DOG AMENDMENT BILL 2013

Committee

Resumed from an earlier stage of the sitting. The Chair of Committees (Hon Adele Farina) in the chair; Hon Helen Morton (Minister for Mental Health) in charge of the bill.

Clause 8: Sections 10AA and 10AB inserted —

Committee was interrupted after the clause had been partly considered.

Hon SIMON O'BRIEN: I think the issue was well canvassed prior to question time. In the time elapsed there has been some time for reflection, and I ask the minister for the government's reflections on my observations about red tape. When pointless bureaucracy comes to notice in our legislation, are we going to walk the walk and do something about it or are we going to find some reason to say, "Oh no, it has to be there"? It does not have to be there, as I would hope everyone in this chamber knows. In this case it is about reducing the burden of red tape on our community; in this case it is about ratepayers and government officers, some of whom probably love red tape. Boy, they would like the Local Government Act they have now, would they not? Let us not spread that contagion to the Dog Act; it is not necessary. Let us do it for them; let us have a blow against red tape. This clause is not just for Pepe MacLaren, Jackson Dawson, Duke and Princess O'Brien or for Rex or Storm Francis—particularly not for Storm or Rex Francis! It is about properly constructed legislation. Here is a case where we have found something. It is hard for governments to admit they got it wrong or that the legislation they are seeking to perpetuate is flawed. But now is the time to acknowledge that, because I am going to vote against this particular provision and I am going to call on other members of the house to support me in doing it.

Hon HELEN MORTON: I fully appreciate the interest of Hon Simon O'Brien in reducing red tape, and I would say that that is something we all aspire to. I do not think there would be a single person in this chamber who would not like to see a reduction in red tape in whatever way that can happen. However, the legal advice we have is that this clause of the bill is necessary. I think Hon Simon O'Brien is making the suggestion that because those delegations and authorisations already apply within the Local Government Act, they are not required in this legislation as well.

Hon Simon O'Brien: I think they should be gone out of there as well!

Hon HELEN MORTON: However, as I have indicated before, they are legally required delegations. As we might know from other circumstances, whether as a minister or in some other capacity, there is a requirement to provide a legal instrument of delegation from one level of authority to another around the powers an individual is able to undertake through that instrument of delegation.

Hon MICHAEL MISCHIN: Hon Simon O'Brien has been doggedly pursuing this issue for some time now! I totally agree with him that allowing bureaucrats to be let off the leash is a very serious matter and one to be deplored! But I do not think he will achieve his purpose by attacking this clause. The intention of the clause is plain from its wording; that is, to arrive at some certainty, when an obligation, a power or an authority is to be granted to a local government authority, that it can be quite explicitly exercised by way of proper delegation to servants of that authority. Not only that, it must be discoverable who has the powers. Some of the powers vested in these local authorities seem to be quite comprehensive. With respect, it is necessary and desirable that the extent of any delegation of power be transparent and clear. I can recall difficulties that I encountered some years ago with a prosecution I conducted against, I think, the then State Energy Commission in one of the first major prosecutions under the Occupational Safety and Health Act. It ended up failing on the basis that, under that act, the authority vested in the department and to the chief executive officer had not been properly delegated to an inspector, so a vast investigation and a major prosecution collapsed on the basis of failure to properly record the delegation. Among other things, clause 8 requires that the local authority keep a register of the delegation so that one knows whether a particular person purporting to be a ranger or otherwise is in fact duly authorised to exercise what may be quite extensive powers and responsibilities vested in the local authority by the legislation. In fact, rather than create red tape, it will establish a means by which the public and government can be satisfied that appropriate delegations are taking place and that those who exercise power on behalf of local government are properly authorised to do so. I support the minister's views that this clause ought not be defeated.

Hon SIMON O'BRIEN: I like listening to the honourable Attorney General; he always makes such a helpful and learned contribution.

Hon Michael Mischin: I like listening to me too!

Hon SIMON O'BRIEN: He likes the sound of his own voice, so he is bringing pleasure to everyone when he speaks! He has just given us what appeared to be a very cogent and believable explanation for why these

provisions should be included. There is just one problem, one fatal flaw in the argument: it is all so much eyewash. These provisions require, and reinforce the need for, a ridiculous chain of flowing red tape to just carry out the fundamentals of dog control. If they are not followed, the inspectors will be acting unlawfully. If these steps are not meticulously in place, we will find that prosecutions are thrown out of court. Nobody has been able to explain to me—I have asked several times now, and I will stop asking because I think the way ahead is clear—why the relevant act cannot contain what is already in the relevant act, which is, that "this class of persons" or some other definition, "is authorised for the purposes of this act". We have always used that in legislation. It works very well in describing who has the powers to do all sorts of things, so I do not see why it cannot be applied here. If we go down the path of using what is printed in the bill, I know that if 142 local governments—they are bureaucracies, peopled by human beings—do not get it all right to the letter, because this is what this bill will require, they will place in jeopardy their officers when they are going about what everyone has thought for the last a hundred and something years was their routine business. That is why I urge the government to have a look at this and at least contemplate, "Hang on, maybe we should have some other way of doing this", rather than trying to defend it at all costs because the government does not want to change it. If the government has to change the Local Government Act because it contains the same rubbish that we are contemplating here, it should change that as well. That is the way to do it. If something is offending, we need to deal with it. I do not think that if this clause were defeated, it would make a blind bit of difference. I think it might leave in the minds of the drafters of the bill a bit of an empty feeling, but I do not think it would do any harm. Other provisions in the bill do the job; the drafters have told us as much. If not, how on earth have we managed to get to October 2013 without the whole shebang falling over?

Hon HELEN MORTON: I will have one more attempt to expand on the information provided by the Attorney General and to try to persuade the member. To do that I will give an example of something that occurred under the Mental Health Act, when it was of concern that delegations were not necessarily undertaken in a form that was required as a legal instrument. As a result, as soon as one thing went wrong, it caused the circumstances around that matter to be taken before the State Administrative Tribunal, which found that the delegation was not correct. It had major implications for the decisions made by the people concerned and for the people on the receiving end of those decisions. It required some additional legislation to go through Parliament to fix it and provide retrospective approval for things that had occurred in the absence of the proper delegated authority. That is just an example.

Hon Simon O'Brien: Has that happened with the Dog Act? I do not think it has. You don't have that problem to fix.

Hon HELEN MORTON: It may or may not have happened with the Dog Act, but I can tell the member that it has definitely happened with another act that I am responsible for. The consequences were significant. This act has wideranging powers, and the delegations of authority are not about just getting a ranger to get on and do his job et cetera; it is about who can receive funding for certain purposes and what needs to be done with that level of funding. It is also about who can modify penalties, for example, and who can approve kennel establishment for an excessive number of dogs. It is more than just a ranger getting on with his job. A broader range of authority and delegated authority needs to be considered under the act.

Clause put and passed.

Clause 9 put and passed.

Clause 10: Section 12A amended —

Hon LYNN MacLAREN: I have a query about clause 10, which amends section 12A. I draw the minister's attention to proposed section 12A(4) on page 14 of the bill at lines 28 to 31. Proposed subsection (4) states—

> An authorised person may, at any reasonable time, without a warrant and without consent, enter any premises other than a dwelling where the person reasonably suspects a dangerous dog to be …

My question regards the phrase "where the person reasonably suspects a dangerous dog to be". I am not convinced how persons so duly authorised will make that decision. Could I hear from the minister once again how a person will identify whether a dog is dangerous for the purposes of entering premises without a warrant? Could the minister please explain how that is intended to work?

Hon HELEN MORTON: I am a little confused as to what part of it is not really clear. It basically says that they cannot go into somebody's house. The term "dwelling" refers to the house where the person might suspect a dangerous dog to be, but it does not matter if it is suspected there is a dangerous dog, a person still cannot go into somebody's house. Under these circumstances, a person can go into someone's backyard or garden shed, or into another aspect of their premises, but they cannot go inside a person's house.

