.

Question put and negatived.

Division

Clause, as amended, put and a division taken, the Deputy Chair (Hon Dr Sally Talbot) casting her vote with the ayes, with the following result —

Ayes (21)

Hon Klara Andric	Hon Lorna Harper	Hon Stephen Pratt	Hon Dr Brian Walker
Hon Dan Caddy	Hon Jackie Jarvis	Hon Martin Pritchard	Hon Darren West
Hon Sandra Carr	Hon Alannah MacTiernan	Hon Samantha Rowe	Hon Pierre Yang *(Teller)*
Hon Kate Doust	Hon Ayor Makur Chuot	Hon Rosie Sahanna	
Hon Sue Ellery	Hon Sophia Moermond	Hon Matthew Swinbourn	
Hon Peter Foster	Hon Shelley Payne	Hon Dr Sally Talbot	

Noes (9)

Hon Martin Aldridge	Hon James Hayward	Hon Dr Steve Thomas
Hon Peter Collier	Hon Steve Martin	Hon Neil Thomson
Hon Donna Faragher	Hon Tjorn Sibma	Hon Colin de Grussa *(Teller)*

Clause, as amended, thus passed.

Clause 5: Section 5 amended —

Hon COLIN de GRUSSA: Clause 5 of the bill amends section 5 of the act by inserting "3 or" in subsection (1), which is around members appointed by the minister. Can the minister please explain the necessity for that?

Hon ALANNAH MacTIERNAN: It is to allow some flexibility into its composition so that it can have either three or four members. I suppose one of the advantages is that if there is a desire to save on costs, three members might be considered sufficient. At this stage, we do not have any plans to reduce it to three, but I believe this recommendation came forward because it is believed that three commissioners will be adequate for the functioning of the commission, bearing in mind that all the producers' committees sit underneath the commission. This is just

the peak overseeing body. Each of the 11 committees has its own producers' committee sitting under it. I think it makes sense. It may well be that from time to time a government decides that it wants only three. We currently have four very capable members and we do not propose to reduce that number at this stage.

Hon COLIN de GRUSSA: Moving to other subsections of the act and the 2006 review of the act, issue 2.2 in the recommendations for that identified issue suggested that the act be amended to simply state that the minister should, after advertising widely, appoint relevant skill-based persons. Is there any reason why that has not been adopted?

Hon ALANNAH MacTIERNAN: Our view is that it was pretty clear that it was to be a skill-based commission. If the member looks at the constitution of the commission, he will see that a member of the commission must have a broad understanding of the agricultural sector and experience in financial management or other experience relevant to the commission's functions. The view was that that desire for a skill-based group was satisfied by the provision in the legislation.

Clause put and passed.

Clause 6: Section 6 amended —

Hon COLIN de GRUSSA: I have a quick question. What is the reason for changing the wording in proposed subsection (1)(a) and for inserting the additional proposed paragraphs?

Hon ALANNAH MacTIERNAN: This is part of a suite of changes. At the moment when a committee is formed, it is formed for a very concrete range of responsibilities, but one of the recommendations in the report was that committees should be able to evolve. For example, the beekeepers committee might have been set up to oversee marketing of bee products, but it might decide after proper consultation that it needs to move into the field of product verification. There are a number of changes that describe the ability to make that change. This will ensure that the wording about the functions reflects that. This is not the provision that gives that power, but it reflects that new regime.

Clause put and passed.

Clauses 7 and 8 put and passed.

Clause 9: Section 10 amended —

Hon STEVE MARTIN: Could the minister give an example of a poll so that I have a sense of what it might look like? Does it involve a postal reply or an email response, or both? I am sure that they have taken place over time.

