

**BIOSECURITY AND AGRICULTURE MANAGEMENT (REPEAL AND CONSEQUENTIAL PROVISIONS) BILL 2006**

*Committee*

The Deputy Chairman of Committees (Hon Graham Giffard) in the Chair; Hon Kim Chance (Minister for Agriculture and Food) in charge of the bill.

**Clause 1: Short title -**

**Hon BRUCE DONALDSON:** It seems quite incredible how many pages of amendments the minister has had to provide for this bill.

**Hon Kim Chance:** It is the same amendment repeated over and over.

**Hon BRUCE DONALDSON:** I realise that, but was this picked up prior to the second reading debate? As far as I remember, we did not speak at great length during the second reading debate because the committee had not really delved too deeply into all these biosecurity and agriculture management bills, apart from the main bill. They were mentioned in the report, but not very much. The opposition has no problem with the amendments; do not get me wrong. However, if we can get to some stage -

**Hon Kim Chance:** It's all the same amendment.

**Hon BRUCE DONALDSON:** Yes; so can we speed it up?

**Hon Kim Chance:** I think we can, but I will respond properly.

**Hon BRUCE DONALDSON:** Okay.

**Hon KIM CHANCE:** It is essentially the same amendment, but because it is a consequential bill, it has to be repeated. The reason for one of the key amendments made to the Biosecurity and Agricultural Management Bill 2006 was to delete the reference to the ministerial body and insert the new term for that body; namely, the Agriculture Authority. Virtually all of these amendments are designed to put that change of name in place.

**Clause put and passed.**

**Clauses 2 and 3 put and passed.**

**Clause 4: Application of *Interpretation Act 1984* -**

**Hon KIM CHANCE:** I move -

Page 6, after line 3 - To insert -

- (6) Regulations made under subsection (4) in relation to a matter referred to in subsection (5)(a) or (c) must be made within such period as is reasonably and practicably necessary to deal with a transitional matter that arises as a result of the enactment of this Act or the BAM Act.

Clause 4 is designed to ensure that the subsidiary legislation, authorisations and other instruments made under the acts that are to be repealed can continue to operate to the extent necessary under the BAM act to the extent that they are not inconsistent with the BAM act, because what we will have is a graduated and quite protracted rollout in the proclamation of the various parts of the act. The provisions of the Interpretation Act that are referred to in clause 4(2) enable things to be done under an act that is repealed to continue in effect under an act that re-enacts the repealed act, in so far as that is consistent with the new act. These provisions are to apply in relation to the acts to be repealed by this bill as though they were re-enacted by the BAM act. This specific amendment to insert new subclause (6) is to ensure that regulations that are referred to under subclause (4), which relates to a matter referred to in subclause (5), must be made within such period as is reasonably and practicably necessary to deal with a transitional matter that arises as a result of the enactment of this act or the BAM act. Under subclause (4), the Governor may make regulations under the BAM act in relation to issues arising as a consequence of the operation of subclause (2), which refers to the Interpretation Act. Proposed subclause (6) is to ensure that the regulations are made in a timely manner as far as that is reasonably practicable.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clause 5: Transitional regulations -**

**Hon KIM CHANCE:** I move -

Page 7, after line 4 - To insert

- (6) Regulations made under subsection (1) in relation to a matter referred to in subsection (2) must be made within such period as is reasonably and practicably necessary to deal with a transitional matter that arises as a result of the enactment of this Act or the BAM Act.

This is effectively the same amendment, except that it is cast in the context of clause 5 rather than clause 4. Honourable members going through the wording of the proposed amendment will note that the two amendments are almost identical. Clause 4, which we have just dealt with, deals with the application of the Interpretation Act 1984, whereas clause 5 applies the same methodology, if we like, to the transitional regulations. That is the reason for the similarity.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clauses 6 to 11 put and passed.**

**Clause 12: Terms used in this Subdivision -**

**Hon KIM CHANCE:** I move -

Page 9, after line 19 - To insert -

**“Authority”** means the Western Australian Agriculture Authority established under the *Biosecurity and Agriculture Management Act 2006*;

We have got to the nub of the amendments in supplementary notice paper 117-1; that is, the changes that give effect to the amendment in the Biosecurity and Agriculture Management Bill that deleted reference to the ministerial body and inserted the new term for that same body; namely, the Agriculture Authority. This amendment inserts in clause 12, which defines the terms used in subdivision 2, the new term “Authority”, meaning the Western Australian Agriculture Authority established under the Biosecurity and Agriculture Management Bill. A later amendment to this clause deletes lines 25 to 27, the lines that refer to the ministerial body. In this amendment, we are adding the new words and in the later amendment we will be deleting the old words.

**Amendment put and passed.**

**Hon KIM CHANCE:** I move -

Page 9, lines 25 to 27 - To delete the lines.