Hon LYNN MacLAREN: I am wondering how a person reasonably suspects that a dangerous dog is on the premises. What are the criteria for identifying, or for having a suspicion, that there is a dangerous dog at the premises?

Hon SIMON O'BRIEN: I would be very delighted to support the minister about the way proposed section 12A(4) is drafted, for the same reason we discussed during brief debate on clause 8. "Reasonably suspects" is a well-established legal term. It has been well exercised in the contemplation of courts of various jurisdictions over the years. If Hon Lynn MacLaren is suggesting that we need to actually expand this and provide a definition of "reasonably suspect", it would be an exercise fraught with danger. All we would do is add about 300 pages to a bill that might be a little too big already. I suggest with the greatest respect that the term "reasonably suspects" is well understood. I am sure if the Attorney General was not away on urgent parliamentary business, he would confirm that "reasonable suspicion" is not a vague notion or a guess; it is an actual opinion formed in light of observing objective conditions. In other words, it is a reasoned process. I do not want to get into hypotheticals, but the test that is generally applied in any court as to whether an officer behaved reasonably or had a basis for a reasonable belief, or in this case a reasonable suspicion, is: would any other normal, rational person, given the same information or circumstances, reasonably come to the same conclusion that that would constitute a reasonable suspicion? By necessity, it is an inexact science. That is why I say it is impossible to define and we should not be tempted to try to define it now. However, I would submit that it is a very well-known article in legislation. I have had to deal with it in practical situations myself. I am not shy to point out flaws in legislation before us, but in this case I think it is right.

The CHAIR: I will check whether the minister wants to take an opportunity to respond at this point.

Hon Helen Morton: I will, but I am happy for Hon Peter Katsambanis to speak first.

Hon PETER KATSAMBANIS: I, too, rise to speak on this clause. I support clause 10 as it stands. As Hon Simon O'Brien indicated, in legal parlance the term "reasonably suspects" or "reasonable suspicion" is relatively well understood. A body of law has built up around it over a significant period. However, the fact an "authorised person" would be able to execute a search without a warrant and without consent under these provisions requires a little examination. It also requires significant training. As we found out in our discussion on clause 8, an authorised person is likely to be someone who has received a sub-delegation through a delegation. It reinforces the point I tried to make during the discussion on clause 8; namely, there is a need for some consistency amongst local government authorities. There is a need for some form of limitation on the breadth of people who can exercise powers under this act. There needs to be some form of articulation. It does not necessarily need to be in the primary legislation, but certainly included by way of regulation at the very least should be the nature and extent of training that officers undertake in order to exercise their powers, including the power to execute a search or enter premises without a warrant and without consent for the purposes of conducting a search or an inspection. The general public, and obviously dog owners, want to know that the people who have this power do not exercise it capriciously.

I do not suggest in any way that authorised people will do so, but people also want to know that those authorised people will not exercise that power unreasonably through lack of knowledge and through lack of training. Again, I seek some clarification about the range of people who may actually exercise this power, who will determine who they are and what sort of training on quite complex legal terms they will have before they engage in conduct that may well infringe on people's liberties.

Hon HELEN MORTON: Both previous speakers understand the concept of "reasonably suspects" and that it is a common legal term. I will therefore not go over too much more in that respect. The way that someone would develop that reasonable suspicion that there is a dangerous dog in a place would be along the lines of them having chased a dog, reporting having seen the dog and perhaps thereafter a dog attack, for example, or that the dog is registered as being there. All those things would lead somebody to reasonably suspect that the dog is on those premises somewhere. There are other reasons that may lead someone to reasonably suspect that as well, but those are some that come to mind immediately.

The other thing I mention in response to the last speaker is that two classes of people are authorised to undertake this work under this legislation. One is, of course, a policeman and the other we call a ranger. The council will appoint these authorised persons, mostly rangers, to carry out activities under this and the other relevant legislation, including the Local Government Act and the Health Act. The local government authority undertakes that role of appointing authorised persons. The people with the best experience and skills for the job are selected, as is done for all positions. There is no requirement for specific qualifications, but most rangers undertake specific training in animal management, including on such topics as dog behaviour, catching dogs, use of equipment for catching and restraining dogs, and dealing with aggressive dogs. There is a range of training that these people undertake. Many also undertake the nationally accredited certificate IV in local government

regulatory services, which includes units in municipal law enforcement, dog and cat management and control, statutory interpretation and evidence for investigators. That is the kind of background that these people will have.

Hon LYNN MacLAREN: I thank the minister for that response. A couple of questions arise from that. How many rangers in WA actually have a certificate IV? My understanding is that very few rangers are qualified with a certificate IV; could the minister please respond to that?

Hon HELEN MORTON: I do not have that information at my fingertips. I can get it for the member, but I will not be able to get it during the passage of this bill.

Hon LYNN MacLAREN: My concern about this clause is that the identification of restricted dogs is fraught with difficulty. If a neighbour, for example, suspects that a dog is part pit bull, this clause empowers police and rangers to enter premises, albeit not dwellings. That is precisely what constituents are concerned about; they are concerned that they will be captured by this legislation when they do not have a dangerous dog. We are giving rangers and police this power and the concern is that there will be a suspicion that a dog is dangerous when it is not. We need to be really clear about the limitations of this power and the ability of rangers and police officers to determine whether a restricted breed dog is a dangerous dog. Unfortunately, in this bill any restricted breed dog is determined dangerous regardless of what they are like. That is precisely why I am concerned about this clause. I would appreciate it if the minister could enlighten us about the limitations of this power.

Hon HELEN MORTON: The part of proposed section 12A(4) that the member did not read out makes it clear. It states —

> An authorised person may, at any reasonable time, without a warrant and without consent, enter any premises other than a dwelling where the person reasonably suspects a dangerous dog to be, for the purpose of ascertaining whether an offence against Part VI Division 2 is being committed.

This is specifically about dangerous dogs, so a person would have to have some suspicion that there is a dangerous dog on the premises and that there has been an offence committed against this part of the legislation. Authorised people will not go around wondering to themselves whether a pit bull terrier lives at a place and then knock on the door or just jump over the fence and look in the backyard to see whether a pit bull is there. Something has to have happened because the authorised person is acting to ascertain whether an offence against that part of the legislation has been committed.

Hon LYNN MacLAREN: I do not want to labour this point very much longer, but it is my reading of the legislation that an offence might be for the dog not to be registered, as the minister pointed out, so there might be a crossbreed pit bull that is not registered. An offence might be that the enclosure does not quite contain the dog. Quite a few different offences are listed in the legislation, and the concern is not for a dangerous dog that has committed an offence or that its owner is in trouble for committing an offence; the concern is that dogs that are not dangerous are captured by this bill. My concern is that it is hard to identify what a pit bull is. The minister says that people are proud to own pit bulls and are proud to own pit bull crosses, but it is also true that many people in Western Australia who would not have a clue about dog breeds may suspect that a dog is part pit bull. They may have what is listed in this clause as a "reasonable suspicion" that that dog is one of the restricted breeds and therefore automatically a dangerous dog. That is what I am concerned about; it is the identification of the breed to enable a person to exercise the ability to further investigate whether an offence occurred.

Hon HELEN MORTON: I am really concerned that Hon Lynn MacLaren keeps falling into this notion that somehow or other owning a pit bull is an offence in itself. It is not an offence to own a pit bull, so the very fact that a neighbour or someone else suspects that a dog is a pit bull or a pit bull cross —

Hon Lynn MacLaren: That might not have a strong enough enclosure.

Hon HELEN MORTON: Again, if it is a dangerous dog, it makes no difference whether it is a pit bull or not. If it is a dangerous dog and the neighbour is concerned about the dangerous dog and that the height of the fence is not sufficient, they will make that call to the authorities whether it is a pit bull or not. If a person is concerned about a dangerous dog and they are concerned that the fence is insufficient to restrain the dog or does not meet the requirements of the legislation or that some other elements are not being adhered to, they have the opportunity, like everybody else, to get that checked out. That is not based on whether the dog is a pit bull; it is based on whether the dog is considered dangerous.