Hon ALANNAH MacTIERNAN: We have some recent example documents from the wine industry committee, Wines of Western Australia. A notice of intention to poll was published in all newspapers stating that the Agricultural Produce Commission, under the Agricultural Produce Commission Act and at the request of Wines of Western Australia and the nine regional wine associations, intended to poll WA wine producers on the establishment of a producers' committee. Then it outlined that if the poll was successful, a fee for service would be introduced. With this notice of intention, the Agricultural Produce Commission invited written submissions from producers who may be affected by the proposal, so they were given that opportunity to prepare submissions. After that, there was a notice to conduct a poll and it started off in the same way. Wine producers were to be asked a very specific question —

> *Do you support the formation of a producers' committee for wine producers of Western Australia under the Agricultural Produce Commission Act covering all service functions listed (a) to (m) of section 12(1) of the Act?*
>
> An eligible producer for the poll is … 'the owner of grapes at the point of crush'.
>
> If the poll is successful wine producers will —

Submit. The commissioner then uses all possible sources of a database, as I understand it, including from industry bodies and any other database that is available. We have a description here of how the commission works. I am happy to table that paper, which compiles a list of producers for the establishment of a poll. The paper looks at all the things that the commission does for that. Then, after having got, to the best of its ability, a list of all parties to it, I believe in this instance the commission conducted a postal ballot. It states —

> Ballot papers will be posted to eligible producers …

Advertising and promotions indicated that this would happen and a postal vote took place. No doubt, that will be an evolving issue and it may be that at some time in the future this could be done electronically. Regulations were set in 1990 under the initial expression of the act. The commission looks at all the information that is available to it. I have four documents here that I am happy to table. I ask that these documents be provided to members who wish to see them.

[See paper 420.]

Hon STEVE MARTIN: I thank the minister for that detailed response. It raised a couple of issues that I am sure those documents will help with. I assume the database would be a list of producers in that particular industry. If we are talking about the list of tonnes grown in another industry, we would need access to commercial information. I understand that is covered in clauses down the track, but can the minister foresee any issues with getting hold of that information in the wheat industry, for example?

Hon ALANNAH MacTIERNAN: I think that would be necessary if we were going into weighted voting. The legislation later introduces a head of power to allow weighted voting, but one of the things that the commission will require producers to do to have weighted voting is to establish the reliability of the data on which they are basing the weightings. I guess that really becomes an issue only if a producer group wants to go down the path of weighted voting. We tend to think that weighted voting will happen in industries in which there is a small number of producers and probably great disparities. For example, in some industries we might have, say, only 20 or 30 growers, but two of the growers grow 80 per cent of the produce. Those are the sorts of circumstances in which there could be weighted voting. Producers would have to demonstrate what they have based their data on, and the commission would have to satisfy itself that the data is reliable.

Hon STEVE MARTIN: I have just one more question on this clause, minister. The clause refers to produce in the whole of the state and part of the state. Can the minister explain those boundaries? Are we talking shire boundaries?

Hon ALANNAH MacTIERNAN: It is flexible. A group in the great southern—for example, great southern wine producers or barley growers—might want to do something different and believe that they have a special provenance that gives them a marketing edge, so they may wish to come together and specify an area. We are very open to that because we might find that there are different groupings. For example, there could be organic farmers, but a producers group might want only organic farmers from the south west. We are open to any possibility. For example, the vegetable committee at the moment covers everything except Kununurra. Does it cover Carnarvon? Yes, it does. It actually got Carnarvon agreeing on something. That is pretty amazing. Presumably with the people in Kununurra, that was a bridge too far. A decision would have been made to exclude them from the operation of that provision. It is entirely flexible to allow groupings of producers to come together in whatever geographic or other configuration they may want.

Hon COLIN de GRUSSA: This clause differs a little bit from the clause in the 2019 bill. It would indicate that it is perhaps a formatting change from Parliamentary Counsel's Office; is that correct?

Hon ALANNAH MacTIERNAN: Yes, those of us who have dealt with a number of bills can see that those changes occur; the PCO has a lot of stylistic preferences that come to the fore from time to time.

Clause put and passed.

Clauses 10 to 21 put and passed.

Clause 22: Sections 16A and 16B inserted —

Hon STEVE MARTIN: Proposed section 16A(2)(b) states —

> has such number of votes as is proportionate to the percentage of the relevant agricultural produce …

It might seem an arcane point, but are we talking value or tonnes? If we are talking barley and someone grows 1 000 tonnes of feed barley worth $200 a tonne and 1 000 tonnes of malt barley worth $370 a tonne, is it flexible or is it one or the other? I refer to the top of page 22. It is about weighted voting, and I am asking whether it is based on value or tonnage.