I have already explained the purpose of this amendment.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Hon KIM CHANCE:** Mr Deputy Chairman, is it possible to deal with clauses 13 and 14 together in that the amendments are identical?

**The DEPUTY CHAIRMAN (Hon Graham Giffard):** Is the minister asking that we deal with clauses 13 and 14 and all the amendments?

**Hon KIM CHANCE:** Yes; from amendments 5/13 to 9/14.

**The DEPUTY CHAIRMAN:** Unless members object, we can proceed that way.

**Clause 13: Ministerial Body is successor in title of former holder - Clause 14: Devolution of assets and liabilities -**

**Hon KIM CHANCE:** I move -

Page 10, line 3 - To delete “Ministerial Body” and insert instead -  
Authority

Page 10, line 8 - To delete “Ministerial Body” and insert instead -  
Authority

Page 10, line 11 - To delete “Ministerial Body” and insert instead -  
Authority

Page 10, line 17 - To delete “Ministerial Body” and insert instead -

Authority

Page 10, line 19 - To delete “Ministerial Body” and insert instead -

Authority

**Amendments put and passed.**

**Clauses, as amended, put and passed.**

**Clause 15: Certain Crown land -**

**Hon KIM CHANCE:** I move -

Page 10, lines 25 and 26 - To delete “performing the Ministerial Body’s functions under”.

The intent is clear from the wording. It is to delete lines 25 and 26, which refer to the performance of the ministerial body’s function.

**Amendment put and passed.**

**Hon KIM CHANCE:** I move -

Page 10, line 30 - To delete “Ministerial Body” and insert instead -

Authority

The reasons for this amendment are obvious.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clause 16: Certain intellectual property -**

**Hon KIM CHANCE:** I move -

Page 11, lines 2 to 5 - To delete the lines and insert instead -

(1) On the commencement day any intellectual property, or right to apply for, hold, receive, exploit or dispose of intellectual property, that the State has immediately before that day is, by operation of this section, assigned to the Authority.

(2) In subsection (1) -

**“intellectual property”** means intellectual property created in the performance of functions under the repealed Act.

This amendment is a little different. Clause 16 deals with intellectual property and, in effect, the clause vests in the ministerial body, now known as the Agriculture Authority, any intellectual property right that was created, acquired or held for the purposes of the to-be-repealed Agriculture Act and was formerly vested in the state. That covers a range of pasture and crop seeds that were bred and developed by the department or may have been acquired by the department. The effect of the amendment before us is to delete the first subclause of existing clause 16, the first two lines of which state -

On commencement day any intellectual property right created, acquired or held for the purposes of the repealed Act . . .

It replaces those words with the words -

On the commencement day any intellectual property, or right to apply for, hold, receive, exploit or dispose of intellectual property, that the State has immediately before that day is, by operation of this section, assigned to the Authority.

It therefore does two things. First, it removes the reference to “Ministerial Body”, which appears on the last line of clause 16(1). It clears up the question that it is not the ministerial body but, rather, the authority. The words “Ministerial Body” appear in lines 4 and 5 and they are the lines that are deleted, as the amendment is to delete lines 2 to 5. Therefore, in each case the references to “Ministerial Body” are deleted and the proper reference to the “Authority” is made. It therefore does two things. It makes those changes in relation to the name of the body and also makes clearer the nature of the intellectual property that is held.

**Hon Bruce Donaldson:** It is the minister who will oversee the intellectual property.

**Hon KIM CHANCE:** That is correct.

**Hon Bruce Donaldson:** Not the ministerial body or the authority?

**Hon KIM CHANCE:** No, it is the Agriculture Authority that is the holder, not the ministerial body.

**Amendment put and passed.**

**Hon KIM CHANCE:** I move -

Page 11, line 6 - To delete “Ministerial Body” and insert instead -  
Minister

I have moved amendment 13/16 standing in my name on the supplementary notice paper, which is the first line of subclause (2), as it replaces the reference to “Ministerial Body” with “Minister”. That line will then read -

The Minister may certify in writing that a specified intellectual property right was . . .

I think that was an error in the initial drafting, as the ministerial body is not capable of certifying. I think it was always intended to be the “Minister”.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clause 17: Agreements and instruments generally -**

Leave granted for the following amendments to be considered together.

**Hon KIM CHANCE:** I move -

Page 11, line 16 - To delete “Ministerial Body” and insert instead -  
Authority

Page 11, line 21 - To delete “Ministerial Body” and insert instead -  
Authority

**Amendments put and passed.**

**Clause, as amended, put and passed.**

**Clauses 18 to 35 put and passed.**

**Clause 36: *Financial Administration and Audit Act 1985* amended -**

**Hon KIM CHANCE:** I move -

Page 17, line 6 - To delete “*Administration and Audit Act 1985*” and insert instead -  
*Management Act 2006*

This is another of the changes that were made between the drafting and introduction stages of the biosecurity and agriculture management bills; that is, the act that was formerly the Financial Administration and Audit Act was replaced by the Financial Management Act 2006.