Hon LYNN MacLAREN: Therefore, the minister is saying there is an opportunity to get the dog checked out. Is she suggesting that if someone had a dog that looked like a pit bull but it was not a pit bull, that person would have an opportunity to somehow exclude that dog from the dangerous dog provisions of this legislation? For instance, if someone had a dog that was dangerously close to looking like a pit bull, but it was not a pit bull, and

neighbours had been constantly questioning that the pit bull owner's fence is not high enough, it will mean a constant fight. Neighbours will be saying, "Well, actually, you do have a pit bull; therefore, you do have to have a fence that's more secure." Is there a way that the legislation can identify a dog that is not of a restricted breed so that people will not constantly be questioning whether dog owners are taking due care and not committing an offence under the act?

Hon HELEN MORTON: I am trying to think of a better way of saying it, but I think Hon Lynn MacLaren is beating this up too much.

Hon Lynn MacLaren: It is a hypothetical; I am not barking up the wrong tree!

Hon HELEN MORTON: I have lost my point now! It is possible for an individual—like a neighbour—to raise the matter with the ranger. For example, I can indicate to the ranger that I think my neighbour owns a dangerous dog; that I am concerned about it in some way or another. If my concern is about the fence not being high enough, resulting in the dog jumping over it to attack my grandchildren or whatever it is that I am worried about, I can ask the ranger to check that out. To make contact I assume the ranger will come and knock on my door, and I have already talked about the kind of process by which that is likely to happen during the second reading speech. A conversation will take place whereby people will decide whether or not the dog is dangerous for whatever reason.

I do not know how often Hon Lynn MacLaren moves house, but I do not move house very often. I have not moved house now for—I do not know how many years—it seems like 20-odd years. I know of some people who move houses more frequently. However, a ranger would probably come around to my place and check out what needs to be checked out. If I had a neighbour who was a bit vindictive in some way, the ranger would be able to say, "Look, I've been out, I checked that fence; it's fine." There is no issue there.

There was another point that the member made that I wanted to respond to, but I cannot remember and I did not write it down. What else did she say that I thought deserved a response?

Hon Lynn MacLaren: Well, everything, obviously!

Hon HELEN MORTON: I will think about it later.

Hon SIMON O'BRIEN: Just a quickie! Section 12A(3) provides for an authorised person to be empowered to do certain things. For the purposes of these powers that we are considering, what would be an authorised person—that is, by what other reference in the act is an authorised person known? Is this what section 29(1) is referring to?

Hon LYNN MacLAREN: Given Hon Simon O'Brien's generous advice to me earlier, maybe it would be interesting to look at page 2 of the bill, that is, "Part 1 — Preliminary", which sets out the definition of an authorised person.

Hon HELEN MORTON: I was looking for another reference in the Dog Amendment Bill 2013 that provides reference to an authorised person as well. It is clear in the interpretation that an authorised person means a person who is appointed by a local government to exercise the powers on behalf of local government under section 29(1). However, I expect that Hon Simon O'Brien was looking for this particular clause, which is 29(1a), which reads —

> A police officer may exercise any power conferred by this section on an authorised person.

Hon SIMON O'BRIEN: I was not, actually, but I thank the minister for confirming the provision. Where does clause 8 that we debated earlier about the CEO receiving a delegation and passing on a delegation come into this? It appears to me we have not touched upon it. It also appears to me that we already have an identification of who the authorised person is. There is a very good reason for asking this question, which I might come to in a moment!

Hon HELEN MORTON: The previous section is the mechanism by which delegations are undertaken; that is, the instruments of delegation et cetera. It does not confer the authorised person itself. Therefore, the connection is not there or it is not specific in the way I think the member is suspecting. The instrument of delegation outlines the range of delegations that need to take place under the Dog Act. The CEO can make those delegations to certain people et cetera. Therefore, it is the process by which delegations occur; that is, section 8. Section 10 now refers to an authorised person who is not only authorised in this mechanism, but is authorised in other mechanisms to undertake the role. Therefore, delegation is who appoints the person. The authorised person is the person who undertakes the role.

Hon SIMON O'BRIEN: If that is the case, what would happen if the new sections 10AA and 10AB have become law, but those delegations have not been attended to by a local government? Can a person, who we have previously known as an authorised person, exercise those powers?

Hon HELEN MORTON: In the absence of the instruments of delegation, unfortunately the council has to appoint everybody itself. That would be quite impracticable and almost impossible for all of the functions undertaken. Clause 8 refers to that process of delegation from the council to the CEO, to the CEO to the next person et cetera, to whatever role they are undertaking. The absence of clause 8 requires the council itself to undertake all of those delegations directly to the people who undertake the individual functions and roles.

Hon SIMON O'BRIEN: How long will it take before the bill becomes law, because it will take an awful long time for every council to get its act together to exercise those delegations through all of its authorised persons?

Hon HELEN MORTON: I am advised that it will be within a fortnight of the bill being passed.

Hon SIMON O'BRIEN: I want to get this clear. When we pass the bill, it will be proclaimed within a fortnight and will therefore become law. At that point, local governments will be able to exercise the delegations to give powers to people—if I understand the bill correctly—and in the absence of that, their officers or anyone acting in the councils' employment will not be able to be authorised persons.

Hon HELEN MORTON: The authorised persons are already operating under the existing act, and clause 8 confirms the process of delegation for that. These people are authorised to undertake these roles et cetera.

Hon SIMON O'BRIEN: I am greatly reassured that clause 8, in effect, only reinforces the existing overkill of bureaucracy and red tape that has already been generated by the Local Government Act! So, that is a big relief, I must say, and I thank the minister for her explanation!

Clause put and passed.

Clauses 11 to 20 put and passed.

Clause 21: Part III Divisions 2 and 3 inserted —

Hon SIMON O'BRIEN: I make a general observation or comment to the minister at the table and ask a question that is intended in a constructive way. Proposed section 21 provides —

> … the owner of a dog must ensure that the dog is microchipped if —
>
> (a) the dog has reached 3 months of age; and
>
> (b) the dog was not registered under this Act or the law of another State or a Territory so that its registration was in effect on 31 October 2013.

It is anticipated that this will apply on and from 1 November, which is coming around very soon. In any sense it is cutting it fine, particularly if the bill is amended, which will delay its passage a little more as it will have to go back to the other place and so on. My question is: do we think we are cutting it fine, and would the government like to revisit this? It could just as easily be proclaimed on 1 January, for example, and that might make more sense. That is my question.

Another thing, while I am on my feet, is that I am concerned about what happens with existing dogs. This bill is for dogs in the future; that is, ones that have not been registered and are over three months. Then we come to proposed section 21(2), which refers to 1 November 2015; that is, two years after it is contemplated this proposed section will commence. By then the owners of dogs—I will call them pre-existing and registered dogs; let us call them Rex and Storm, for argument's sake—will have to have them microchipped. In discussion, comments arose such as, "Hang on, how far are we going to go with this? What if you've got some poor old dog that hardly even gets out of bed, let alone goes outside? Are we going to be requiring them to be retrospectively microchipped, because there'd be a heck of a lot of them?" The exemption provided for is a certificate given by a veterinarian. Again I think there has been some commentary in the public domain to say, "We're now going to require the owners to take their old dogs along to the vet and somehow have to prove that they are physically incapable and so on." On reading this provision, I think it has been constructed in such a way, given the time difference of two years, that it will not be overly onerous a provision to place upon dog owners. In looking at all the requirements we are talking about here with microchipping and so on, I can see that it is a bit like the Cat Bill 2012 that we dealt with a while ago. Responsible pet owners are doing this stuff anyway. They are registering their animals; they are getting them microchipped ahead of it being a lawful requirement because they want the benefit of being able to trace the animal if it is lost; and they are getting animals sterilised and all the rest of it. That is therefore not a problem. It should not be a problem for the owner of a dog that might be pretty old and infirm to get a veterinarian certificate between the start date of this proposed section and 1 November 2015.