Hon ALANNAH MacTIERNAN: As I read this proposed section, it refers to tonnage. It states —

> … to the percentage of the relevant … produce …

I think that is volumetric, rather than based on value. Bear in mind, this is only if the producers want to go down the weighted voting path. If we went by value, we might get a slightly different figure, but, generally, someone producing 10 tonnes of barley will get less value for it than someone producing 1 000 tonnes of barley will get. It is based on volume, but, again, the commission can allow that to happen only if it is confident that there is sufficient data to make the determination and it is in the best interests of the agricultural industry. For example, if we are dealing with an enormous differential in the value of one product compared with others, one of the things that the commission could well take into account is that going down the path of a weighted vote might not be in the best interests of the agricultural industry because the big disparity in value is not properly reflected in the volumetric. Thinking about it, it would probably be very difficult to do an assessment per value because we do not have access to the data to make that decision about the value of each person's produce. I think this is the best way to go about it. It is quite clearly volumetric rather than value.

Clause put and passed.

Clause 23: Section 17 amended —

Hon COLIN de GRUSSA: Clause 23 amends section 17 of the act by deleting subsection (2). It would appear that this, in some ways, adopts recommendation 1.7 of the 2006 review. Is that correct?

Hon ALANNAH MacTIERNAN: We certainly had recommendations in the 2006 review, including to recoup charges. Section 17(2) will be deleted and replaced with proposed section 16B, which will entitle the Agricultural Produce Commission to recover costs. I am trying to work out how that fits in; it is now in proposed section 16B.

Clause put and passed.

Clause 24 put and passed.

New clause 24A —

Hon COLIN de GRUSSA: Members will be aware that during my contribution to the second reading and clause 1 debates, I raised that in the consultation that members of the opposition and I had with industry, it was continuously raised with us that an opt-out provision should be included in the act rather than in regulations. This is for a number of reasons, not the least of which is that there is no visibility of what those regulations may look like and the ability for the regulations to be changed relatively easily in comparison with changing a provision within the act. In order to encompass those concerns from industry, I had the following amendment drafted to insert an opt-out provision into the act. I ask the minister for the government's response on whether it will support the amendment. I move —

Page 23, after line 12 — To insert —

24A. Section 18A inserted

After section 18 insert:

18A. Opting out

(1) In this section —

specified agricultural produce means the agricultural produce specified in the notice given under subsection (2);

specified producers' committee means the producer's committee specified in the notice given under subsection (2).

(2) A person who is a producer of agricultural produce for which a producers' committee has responsibility may, by notice given to the Commission, opt out of paying charges imposed under this Act that would otherwise be payable by the producer for services provided by the producers' committee in relation to the agricultural produce.

(3) A notice given under subsection (2) must —

(a) be in writing; and

(b) specify the agricultural produce concerned; and

(c) specify the producers' committee concerned.

(4) If a person gives the Commission a notice under subsection (2), then —

(a) despite any other provision of this Act, a charge imposed under this Act that would otherwise be payable by the person for the provision of a service by the specified producers' committee in relation to specified agricultural produce is not payable by the person to the extent that it relates to a time after the day on which the notice is given; and

(b) for the purposes of this Part, the person is taken not to be a producer of specified agricultural produce while the person is not paying charges that would be payable by the person if the notice had not been given.