Mr Chairman, do I have a problem? Is the name of the act not the Financial Management Act 2006? That seems to be a misprint in the supplementary notice paper.

**The CHAIRMAN:** The word “*Financial*” remains in the bill; the minister is deleting only those words after “*Financial*”.

**Hon KIM CHANCE:** I see.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clause 37 put and passed.**

**Clause 38: *Plant Pests and Diseases (Eradication Funds) Act 1974* amended -**

**Hon KIM CHANCE:** I will move amendment 17/38 standing in my name.

**The CHAIRMAN:** The minister can move amendments 17/38, 18/38, 19/38 and 20/38 because of the earlier decisions of the committee.

**Hon KIM CHANCE:** I move -

Page 19, lines 9 to 16 - To delete the lines.

Page 19, line 25 - To delete “Ministerial Body” and insert instead -  
Authority

Page 19, line 26 - To delete “Ministerial Body” and insert instead -  
Authority

Page 19, after line 28 - To insert the following -

(2) In this section -

**“Authority”** means the Western Australian Agriculture Authority established under the *Biosecurity and Agriculture Management Act 2006*.

Perhaps I should give an explanation to the committee, because not all members are following the debate quite as closely as we are. Amendment 17/38 actually picks up a definition of “Ministerial Body” and deletes it, and the other changes are more obvious.

**Amendments put and passed.**

**Clause, as amended, put and passed.**

**Clause 39 put and passed.**

**Clause 40: Meaning of terms used in this Subdivision -**

**Hon KIM CHANCE:** I move -

Page 20, after line 11 - To insert -

**“Authority”** means the Western Australian Agriculture Authority established under the *Biosecurity and Agriculture Management Act 2006*;

Page 20, lines 19 to 21 - To delete the lines.

The new words inserted relate to the Agriculture Authority. The words deleted relate to the ministerial body. Both of those appear in the meaning of terms used in this subdivision.

**Amendments put and passed.**

**Clause, as amended, put and passed.**

**Clause 41: Funds in, or payable to, former account -**

**Hon KIM CHANCE:** I move -

Page 20, line 26 - To delete “Fund” and insert instead -

Account

Page 21, line 1 - To delete “Fund” and insert instead -

Account

In each case, the amendment alters the term from “Consolidated Fund” to “Consolidated Account”, and that keeps the wording consistent with that of the act.

**Amendments put and passed.**

**Clause, as amended, put and passed.**

**Clause 42: Devolution of assets and liabilities -**

**Hon KIM CHANCE:** I move -

Page 21, lines 7 and 8 - To delete “Ministerial Body” and insert instead -

Authority

Page 21, line 11 - To delete “Ministerial Body” and insert instead -

Authority

Page 21, line 17 - To delete “Ministerial Body” and insert instead -

Authority

Page 21, lines 18 and 19 - To delete “Ministerial Body” and insert instead -

Authority

In each case, the amendment deletes the term “Ministerial Body” and inserts instead “Authority”.

**Amendments put and passed.**

**Clause, as amended, put and passed.**

**Clause 43: Proceeds of sale of certain assets -**

**Hon KIM CHANCE:** I move -

Page 21, line 21 - To delete “Ministerial Body” and insert instead -  
Authority

Page 21, line 27 - To delete “Ministerial Body” and insert instead -  
Authority

Page 22, line 1 - To delete “Ministerial Body” and insert instead -  
Authority

**Amendments put and passed.**

**Clause, as amended, put and passed.**

**Clause 44 put and passed.**

**Clause 45: Final reporting -**

**Hon KIM CHANCE:** I move -

Page 22, line 12 to page 23, line 13 - To oppose the clause.

It is proposed in this amendment to delete the whole of clause 45, which deals with final reporting. It principally relates to the Agriculture Protection Board. Subclause (2) requires a final report to be prepared for the period since the last full financial year of existence of the APB until the repeal of the Agriculture Protection Board Act, which defines the final period. This was to be done as required under section 70A of the former Financial Administration and Audit Act 1985. When a department or statutory authority was abolished by a reporting officer appointed under section 70A(2), that section required the appointment of the reporting officer to be made by the Treasurer. The references to sections 66 and 69 are to the provisions requiring financial statements and tabling of the report as an annual report. The effect of subclause (3) is that the reporting officer is required to complete any annual reporting requirements of the APB that were not fulfilled before the repeal of the APB act. The changes are partly as a result of the replacement of the Financial Administration and Audit Act with the Financial Management Act, but are also, in part, due to the changes that we made earlier in this process when we made the amendments in clause 4 that allowed for the period under regulations to be shortened to allow things to be done, consistent with that act. This, in effect, replaces the need that was more highly specified under the FAAA than it is under the FMA.