Why? It is because any responsible pet owner takes their dog along to the vet annually to get its shots and a check-up. It is a routine thing and should not be hard to do. I therefore want anybody reading this record to know that the house has recognised and has taken care to satisfy itself that this proposed section, no matter how it might appear at first glance, will not be unduly onerous on pet owners.

Clause put and passed.

Clauses 22 to 24 put and passed.

Clause 25: Section 29 amended —

Hon SIMON O'BRIEN: I support clause 25. Clause 25(7) proposes to delete section 29(8a) and insert a new subsection (8A), which is printed in the bill. It states —

> Where a dog is detained … and, at the expiration of the period of 7 days after the detention commenced … no application has been made for an order for the destruction of the dog …

Then certain things will happen, one of which is —

> (a) if the dog is wearing a registration tag or is microchipped or the owner is otherwise readily identifiable, an authorised person shall cause notice to be given to the owner … as soon as is practicable after the expiration of the detention period …

I want to get a clear understanding that these provisions provide that the lawful custodian of a detained dog is required to make all reasonable attempts to establish the owner of a dog and to get into contact with them.

The CHAIR: Members, noting the time, I give the minister the call and I will leave the chair until the ringing of the bells.

Sitting suspended from 6.00 to 7.30 pm

Hon HELEN MORTON: Before the dinner break, a government member asked what efforts would be made to find the identity of the owner of a dog. I draw members' attention to proposed new section 28, which makes clear the obligation to identify a dog's owner. Proposed subsection (1) states —

> If the identity of the owner of a dog entering a dog management facility is unknown to the operator of the facility then, as soon as practicable after the dog enters the facility, the operator must make every reasonable attempt to identify the owner of the dog including, where possible, by scanning the dog.

To not do so, will incur a penalty of up to $5 000. There is a genuine attempt in the legislation to require the facility to identify the dog's owner.

Clause put and passed.

Clauses 26 to 29 put and passed.

Clause 30: Section 33 amended —

Hon PETER KATSAMBANIS: I am extremely supportive of this clause. The intention of the clause will enable greyhounds that have reached the end of their useful life as racing greyhounds to be rehabilitated as pets. In rising to speak on this clause, I seek clarification. A few years ago I became a greyhound owner. I have not had the chance to speak about owning dogs, like some other members in this place. We have already heard about Pepe, Hon Lynn MacLaren's poodle, Duke and Duchess, and also the new addition, Princess, to Hon Simon O'Brien's pet family.

Hon Liz Behjat: What about Stormy and Rex?

Hon PETER KATSAMBANIS: We have heard about the member for Jandakot in the other place and his two current dogs, Stormy and Rex. Members who know the member for Jandakot have probably also heard about his now passed away but certainly not forgotten Sasha. Members have heard about dog ownership in relation to dogs as pets. I put on the record and declare my interest that I am a greyhound owner. Greyhounds do not usually have those sorts of pet names like Storm, Rex, Sasha, Pepe and the like. My two original greyhounds were called Heater's Smother and Didak Princess. I tell this story because it is a way of showing what happens to greyhounds when they reach the end of the line of racing.

Heater's Smother was a relatively successful dog. She earned her keep relatively well and was officially retired from the racetrack, unfortunately, by the stewards because she would snap at the other dogs. When she was retired there was a desire on the part of breeders to match their dogs with her. She has recently had a litter of eight pups, and I have been very fortunate to become the part-owner of four of those eight pups. Interestingly, halfway through the debate before the dinner break, I received my latest bill for trainer's fees. The other dog

initially purchased by my syndicate, Didak Princess, was not as successful. Her career started and ended relatively quickly.

Just as pet owners have affection for their pet dogs, owners of greyhounds become attached to their dogs. No owner of a greyhound wants to see ill of animals; they certainly do not want to see ill of these dogs that have become part of their extended families. But it is rare for the dogs of greyhound owners to reside with their owners. Usually the dogs are put out to trainers to train the dogs, nurture them, teach them in trials how to run and then race them on behalf of the owners. Sometimes the trainers can also be owners or part-owners, but in many cases they are simply the people who hold the dogs. The dogs are kept by those people, not by the owners themselves. Often when a racing dog reaches the end of the line of racing, and for one reason or another breeding is not appropriate, those dogs do not pass to the owner. It falls to the trainer to find an appropriate home for those dogs.

It is the trainer's job to nurture these dogs. They nurture them from pups; they love them as much as anybody else would. They do not want to see anything bad happen to them. They have many more years of life and they can be rehabilitated into great pets, which is why when reading clause 30, I was interested in the language used in proposed new section 33(1)(a), which reads, —

> A greyhound must be muzzled in such a manner as will prevent it from biting a person or animal unless —
>
> (a) it is in or at premises occupied by its owner …

As I have explained, in the usual course of events many greyhounds are never at the premises of their owner; they remain at the premises of their trainer. I contrast the language used in this proposed section with language that exists in the principal act. I will not go back as far as 1903 as Hon Simon O'Brien did in his very learned contribution to the debate, but section 33B(b) of the Dog Act 1976 uses the phrase "the occupier of premises where the dog is ordinarily kept or ordinarily permitted to live". I hope that is right because I am reading my own handwriting. I seek clarification from the minister why similar terminology was not used in proposed new section 33(1)(a) so that it covers situations like the one I have just discussed, which is very common; or, alternatively, is the concept of "premises occupied by its owner" as envisaged in this new section going to be defined more broadly so it covers "the occupier of premises where the dog is ordinarily kept", to use the words of the principal act.

Hon HELEN MORTON: I know that was a long speech and I should have been concentrating better, but I thought Hon Peter Katsambanis was going to ask something else and I was busily getting information around the circumstances in which a greyhound would not need to be muzzled after it finished its career. However, that is not what the member asked. Is the member asking about the premises of a greyhound that is still an active racing greyhound?

Hon PETER KATSAMBANIS: I will try to clarify for the minister, and I apologise for not making it clear. I am talking about a greyhound that has finished its useful life as a racing greyhound, but during its time as a greyhound it was kept at premises other than the owner's premises because the owners may live in other places, towns or states and it is really being kept by the trainer and his or her family. It may well be agreed between the owners, the trainer and the trainer's family that the dog should stay with the trainer or be handed on to some other third party for the purpose of successfully retraining the dog. I drew the analogy with the existing act, which envisaged situations such as that as a defence for offences under these sections. I seek some clarification why the broader possibility that the dog is not kept solely at the owner's premises has not been covered in this particular provision.

Hon HELEN MORTON: I am much clearer now. The member would probably look to proposed section 33(1), which reads —

> A greyhound must be muzzled in such a manner as will prevent it from biting a person or animal unless —
>
> (a) it is in or at premises occupied by its owner; or
>
> (b) it has successfully completed a prescribed training programme.

When a greyhound has completed its career it can undergo this training, and if it passes the training it can be adopted by a new owner. The new owner could be, in fact, the trainer. If this dog has not been kept at the owner's premises at all during that career as a race dog and has been kept with the trainer at the trainer's premises, and if the dog is able to be adopted as a result of going through that training and passing it, then it would indeed be able to live at these new premises after being adopted by this new owner who is the trainer, and then need not be muzzled.

Hon PETER KATSAMBANIS: I take it that while it is on the premises of the trainer it would have to be muzzled. I will accept that. It is probably not the most advantageous outcome to either the dog or the family that may be housing it, but I accept that, and that is exactly how the provision reads. I will move on to proposed section 33(1)(b), which refers to the dog successfully completing a prescribed training program. I acknowledge that that is a very good idea. As I said, I am very supportive of this proposed section; it is a way of allowing racing greyhounds that are no longer able to race or breed to go into the community as very useful household pets. I notice we are speaking about a prescribed training program, which will require new regulation. I raise this issue to seek some clarification about how these new prescribed training programs will interact with the existing provisions in the principal act, the Dog Act 1976, and I specifically refer to language used in a few areas. I specifically draw the minister's attention to section 31(2)(e) of the principal act, which reads —

> … classes conducted under the auspices of the body known as the Canine Association of Western Australia (Inc.) or a body approved by the local government in whose district the obedience trial or classes are conducted;

The principal act envisages a series of—I hesitate to describe them as prescribed—training programs authorised under the act. I note that in the amending bill the nomenclature has changed to "prescribed training programme". That is applicable not only to clause 30 but also clause 36, so I seek some clarification. Are the training courses envisaged in the act going to also be prescribed as training programs for the purposes of the act in the future after these amendments go through, or is it likely that people will need to access the regulations made under the provisions of this new bill as well as those other programs that might be prescribed by local government? Again, it seems to create a confusing set of regulations for ordinary people to comply with.