Hon ALANNAH MacTIERNAN: We are very keen, when possible, to accommodate legitimate concerns that are raised by members, but I simply cannot, as a matter of principle, accept this amendment. In a way, this is a case of the tail wagging the dog. When this matter was considered in 2006, the review committee could not get a consensus on whether there should be an opt-out provision. It is very clear that a number of the most active and successful existing committees are very strongly opposed to the introduction of an opt-out clause into their existing provisions. That comes from the producers of vegetables, pome and wine, who between them collect approximately 50 per cent of the total fee-for-service funds. There is no way we are going to introduce an opt-out provision just to accommodate people who are not actually already in the thing. It is true that the Western Australian Farmers Federation made it

clear that if we were to withdraw the exemption for broadacre, it wanted an opt-out provision. But, likewise, it has made it clear—I believe this was confirmed in its submission to the inquiry—that it accepts that the most workable approach is placing the opt-out provisions in the regulations. That means that if, let us say, lupin growers, for example, wanted to form a group to bring lupins or field peas back into our agronomy—it would be an extremely good thing if we were able to do that—they might want an opt-out provision. The way this works is that the lupin producer group could specify that it wanted an opt-out provision included for its committee. This proposition would go to all the lupin growers in the state so that they could look at it and make a decision: "Yes, this particular proposal includes an opt-out provision. We are happy with that; we can go with that." We have decided to put this provision into the regulations to give the head of power to the new committees that may or may not emerge from our redaction of the scale of the exemption; therefore, opt-out provision can be included should they so desire. We are not going to undermine the successful operation of the existing producer committees to allow that. My understanding from our very good friends in WAFarmers —

Several members interjected.

Hon ALANNAH MacTIERNAN: Some of them are—particularly the grains people. I think very highly of Mic Fels. Even the president has been very pleasant of late.

They accept that placing the opt-out provisions in the regulations is acceptable and their support for our contracting of the exclusion still stands.

Hon COLIN de GRUSSA: As I understand it, obviously the government will not support my amendment for the reasons outlined. Am I to understand, minister, that the proposed regulations—we have not seen them and we do not know what they will be unless the minister has an example—will apply only to new producer committees and that already formed committees will not have the ability to opt out?

Hon ALANNAH MacTIERNAN: If existing committees want to change their provisions, they will be able to do so. They can approach us and seek a change to their current regulation, which we think is a fair thing, but they certainly do not want this imposed on them. Given the disparate nature of the agricultural groups that we are dealing with, it is better to have flexibility so that this can be developed on an industry-by-industry basis. The whole idea is to allow maximum flexibility in how we bring together a producer group and the terms on which it wants to operate.

Hon COLIN de GRUSSA: We have no visibility of how the regulations will be drafted or, I guess, some sort of example. Does the minister have an example? The minister said existing producer committees could add an opt-out provision if they want to, but how will they go about adding that opt-out provision? Will it be put to the vote of the entire cohort of producers in a committee or will it be a decision of that committee itself?

Hon ALANNAH MacTIERNAN: We do not have any regulations as yet because no-one has the head of power and no-one has said that that is what they want to do. A regulation will be drafted only if there is a request from the producer committee. It would then have to be considered by the commission, which has to decide whether it is in the best interests and truly has support, and then a decision has to be made by the minister, obviously, about whether to proceed down the path of regulation. The precise content of a regulation will be drafted to meet the needs of a specific producer committee. All this will be tailor made because there will be very different points of reference from honey to truffles to beef and different measures will have to be taken into account. It would set out the relevant facts for consideration and the time frames for an opt-out would need to be specified, but, obviously, that would vary from industry to industry depending on the cycle of production. We do not want a single blunt instrument that does not reflect the circumstances of these subsets of the agriculture sector. Rather, we want the ability for existing groups to come forward and say, "We want to change our rules; we want to embrace an opt out." If the commission believes that that is fair and reasonable, it will refer that to me and, if we authorise that, the task of working with that producer committee to draft the detailed regulations would commence.

Hon STEVE MARTIN: It is disappointing that the government will not support the very sensible amendment moved by Hon Colin de Grussa. I have to respond to the verballing of the WAFF grain section. During the winter recess, I spoke to a large number of senior-level people at WAFF and it was very clear—it could not have been clearer—that they wanted the opt-out provisions in the bill, not the regulations.

That aside, the minister mentioned that a number of existing groups were strongly opposed to the opt-out clause. I assume that that is because if it becomes available to their members, they would leave. Does the minister have a view on that?