Hon HELEN MORTON: It will be less confusing than what appears, because the program known as Greyhounds As Pets—that is the training program under the auspices of the Western Australian Greyhound Racing Association—will be the only program that is prescribed. It is a comprehensive program that has been in place for more than 15 years. It has been proven to be beneficial in that owners can ensure that their greyhound's behaviour et cetera becomes acceptable—for example, they do not need to be muzzled in public—and they can become pets. The dogs are exposed to other dogs and other animals and their reactions are assessed. They can be fostered out or they can be brought to this program by their owner and assessed on an ongoing basis over a number of months and if they pass all the tests, they can be put into the category of not being required to be muzzled in public.

Hon PETER KATSAMBANIS: I acknowledge the answer of the minister, and I thank her for that. The answer partly provides me with comfort and partly raises alarm bells about certain other issues. If only one program is prescribed, I hope the minister meant that at the moment only one program is eligible for application under this provision and that it does not preclude some other program in the future from being brought forward by another organisation, such as the Canine Association of Western Australia or somebody else, because that would, unfortunately, sound like a fettering of competition in a way that is not beneficial. I hope that that is simply a matter of the fact that no other programs exist at this time and that if there were other programs in the future, they would be considered on their merits.

I know we are contemplating this clause, but, as I foreshadowed, the same nomenclature appears in clause 36. My issue is not with whether a particular program will be prescribed; my issue is that a series of programs will be prescribed by regulation, another series of programs will be authorised by the act itself, which includes those auspiced by the Canine Association of Western Australia—I note that there is some consternation about that, but it is specifically provided for in section 31(2)(e) of the 1976 act—and a third series of programs that are approved by the local government in whose district the obedience trial or classes are conducted will be available to people under the act. Again, I quote from section 31(2)(e) of the principal act. Maybe this is a matter for consolidation at some point, but there may be a need to consider possibly combining the types of ways we can prescribe approved programs so that we can create some clarity and certainty for members of the public who need to use these programs, rather than create more red tape and confusion.

Hon HELEN MORTON: I will deal with this one proposed subsection at a time. The member was referring to section 31(2)(e) of the act, but section 31(1) states —

> A dog shall not be in a public place unless it is —
>
> (a) held by a person who is capable of controlling the dog; or
>
> (b) securely tethered for a temporary purpose,
>
> by means of a chain, cord, leash or harness of sufficient strength and not exceeding the prescribed length.

It does not refer in any way to greyhounds. It refers to any dog and the exceptions are: it is in a vehicle, it is being exhibited for show purposes or it is participating in an obedience trial or in classes conducted under the auspices of the body known as the Canine Association of Western Australia Inc. There is an entirely separate section for greyhounds. Section 31(2)(e) would not satisfy the requirements of a greyhound becoming a dog that can participate or roam in the streets without a muzzle.

Hon PETER KATSAMBANIS: I thank the minister for that. That is not an issue at all. It is simply that although there are specific provisions for greyhounds, section 31, except where exempted, will apply. It is the broad issue again that the principal act has a way of nominating approved courses for dogs and that happens either through a course run by the Canine Association or a course prescribed by local government. In this amending bill we are creating a third way of courses being approved; that is, those prescribed by regulation. If that is the intention, that is fine, but it seems to me to be creating another overlay of confusion and, therefore, possible noncompliance for all dog owners. As I pointed out, this new way of prescribing training programs does not apply only to greyhounds but seems to filter through into other areas of the legislation, including clause 36 of the bill, which relates to dangerous dogs.

Hon HELEN MORTON: Section 31(2)(e) of the act means that a dog is exempt from the provisions of subsection (1); that is, it does not have to be held by a person who is capable of controlling a dog or be securely tethered for a temporary purpose. Neither of those provisions need apply to a dog in a public place when it is going through an obedience course. Subsection (2) provides that a dog is exempt from the requirements of subsection (1) if it is in an exercise area, in a public place that is not a rural leashing and specified area, in a vehicle, being exhibited for a show or participating in an obedience trial or classes conducted under the auspices of the body. This section does not seek to authorise or assess any program as good, bad or indifferent. It requires only that a dog does not have to be on a leash while it is in an obedience trial or class conducted under the auspices of the body known as the Canine Association of WA, or a body approved by local government. It is quite a different matter, I think.

Hon PETER KATSAMBANIS: I will use language that other members have used, but I will not labour this point; I am not much good at labouring anything! I go back to the principles of this clause, which I said right from the outset I support. I think I can use the word "unique"—I am unique in this place in the sense that this clause applies to people like me who own greyhounds. Despite the fact that some of us owners do not get the pleasure of daily contact with our dogs in the same way that a person might get pleasure from Pepe MacLaren or Princess O'Brien or, in the past Sasha Francis, or Storm and Rex Francis and other dogs who have been mentioned in debate —

Several members interjected.

The DEPUTY CHAIR (Hon Simon O'Brien): Order! We are considering a narrow scope of clause in this bill, namely clause 30, which relates to greyhounds. It is not about Storm and Rex; it is about greyhounds. I ask the honourable member to restrict his remarks to that, and then I will see if other members want to make a contribution.

Hon PETER KATSAMBANIS: Thank you, Mr Deputy Chair. I do not have the pleasure of having dogs like that. I have Heater's Smother, Didak Princess and four unnamed pups that we have inherited. I better pay the training fees otherwise the trainer—whose name happens to be the same as a former Prime Minister of Australia, William McMahon—will be chasing us for them shortly.

I commend clause 30 despite the questions I have raised about its practical application. When greyhounds reach the end of their useful racing life and are not available for breeding for one reason or another, they ought to find a good home. They make good pets, especially if they have undertaken prescribed training. In a way it will allow these dogs to continue to provide pleasure to their new owners after their racing days have finished.

Hon LYNN MacLAREN: It would be remiss of me not to express my support for clause 30. This clause is one of the best parts of the bill because it means that greyhounds will be welcomed into family homes. Special exemptions have been made to other aspects of the bill in order to accommodate greyhounds as pets. I have participated in many events with people who have rescued greyhounds. They make very special pets. As I said during my second reading contribution, the government is doing a very good thing through this clause; namely, amending the act to enable greyhounds to be more easily accommodated in families. I support this clause in the same way that Hon Peter Katsambanis so eloquently expressed. This clause is a great clause.

Clause put and passed.

Clauses 31 and 32 put and passed.

Clause 33: Section 33D amended —

Hon DARREN WEST: This clause refers to dangerous dogs. I had a brief read of the legislation because I have working dogs on my property. We have a particular working dog called Jess West, a four-year-old black kelpie bitch, who, quite conveniently for us, works in the yards. There are times when visitors to my household are greeted at the front gate by Jess West with an aggressive bark and sometimes the baring of teeth. I would hate to think that such a worthwhile contributor to my operation and to our business would ever be deemed as belonging to a dangerous breed, and I would like some assurance that great contributors such as Jess West are not referred to in this way and are under no threat as a result of this legislation.

Hon HELEN MORTON: I thank Hon Darren West for his involvement in the bill! Let me draw members' attention to proposed section 33D(2B), which states —

> It is a defence to a charge of an offence under subsection (1) or (2A) if the person charged satisfies the court —
>
> (a) in the case of any person, that the dog was being used in good faith in the reasonable defence of any person or property or for the droving or removal of any animal found trespassing …

That is probably where Jess West would fit.

Clause put and passed.

Clauses 34 and 35 put and passed.

Clause 36: Sections 33GA to 33GE inserted —

Hon LYNN MacLAREN: Clause 36 is the guts of the bill and I have raised my reservations about it. I have gone to the extent of drafting, with some assistance, two amendments to this clause. The reason I have done so is that this is where the details are in the legislation about the offences relating to dangerous dogs. If anyone who did not get a briefing on this bill wants to know what the guts of the bill is, they should look at this clause beginning on page 48 of the bill. The clause relates to things a person must do if they have a dangerous dog. In doing so, the legislation lists offences. For example, proposed section 33GA(1)(b) states —

> a dangerous dog other than a commercial security dog must ensure that the dog wears a collar of a kind prescribed to be worn by dangerous dogs …

A fine is attached to that offence. Proposed section 33GA(2) states that the enclosure within which the dog is confined must be constructed to prevent the dog from escaping and to prevent a child who has not reached the age of seven from entering or inserting any part of her body to the enclosure without the help of an adult. There is also a penalty for that offence. The legislation then goes on to describe how a dangerous dog must be confined and controlled in various ways by chains, cords and leashes.

I propose that on page 53 after proposed section 33GA(9), another proposed subsection be inserted. The proposal before us is to insert proposed subsection (9A), which would state —

> (9A) A dangerous dog (restricted breed) is exempt from subsections (1) to (9) if it has successfully completed a prescribed training programme.

As I said in my speech on the second reading, I believe that this is the way to deal with pit bulls, for example, that are not declared dangerous dogs. For those people who have a pit bull, a pit bull cross or a mixed breed with some pit bull in it and who are very concerned about the extra requirements for managing that dangerous dog, this amendment will provide some opportunity for them to have the same freedoms as other non–dangerous dogs, if we can call a dog non-dangerous. We know that any dog can be dangerous but in this bill we are dealing with declared dangerous dogs and all dogs of a restricted breed. I am proposing that we provide some opportunity to owners of dogs that have pit bull in them but are not intended to be caught by this legislation, which is for dangerous dogs. Should a pit bull or a mixed breed with pit bull in it be dangerous, it would still be captured by the provisions in the bill relating to dangerous dogs, which are declared. It does not mean that they get a pass out; it just means that there is some opportunity for them to have the same freedoms as any other dogs that are not meant to be captured by this bill.

When raising this matter earlier, the minister was perhaps not aware of the courses that are available. Hon Peter Katsambanis just indicated that there are several different categories of training courses. He brought our attention to the canine industry courses. That clause states that local government authorities can approve a training course that is related to some clauses of this bill. We know that greyhounds have a particular prescribed training course. I am not an expert trainer. I asked the experts for their advice on this. In their words, they say that the ability to correctly socialise and train any dog from an early age is paramount, regardless of breed.

Correctly socialised and trained dogs do not become a problem and owners can also be educated on responsible dog ownership. Qualified trainers are able to detect early behaviour issues and address these with the owners, which is why we have this certificate IV animal control and regulation qualification. This helps us understand how to manage dogs and if we have a problem dog, how to identify that. I understand that an industry-accredited dog trainers' course is offered by Challenger Institute of Technology. That includes seven units from the national animal care and management training package. The skill set is minimum requirements for dog trainers and also entry level for certificate IV in companion animal services. I am not saying that we prescribe the training course on the floor of the chamber right now, because none of us have that expertise. I know that the Department of Local Government and Communities will be working on developing the regulations behind this bill to flesh it out and that a training course can be prescribed that goes through the behavioural risks of any dog, regardless of breed. Now is the time to address the risks of this bill going forward, amend the problems that are foretold by experience around the world in very specific legislation and provide an opportunity for those constituents who are deeply distressed by having these extra management strategies for dogs that really do not need them.

I urge members to support this amendment. I think it is a good way forward. I move —

Page 53, after line 15 — To insert —

(9A) A dangerous dog (restricted breed) is exempt from subsections (1) to (9) if it has successfully completed a prescribed training programme.

Hon HELEN MORTON: The government will not support this amendment. The proposed amendment aims to remove the controls over restricted breeds if they have "successfully completed a prescribed training programme". I have two major concerns with the proposal. The first relates to the protections that the amendment proposes to remove. The inclusion of new subsection (9A) in section 33GA removes the requirement for an identifying collar; the need for a secure enclosure and warning signs; and the requirement for the dog to be in control of an adult and lead and muzzled when in a public place. It removes all those requirements for a restricted breed or a dangerous dog. Hon Lynn MacLaren states that she wants to put in place provisions similar to those that apply to retired greyhounds that have completed a prescribed course. But the only concession given to a rehabilitated greyhound is for it not to wear a muzzle. It must still be on a lead at all times when in a public place.

Hon Lynn MacLaren's next amendment on the supplementary notice paper inserts new subsection (7) in 33GC, which would allow these dogs to be advertised, sold and transferred. Accepting this amendment would mean that an unsuspecting person could purchase or be given one of these restricted breed dogs. They could unwittingly put their own or someone else's children at risk because the "retrained" dog would be in a new environment with different stimuli.

My second concern with the proposed amendment to insert subsection (9A) is that no such course exists here or anywhere in Australia to my knowledge, to the knowledge of the department and to the knowledge of my advisers. No prescribed training course or program trains and assesses pit bulls. Whilst Hon Lynn MacLaren referred to an industry accredited dog trainers' course run by Challenger TAFE, that course trains people to train dogs; it does not train and assess any type of dog, least of all a pit bull. Successful graduates of this course are people, not dogs. No such course exists. Challenger TAFE offers a certificate III or certificate IV in companion animal services. Again, neither of these trains dogs. They are aimed at providing practical skills and knowledge to people working in the animal care workplace. Any consideration for relaxing restrictions on restricted breeds should occur only after a proven training program has been thoroughly tested, which is what has happened over the past 15 years with the course for greyhounds.

The act is to be reviewed as soon as practicable after 1 January 2019. This seems a suitable time to evaluate any training program that is put in place, to consider what exemptions should be appropriately given and to consult with other jurisdictions on the impact of such a change. It is not up to government to put in place a training program and somehow or other design it and specifically access it over a time as being suitable to retrain pit bulls. That is up to an organisation such as the pit bull owners association, if there is such a thing, or an industry or a sector that has a particular interest in people keeping pit bulls as pets. If those owners were to get their association to put some program in place, if they were to prove it up and if they were to show that it could do what Hon Lynn MacLaren suggests it could do, that would be the time, after it had a level of assessment attached to it, to enable a review of this legislation to be considered. At the moment there is no such training program anywhere in Australia to the knowledge of any of the people who have been advising me and the department. I therefore do not support the amendment.

Hon ROBYN McSWEENEY: We have a beautiful dog called Lulu. She is a flat-coated retriever. She is very quiet and she is very loving and gentle. However, when children come to my house, I always put Lulu on the lead, because even though she is a well-trained dog, I do not trust her around children. I think that stems from the

fact that I would not ever want to put Lulu down, because if she bit a child, that is what I would have to do. I do not think we can take the chance of passing this amendment moved by Hon Lynn MacLaren. Pit bulls are dangerous; that has been proven. All dogs need training; training is a must. However, in Sydney, New South Wales, last year a dog, which was well trained and friendly, bit a child to death. It is not uncommon in Australia, sadly, that dogs that are not of a dangerous breed attack and bite for no reason at all. But I believe that we have to start somewhere. This bill does that, and I certainly do not agree with Hon Lynn MacLaren's amendment.

Hon LYNN MacLAREN: I do hear members. I understand that the government is going down the road of making the assumption that because a dog is a pit bull, it is a dangerous dog. All I am asking for is the opportunity to question that assumption. I am not saying that I know of a particular training course that a dog and its owner need to go through to establish that there is that training that any dog must go through. I am not saying that. In fact I am saying that it is possible to do that training, and I am hearing the government saying that it is not. That is the opinion the government is expressing.