Hon ALANNAH MacTIERNAN: As the member knows, there are, in any group of people in any society, those who are other-regarding and comfortable acting collectively and want to share risks and opportunities, and those who want to socialise the losses and capitalise the profits and seek to get the benefit without paying their fair share. No doubt there are those people—I think we could all name a number of people in the industry—who would be automatic refuseniks and "opter-outers". I was at a University of Western Australia Institute of Agriculture event.

One gentleman got up and gave a keynote address attacking the whole notion of levies—not here, but with the Grains Research and Development Corporation, the royalties and endpoint royalties. He was asked a very good question by Tress Walmsley from InterGrain, and he was unable to answer it. Has this industry relied on people who are incredibly hardworking and innovative? Yes, it has. Have we derived enormous benefit from collective action? Through the efforts of the Department of Primary Industries and Regional Development and entities such as InterGrain, have we been able to breed varieties to deal with the challenging and changing circumstances of our climate, salinity and acidity? Yes, we have. Would it be fair to allow a certain percentage of farmers to benefit from the combined action while others pay? No, it would not. Given all our levy systems, our fee-for-service arrangements and, indeed, our whole concept of taxation, many people would not want to pay tax and may argue that they could do a better job than government to disperse their largesse. This is quite clearly the strong view of some of these sectors.

We should just look at apples and pome. We have had over 40 years of breeding by people like John Cripps and Steele Jacob to continue the extraordinary tradition of pink ladies, crisp reds, our beautiful bravos and numerous other exciting looking apples that I have seen in recent times. That has come from that collective endeavour, and people are very conscious of that. Growers would not be able to do that by themselves; they would not be able to make that investment over 40 years to keep that gene pool going and continue experimenting. Would some people opt out? Yes. Could we name them? Yes. Is it a good thing? No. However, in order to get a project across the line, some groups may be prepared to countenance that. We are giving them the maximum flexibility to do it.

Hon Dr STEVE THOMAS: Let me summarise this a bit. I think it is pretty critical and a bit funny at the same time. I come from a fruit-producing area. The people involved in the Agricultural Produce Commission think the system is very good and they want to support it. The minister talked about apple producers et cetera. It is absolutely the case that they do not want to create opportunities for people to opt out of the system. I understand that. The system for opting out is the one that I am interested in. I understand that the minister has suggested that some regulations might allow an "opt out" to be put into the operating procedures of individual producer committees. That is interesting. We have to understand that the committee members are generally in those positions because they support the system and the levies. Theoretically, if a group is disgruntled by being forced to pay a levy, the first thing they have to do is convince a producer committee, which is appointed because it is invested in the system, that it is wrong. If the group manages to do that, that same group of people has to take the next step, which is the APC itself—a group of people appointed because they believe in the system and the levies—and convince them that they are wrong as well. At the end of that process, if they manage to get through the first and second hurdles, they have to get to the minister. If it is the current minister, who believes in the current system, they have to convince her to admit that she is wrong. I have been trying to do that a lot in the last few years. I have not quite managed to get too many admissions out.

Hon Darren West: Maybe you've been wrong.

Hon Dr STEVE THOMAS: I have said some very nice things about the minister. Her main job is keeping the parliamentary secretary out of her chair. Let us not go down that path. We are great supporters of the minister; we think she is fantastic. She does a very important job.

If we want to introduce an opt-out system, we have to negotiate with three levels of organisational structure that believe in the system. I suggest that the chances of that occurring are infinitesimal to zero. Is a real opt-out system being put in place or is it lip service to an opt-out system just to try to take the debate away? It is interesting that the Western Australian Farmers Federation, which was originally a champion of this process of the extension of the APC into the agricultural region, in particular, is saying—certainly at certain levels—that it wants to do so with an opt-out system in place. That is an interesting shift because it opens a significant door.

Therefore, I ask the minister, in relation to the regulations that might be written for opt-out clauses—bear in mind that anything that the opposition does at this point is completely taken on trust—is it the government's intent that opt out will be available to individual producers on a one-by-one basis or will the envisaged regulations address the opportunity for an industry, for example, to opt out for a period of time on the application of levies? That kind of happens now. The committee can decide not to charge a levy if it does not have a need for it, for example, under the project for which the levy was raised et cetera. We can do that now. Separate from that, I presume that the regulations proposed by the government would allow individual producers to opt out. If that is not the intent, can we work out precisely what the intent is?