It is a good thing that this bill will be reviewed in six years. I commend the Legislative Assembly—the other place—for including that amendment on the review. However, in six years many of these dogs that are alive today will be quite a bit older and will have complied with the restrictions on dangerous dogs, even though they are not dangerous. We cannot use a broad brush and say that every single pit bull or every single dog with any bit of pit bull in it is a dangerous dog. That is what this bill does. My amendment tries to address that by providing an opportunity to review and test that assumption. I said at the very beginning of my speech during the second reading debate, and I think all of us in this place agree, that every dog is potentially dangerous and that we should not therefore go down the road of identifying just one breed of dog as a restricted breed. I therefore commend to members the amendment on the supplementary notice paper standing in my name.

Hon HELEN MORTON: Hon Lynn MacLaren said that she does not know of any training course but that the opportunity should be left open just in case one materialises in the near future.

Hon Lynn MacLaren: That is correct.

Hon HELEN MORTON: The dogs that Hon Lynn MacLaren is concerned about are those that exist right now, which will have the restrictions placed on them—the enclosures, warning collars, leads and to be muzzled when in public. They would still have to have those restrictions until such a course was both designed and assessed as effective, so it would not be saving those dogs from anything. If such a course materialised in the next six years and if there was sufficient time in that time frame to obtain evidence that it was effective, then we would change it, but these dogs would still be required to go through those restrictions for the next five years while that process was being undertaken, so the amendment would not save them from anything. The government does not support the amendment. The better way to do it is to put these restrictions in place and to remove them once and if such a program becomes available.

Amendment put and negatived.

Hon LYNN MacLAREN: I move —

> Page 55, after line 23 — To insert —
>
> (7) A dangerous dog (restricted breed) is exempt from this section if it has successfully completed a prescribed training programme.

This amendment is in basically the same terms as the previous amendment. Proposed section 33GC will impose restrictions on the transfer of ownership of dangerous dogs (restricted breed). Something that has not come out very clearly so far in the debate is that if a person owns a dangerous dog (restricted breed), that person will not be able to transfer the ownership of that dog. For example, if a person has a house with a nice big yard that the dog can run around in but then downsizes and moves to a smaller house, as promoted by all our planning polices under Directions 2031, and it becomes a little difficult to keep that dog in the new unit, that person will have no opportunity to transfer the ownership of that dog to another individual who has premises that are suitable for raising that dog. In fact, the owner has no options; they cannot sell it or transfer ownership—they cannot do anything. If we do not exempt certain dogs in that restricted breed category that are suitable to be with families, how are we going to give a fair playing field to these animals and their families? It is not easy when a person has to separate from a pet, but if they have to separate from a pet and there is nowhere for that pet to go, they are really giving it a death sentence; they will have to put down the animal because they cannot transfer the ownership of it just because it might have a bit of pit bull in it. That is the purpose of this amendment. It is similar to the previous one. I mentioned that this is similar to the treatment of greyhounds by having an opportunity to look at individual cases of animals and not just lump them all in the same category of restricted breed. It is similar to the treatment of greyhounds but not exactly like their treatment. I never said that it was exactly the same; it is only similar in some ways.

I want to draw the attention of members to the fact that compulsory sterilisation would not be affected by this amendment, nor would it have been affected by the previous one. The breeding prohibitions would remain. I have not attempted to establish full equality here; I have attempted to give some fairness to animals that should not be captured by these dangerous dog clauses. All the dangerous dog (declared) provisions would still remain; if one's dog is declared dangerous, one should be held accountable by those provisions. This amendment is merely to deal with the restrictions of transferring ownership of dangerous dogs in the restricted breed category that have been proven to deserve to be treated as fairly as any other dog because they have not been identified as a dangerous dog.

Hon HELEN MORTON: Again, the government will not support this amendment. The circumstances are really clear: we do not want to see these dogs being advertised, sold or transferred, and accepting this amendment could mean that an unsuspecting person could purchase or be given one of these restricted breed dogs. As I have previously indicated, they could put their own or someone else's children at risk because the untrained dog will be in a new environment with different stimuli. The circumstance really is that owners have to take responsibility, and this is kind of like the ultimate responsibility that an owner has to take for owning a dog of this type. Part of that process is that if a person wanted to downsize in the way that Hon Lynn MacLaren has indicated, that decision would have to be made with a full understanding of the consequences for the dog in that process. The responsibility of owning a dog like this and making a lifestyle decision after the event is an onerous responsibility, but that is the responsibility of the owner of the dog, and if people are in circumstances in which this is likely to be something that is going to occur during the life of the dog, then they should not take on the responsibility in the first instance; that is the issue. There are, however, clauses that quite clearly make it possible for unforeseen circumstances to apply—such as circumstances in which the dog or pup forms part of a deceased estate and its ownership is transferred by the executor of the will in the administration of the estate; or the owner of the dog or pup is certified by a medical practitioner, for example, as being incapable of caring for the dog and fulfilling the responsibilities that an owner of a dangerous dog must fulfil. But it will not be sufficient for somebody to say, "I didn't understand when I took on this dog what the responsibilities would be and what the implications would be if I wanted to make a change to my lifestyle during the life of the dog." The government does not support the amendment that has been put forward by Hon Lynn MacLaren.

Hon LYNN MacLAREN: I just make the point, minister, that sometimes these changes are not in one's control. Sometimes people lose their job; sometimes their house gets repossessed; sometimes their families are broken up; and sometimes people cannot afford to continue living in the circumstances that they used to live in. This amendment is to deal with those circumstances. I feel that legislation should be written so that it takes into account people's different circumstances, and this bill clearly does not. It does not accommodate dangerous dogs (restricted breeds) that are not dangerous, and it does not accommodate changes in circumstances. I feel that the bill lacks compassion; it does not allow for people to keep their pet even when their pet is not dangerous. It is sad that the government is going down this path. I do not know how many government members have been visited by these constituents. However, over the next six years, they are likely to be visited by some of these people. Sad circumstances do occur. I would hate to see any family lose their pet because of a heartless piece of legislation that we allowed to go through this Parliament because we were not thinking about the need to treat people with a bit more sense and realism for how things really are in this world. I urge members to support the amendment.

Hon SIMON O'BRIEN: It is awfully late in the day for this to come up. Frankly, I do not think that the proposed amendment does the trick. When we dealt with the previous amendment, we explored the question of how prescribed training courses will provide people with a get-out-of-jail-free card for restricted breed dangerous dogs. That amendment was not adopted by the government or the house. However, this amendment is a bit different. What is being thrown up here is the prospect that there will never be the transfer of ownership of a dog of a restricted breed except in two quite limited and defined circumstances.

I understand that two restricted breeds have been banned from importation into Australia. The government's intention seems to be that those breeds be progressively phased out of existence in Western Australia. That will occur through not only the prohibition on importation of those breeds, but also the compulsory sterilisation of dogs of that breed. The inevitable outcome is that those two breeds will cease to exist in Western Australia—apart from what we might call black market dogs, or dogs that are crossbred and slip through the net, at least for a period of time. Perhaps the minister would indicate whether I have got that right, but that would seem to be the inevitable outcome.

However, that is not what we are talking about in the particular part of the bill to which the member has moved this amendment. Hon Lynn MacLaren invites us to contemplate, I think on compassionate grounds as much as anything else, the situation in which a person may need to transfer ownership of a dog in circumstances other than the two exemptions listed; and, if that cannot occur, the unfortunate consequence is that the dog will need to

be put down. I think that is the case. Perhaps the minister would indicate also whether I have got that right. Those are the two questions that I put to the minister.

Hon HELEN MORTON: I believe Hon Simon O'Brien is right. The ban on bringing these dogs into Australia is Australia-wide, so we will not have any of these dogs coming into Australia, and there has been compulsory sterilisation of these dogs since 2002. No permits will be granted for these dogs to be bred, and if breeding is taking place at the moment, it is occurring illegally. The intention is that over time these dogs will not exist in Australia.