Hon ALANNAH MacTIERNAN: I want to express my strong support for my parliamentary secretary. I acknowledge that he does rile the opposition. The fact that he is the only working farmer in the Parliament is something that they find —

Hon Dr Steve Thomas: You're lucky you said "working" under parliamentary privilege.

Hon ALANNAH MacTIERNAN: I have been out to his farm. I have watched him drive the tractors and do all the farming bits, and shear. He runs a very successful farm. I have seen the Japanese delegations come down and look at his beautiful oats and hay and celebrate the wonderful produce that our only working farmer has. He would make an esteemed successor to me. In the meantime, he is an absolutely wonderful parliamentary secretary. He does a very good job.

It is certainly the case that the people who bother to get involved in the producers' committees believe that they are worthwhile. I would have thought—possibly not—that anyone in politics would understand that the people who get involved and put their hand up to become members of Parliament basically believe that it is a worthwhile thing to do. Do we say that we cannot have these people making laws because they all come from a background that is in favour of lawmaking? We would not get a balance. We have to get some people in Parliament who oppose the rule of law. Occasionally, we get a few mung beans in who do that, and sometimes they sneak through even the major party channels. It is true that we tend to find that people who actually believe in the worthwhileness of collective action are involved in collective action. How do disgruntled individuals get around this? From time to time, we look at whether there is enough industry support. I will give members a classic example—a very sad example, in my view. I decided not to determine a rate for the Carnarvon fruit fly program and, indeed, to wind it up. Do I actually think that is a good thing? No. But we had a lot of argy-bargy and a lot of people who were playing their own games with a project that was set up under the previous government and that I had continued to support and put state government money into. My assessment was that it was in the long-term interests of the industry, but there were people in that part of the world who seemed to be motivated more by a sense of grievance than looking in a cold-eyed way at their own long-term interests and the value of their property.

From time to time, notwithstanding the fact that people might think it is a bad idea to dismantle or not allow a certain thing to happen, we do it because we understand that even though we might have beyond 50 per cent support, the amount of agitation and grief within the community says that this is not something that is worth investing in. I have no doubt that this same thing will happen here. I think that the embrace of opt-out will more likely happen in new groups that are formed. How will the opt-out work? Will it be on the basis of group sectors, or on the basis of hardship? It can be any of those things. My attention has been drawn to the provisions in the Fish Resources Management Act, which has a similar head of power to enable a regulation to be introduced to allow the director general to exempt individuals who meet certain hardship criteria; or, at other times, a cluster of people might be exempted permanently or temporarily. All these things are possible. In this case, it will most likely be dealt with on a committee-by-committee basis, because these industry sectors are so diverse. There is absolute flexibility in there. As I say, as we have seen with the Carnarvon fruit fly recognised biosecurity group, it is possible for a group of dissidents to get out there and destroy it for everyone. The member's dream might come true that ginger groups can rise up and cause a sector to fall over. I think it is more likely, as I said, that this will happen in those new groups that are being formed.

Obviously there are many voices in WAFarmers. But my understanding is that its formal submission to the committee was that it was prepared to accept that the opt-out clause would operate in the regulations. Certainly my view, and what was explained to WAFarmers very clearly when I responded to its request, was that we would not jeopardise the structure of the existing committees to accommodate it, and it should be prepared to accept the introduction of the head of power in the regulations, with the very clear understanding that we do not want to go out there and create division in different industry sectors. These things can take a long time. Do not get the idea that a group of zealots can just race in and get it all happening. It took 10 years to get this up for the wine industry. The APC understands that its role is to make sure that, on balance, this is in the interests of the sector. I am confident that WAFarmers accepts that it is appropriate to have this in the regulations. WAFarmers well understood that we would not have contracted that exemption if it had been predicated on us having to put that provision into the legislation. That would not be good, and it would be against the interests of those existing groups. I am not trying to be unreasonable. I am trying to accommodate those good points that are raised. I want good legislation.

Hon Dr STEVE THOMAS: If I could just try to summarise that. The regulations are not in place. The minister accepts that it would be difficult to get exemptions through the current system. I accept that as well. My main question for the minister was: will the regulations allow individuals to withdraw? I got the impression that the minister said yes. Could we get a straight answer to that particular question? Under the regulations, if individuals were able to get through that very tough system, would they potentially be able to opt out, and can the government give an indication of whether that is its intent, or not?

Hon ALANNAH MacTIERNAN: Of course, as the member knows, regulations are never drafted before legislation, because we do not expend that precious resource that is parliamentary counsel before we know what the legislation actually is. Secondly, of course, as we have said, what we are introducing here is a head of power. We will proceed with regulations only should a producers' committee want to proceed on that basis. The potential circumstances in which a producer might make a request to opt out—it could be an individual producer—are producer hardship, time to establish a new business, overpayment or duplication, or early payment of fees. This head of power is

extremely broad. It is certainly not our intention to race off and make a whole heap of regulations that will now give individuals the power to approach us to get an exemption. However, there might be a request from producers' committees or from the APC to do that. We have provided a lot of protections in here. Industry will get to vote. Regulations can be disallowed. We are not going to go down this path. As I said, our primary aim is to make this legislation more effective for the existing participants. The existing participants do not want this opt-out clause to be introduced into the act. In order to accommodate broadacre, we have agreed to provide a head of power to make that possible. That is the end of the story. We have negotiated an agreement that, I think, is very fair and reasonable. It does not undermine the existing industry structure, and it allows these new sectors to come in should they wish to. If they want to come in with an opt-out provision, we will have created a head of power to make that possible.

Hon Dr STEVE THOMAS: This is more of a statement than a question. In front of us, we have, effectively, two alternatives: the amendment moved by Hon Colin de Grussa, which is a genuine opt-out clause for the legislation, and the government's alternative, which is not an opt-out clause, but the capacity for an exemption. It is not an opt-out clause that anybody can choose.

Hon Alannah MacTiernan: It's a head of power.

Hon Dr STEVE THOMAS: It is a head of power to create the capacity for exemption; it is not a head of power to create the capacity for opting out. I am a believer in calling it as it is rather than calling it something else. Hon Colin de Grussa's amendment discusses an opt-out clause. In the government's terms, it is not an opt-out clause; it is a head of power to create the capacity for an exemption. It is important that we understand that because that is the pivotal difference in what is being presented before the chamber today; that is, one is a genuine opt-out clause and the other is not. It is the head of power to create exemptions, as approved, through a three-step system. It is important that we understand the difference between those two things.

Hon ALANNAH MacTIERNAN: One is a head of power that will enable opt-out clauses to be created and one will impose opt-out clauses on the existing industry. As I said, and I have repeated this ad nauseam, fundamentally, this reform is meant to improve the operation of this legislation for those existing 11 industries at the request of people who purport to represent broadacre farmers. We will reduce the exemption, and we will introduce a head of power that will enable industry to have opt-out clauses should it want to go down that path. We will not have the tail wagging the dog in this bill. We will not undermine the functions of the Agricultural Produce Commission for the benefit of people who may or may not want to be part of the system. What we have done is very fair and balanced across the industry.

Division

New clause put and a division taken, the Deputy Chair (Hon Peter Foster) casting his vote with the noes, with the following result —

Ayes (10)

Hon Martin Aldridge	Hon James Hayward	Hon Dr Steve Thomas	Hon Colin de Grussa *(Teller)*
Hon Peter Collier	Hon Steve Martin	Hon Neil Thomson	
Hon Donna Faragher	Hon Tjorn Sibma	Hon Dr Brian Walker	

Noes (20)

Hon Klara Andric	Hon Peter Foster	Hon Sophia Moermond	Hon Rosie Sahanna
Hon Dan Caddy	Hon Lorna Harper	Hon Shelley Payne	Hon Matthew Swinbourn
Hon Sandra Carr	Hon Jackie Jarvis	Hon Stephen Pratt	Hon Dr Sally Talbot
Hon Kate Doust	Hon Alannah MacTiernan	Hon Martin Pritchard	Hon Darren West
Hon Sue Ellery	Hon Ayor Makur Chuot	Hon Samantha Rowe	Hon Pierre Yang *(Teller)*

New clause thus negatived.