Hon SIMON O'BRIEN: There could be circumstances, which Hon Lynn MacLaren alluded to, whereby a dog is properly enclosed and the owners are meeting all the requirements—these are onerous requirements for a family pet—but the owner has to downsize their premises because of some crisis other than a medical development or a death, as described in this section, and it would seem reasonable for someone somewhere to have a head of power to grant an exemption so that we do not end up with someone's pet having to be destroyed. It could very well be pretty old anyway, given these restrictions have been in place since 2002. Was any contemplation given to building in, in a couple of lines, a safety valve that might allow for a situation that I described, or some other situation that may arise that has not been foreseen; and, if so, what is the view on proceeding with that?

Hon HELEN MORTON: I mentioned the considerations, and they are those that Hon Simon O'Brien has mentioned; that is, if a person becomes ill or incapacitated in some way that they cannot continue to care for the dog. That may also be a reason that somebody has to move from a place that is sufficiently large to accommodate the dog to a smaller place such as a unit, where they could not take the dog anyway. That is on the basis that this person has a GP who is willing to provide a medical certificate that indicates that is the reason the person is moving; and, of course, the other consideration is if a person dies. I often hear people say that the restrictions around these dogs are onerous, but as a person who is looking at it from the opposite perspective, I do not believe that requiring the dog to wear an identifying collar or to be in a secure enclosure with a warning sign or, if it is out in public, in the control of an adult, to be on a lead or muzzled is onerous. That feels like something that is achievable without being a major difficulty for people. The other point is that the amendment that has been moved by Hon Lyn MacLaren relies on sending these dogs on a course; however, this course does not exist in Australia.

Hon Simon O'Brien: That was not my question. My question was: why not add a paragraph (c)?

The DEPUTY CHAIR (Hon Brian Ellis): Order, members! Does Hon Simon O'Brien wish to have the call?

Hon SIMON O'BRIEN: I was just trying an interjection, but the minister sat down.

I do not think the amendment is supportable because I do not think it would do what the member wants it to, and clearly it will not get up. But the point has been raised—it is very late in the day—of some other circumstance arising. We do not to seem to have a safety valve. I am just wondering whether the government would contemplate that we add to proposed section 33GC(4), which contains paragraph (a), which relates to the dog being part of a deceased estate et cetera, and paragraph (b), which relates to the owner of the dog being certified as medically incapable, a paragraph (c) that will provide some safety valve for other unforeseen circumstances in which the minister or their delegate might grant a transfer of ownership if warranted.

Hon HELEN MORTON: As I have previously indicated, two safety valves have been put in place for those circumstances. I think responsibility lies with dog owners to look for solutions to their problems, if at all possible. An example would be if circumstances change, as in financial circumstances, for example, options and decisions and choices can be made by people to move. I like living in a country town, for example, so if somebody's dog is so important, then they can move to a cheaper residence with the required area for the dog. That would be one way of downsizing financially if that was the issue. Medical conditions and death are already covered, but I think if we start trying to put an amendment in the Dog Amendment Bill 2013 to cover all other possible circumstances, we will not be able to and we have to draw the line somewhere. Right now the government has drawn the line around those two circumstances identified in the bill. As to the rest of it, I think it is up to the owners to take responsibility for solving those sorts of problems.

Hon SIMON O'BRIEN: I do not want to prolong these proceedings unnecessarily, but I think we are failing to communicate here. It is not contemplated that we try to hypothesise every remote and unusual circumstance and whack that in the bill. My question was quite simple. We have an exception, firstly, when a person has died and the executor needs to transfer ownership of the dog; and, secondly, when an owner has become medically incapable of looking after the dog. We know that. But we surely must recognise that circumstances could arise, without hypothesising or trying to invent hypothetical scenarios, when it may be reasonable for a change of ownership in extraordinary circumstances—indeed perhaps even unforeseen circumstances—to be contemplated,

and it would be pretty awful if it was not able to be. Again, we have to reflect community standards in this. My question was quite simple: what about having a simple escape valve mechanism that gives a prerogative that someone—probably the minister—could contemplate some other extraordinary circumstance and approve that? Are we so cold-hearted that we are not going to contemplate that? Apparently so. It is a pretty simple question. Has that been contemplated; and, if it has and has been rejected, why?

Hon HELEN MORTON: Although there was not a lot of feedback from the community about this particular matter, the minister and the department considered how far these exemptions should go, and it was agreed that these were the two exemptions that should stand and that anything additional would open it up to consideration being sought in an unreasonable manner. Basically, it would defeat the purpose of this part of the bill and, consequently, the decision was made to leave it as it is written.

Hon SIMON O'BRIEN: This is a very short-sighted mechanism. I think it will come back and bite the minister of the day after it is enacted; and, if it does not, it would not do any harm to have a provision to grant an exemption in extraordinary circumstances. I do not know whether there is any appetite at this late hour for the committee to contemplate this. I sense there is not, which I find awfully discouraging. I think it is short-sighted. It probably fails to recognise a lot of what has been discussed in the few contributions that we have had to this bill. It is probably too late to contemplate an amendment now, but I am very disappointed by the attitude of the government as it has just been conveyed to me in this respect. I will not attempt to construct an amendment on the run, because, frankly, I cannot detain the committee to do that. But it strikes me that it could have been pretty straightforward, if there were any will to do it, for someone else with some expertise to have done this in the few moments that I have been on my feet. I think it is regrettable that that has not even been contemplated. It shows something about the attitude of the government in this whole matter that frankly I find a bit disturbing.

Hon LYNN MacLAREN: I echo Hon Simon O'Brien's comments in this regard. It is disappointing that the government has not attempted to address the concerns that were raised. Although I fully understand that he may not have been aware of the implications of this particular clause, I have been aware of them for the whole time. If he were to review my second reading contribution, he would see that it is one of the concerns that were brought to my attention and the whole reason we have tried to amend this legislation at the eleventh hour. It is true that we are towards the end of the debate. Only four amendments proposed by me were circulated on the supplementary notice paper. Nothing else has been proposed to address this very disturbing implication of the legislation we are about to pass. I welcome Hon Simon O'Brien's constructive contribution at this late stage. It would not be difficult to draft that amendment because Hon Simon O'Brien has already mentioned that some authorised person might be relied upon for an exemption. It would be easy to amend proposed subsection (7) on the supplementary notice paper to delete the words "if it has successfully completed a prescribed training program" and insert "if an authorised person grants an exemption". It is not that we cannot do this at this late time. It is our job in the Legislative Council to review legislation and amend it according to our higher wisdom. I want to acknowledge the constructive contribution Hon Simon O'Brien has made and support his comments at this time, while recognising that he did not support my amendment because of the hang-up around the prescribed training courses. But there may be an opportunity for him to now amend the proposed section. He is quite an experienced member, as there are several other experienced members in this chamber, who are capable of drafting such an amendment at this late stage. However, like him, I sense that there would be little support for amending this bill no matter how badly it is written and how weak we have found certain clauses. There seems to be no appetite to improve the bill, as much as I have attempted to do so and other members have drawn attention to its weaknesses. I believe I can say no more. I know that many people are deeply concerned about these clauses and I am sure they will make it known to the government of the day exactly how these clauses will affect them and exactly why this bill could be better. Over the coming weeks and months, as the legislation comes into law, I am sure those people who now have activated a group of their own and are a good lobby group and who have 13 000 signatures on a petition will be interested in making their views known to the powers that be. I entrust that to them. I have done what I could to amend and improve this bill.

Amendment put and negatived.

Hon SIMON O'BRIEN: I move —

Page 55, after line 6 — To insert —

;or

(c) the Minister has given permission for a transfer of ownership in circumstances that he considers justify it.

I think the minister of the day, whoever it may be, needs a safety valve, whenever it may be, and this amendment would permit that. If it is never used, so be it. Apart from that, I think we have had the debate. I regret that this amendment is being moved on the run, but it is the best we can do.

Hon HELEN MORTON: I have advice that the clause currently being considered is too vague and would not be able to stand up legally if it were challenged in some way or another. It is not specific enough. My understanding is that the Minister for Local Government will not entertain such a clause anyway. I understand that to be the position at this moment.

Progress reported and leave granted to sit again, on motion by Hon Helen Morton (Minister for Mental Health).