Clause 25 put and passed.

Clause 26: Part 3A inserted —

Hon ALANNAH MacTIERNAN: This clause relates to the inspection and compliance of records. The change that I will make is to the definition of a "relevant record". I will take out a reference to a record that contains information that may be relevant for compliance purposes and adopt a recommendation of the committee to replace the word "may" with the words "is likely to". I formally move —

Page 25, line 21 — To delete "may" and insert —

is likely to

Some concern was expressed that persons inspecting records, to determine the value of a sale, might be able to, somehow or other, use the compliance inspection as some sort of fishing expedition. The committee suggested a change of wording to this clause to raise the bar a little higher on the relevance of the document to determine whether the levy is complied with. I was happy to do that. It seemed like a reasonable point, so I move that amendment.

Amendment put and passed.

Hon COLIN de GRUSSA: Minister, thanks for that amendment. One of the focuses of my questions on this clause was around committee recommendation 4. Further, the committee also considered the issue of self-incrimination under proposed section 19F. The committee made a recommendation on that part as well, which states —

> The Minister … explain how clause 26 of the Agricultural Produce Commission Amendment Bill 2019 (proposed section 19F of the *Agricultural Produce Commission Act 1988*) will achieve an appropriate balance between compelling a person to provide information about compliance with the Act while providing adequate protection against self-incrimination.

Does the government have a response to that recommendation?

Hon ALANNAH MacTIERNAN: Proposed section 19F is not an unusual provision to have in legislation such as this, whereby a person is required to provide certain information to an authorised person or body. A search of the statute book shows there are around 20 acts with a very similar provision. The act, as amended by this bill, will only require a person to provide information in respect to their records and in response to questions asked by an authorised officer of the commission in relation to its operation. It is not as though an officer will come in to look at how many apples they have sold. They cannot ask questions about whether someone has been breaching biosecurity arrangements or stealing Fruit West's intellectual property or whatever, so it should be emphasised that the ultimate aim of the commission is to work with producers in a collaborative and strategic way. The commission does not operate like an investigative agency. Such an approach would undermine the purpose of the act, which is aimed at ensuring that the provisions requiring accurate and correct information can be provided to the commission to satisfy producers that the information collected can be relied upon. As committees make decisions for their industry based on information collected, they need to be satisfied that this information is accurate. I think it is important to understand that the commission totally understands that it would not be able to fulfil its other duties if it took an adversarial approach. It is in the commission's interest to keep the show on the road and keep people believing and wanting to participate in this, and it completely understands that if it were to go in with all guns blazing—like Hon Dr Steve Thomas's threatened Gestapo to go and root out arum lilies—and take that approach, it would undermine the whole functioning, belief and support for the system.

Hon COLIN de GRUSSA: Minister, I refer to the document tabled when we first commenced debate on this, which is the "Response to recommendations of the standing committee in its review of the Agricultural Produce Commission Amendment Bill 2019". The two dot points on this particular recommendation state —

- Commission will develop policies as to how enacted
- Will include safeguards to ensure persons cannot be unduly compelled

Would those safeguards be in regulatory form or would they just be an order or directive for the authorised officers?

Hon ALANNAH MacTIERNAN: It will fundamentally be part of the operating procedure of the commission, which will be training people to undertake the compliance. As I said, I think it is pretty clear from the way that the commission has operated that it absolutely understands—this will be the message going out to its compliance officers—that it needs to observe the importance of long-term relationships between committees and producers; treat parties with respect and consideration; allow for due process; protect privacy and confidentiality; have a working understanding of the act; and have a working understanding of any relevant regulations. Work is being done to make sure that there is proper training for anyone who becomes an authorised officer, because, as I said, it is in the commission's interest to ensure good relationships with industry.

Clause, as amended, put and passed.

Clauses 27 to 31 put and passed.

Title put and passed.

Bill reported, with amendments.