**The CHAIRMAN:** The way we are to achieve that is by defeating the clause.

**Hon KIM CHANCE:** Yes.

**Clause put and negatived.**

**Clause 46: Agreements and instruments generally -**

**Hon KIM CHANCE:** I move -

Page 23, line 20 - To delete “Ministerial Body” and insert instead -  
Authority

Page 23, line 24 - To delete “Ministerial Body” and insert instead -  
Authority

**Amendments put and passed.**

**Clause, as amended, put and passed.**

**Clauses 47 to 58 put and passed.**

**Clause 59: Funds in, or payable to, former account -**

**Hon KEN BASTON:** This clause deals with the cattle fund. I noticed in the second reading speech that it involves a saving of some \$150 000 a year, and that the fund will now stand on its own. Can the minister tell me

how the saving of \$150 000 a year has come about? Was it just the amount of money that was contributed each year?

**Hon KIM CHANCE:** It is actually a matter more relevant to the earlier debate. My recollection is, and I believe it to be the case, that it was the quantum of contribution.

**Clause put and passed.**

**Clauses 60 to 63 put and passed.**

**Clause 64: *Agricultural Produce Commission Act 1988* amended -**

**Hon KIM CHANCE:** I move -

Page 28, after line 22 - To insert -

- (2) A person must not enter an orchard under subsection (1) unless -
  - (a) the person has taken reasonable steps to give the owner or occupier of the orchard notice of the intended entry; or
  - (b) the owner or occupier of the orchard consents to the entry.
- (3) The notice must specify the purpose for which the entry is required and successive entries for that purpose are to be regarded as entries to which the notice relates.
- (4) The notice must be given not less than 24 hours before the power of entry is exercised.

This is the clause that deals under the Plant Diseases Act 1914 with the powers of officers, employees and other persons. The proposed amendment reflects changes that were originally proposed by the opposition in debate in the Legislative Assembly. I think they came to us already amended. Alternatively, it was an amendment made here by the opposition. I recall that the opposition was quite strong and the government was eventually convinced by the argument that, before an inspector enters a person's private property to carry out works, he was to make a reasonable attempt to inform the owner. Ultimately, the government could see the commonsense in that amendment and supported it. We have now got to the point where, having amended the Biosecurity and Agriculture Management Bill in terms of powers, we also have to reflect that in the consequential amendments because the Plant Diseases Act 1914 also needs to be consistent with the powers under the BAM act. It is effectively making the same amendment in the old act as will be in the new act.

**Hon GIZ WATSON:** I wish to add for the record that the standing committee looked at this clause. The recommendation was for this amendment.

**Hon Kim Chance:** It was a committee recommendation?

**Hon GIZ WATSON:** Yes. I just wanted to make sure that we got our credit on the record.

**Hon Kim Chance:** I am so sorry; I do not have my notes.

**Hon GIZ WATSON:** I am sure it was brought up by many people. For members' information, the standing committee's seventh report deals with this on pages 92 and 93. It included this recommendation. We appreciate the fact that the government has accommodated it. Indeed, it is noted in the consultation process on the green bill that this was raised by a number of people in the pastoral industry.

**Hon Kim Chance:** I do know that it was also an issue for the opposition.

**Hon GIZ WATSON:** Yes.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clauses 65 to 88 put and passed.**

**Clause 89: *Exotic Diseases of Animals Act 1993* amended -**

**Hon KIM CHANCE:** I move -

Page 41, after line 21 -

“**Crown land**” means land other than -

- (a) land alienated from the Crown; or
- (b) land that the Crown has lawfully agreed to alienate; or
- (c) land held under a lease lawfully granted by the Crown;

This is a fairly simple addition. It is a definition of “Crown land” with respect to division 3, “Stock on Crown land”, of the Exotic Diseases of Animals Act. It is necessary to have a clear definition of what crown land is when we are dealing with the issue of stock and crown land. We have to be able to prove that animals were on crown land. A definition was seen to be necessary in terms of the provisions of this particular division of the act.

**Hon GIZ WATSON:** For the information of members, this issue was raised in the standing committee. I quote from page 94 of the standing committee’s report -

The effect of clause 89(4) is that it preserves the Crown’s power to take possession of any stock on Crown land which is situated within a proclaimed area. The Crown can then treat or dispose of the stock without any payment of compensation to the previous owners of the stock. Certain areas may be proclaimed for this purpose if it is necessary to prevent the spread of an exotic disease or to eradicate or control an exotic disease.

As a result of the Committee’s inquiry, the DAF advised that the phrase ‘Crown land’, as it is used in proposed section 28A, is intended to refer only to Crown land which has not been alienated or otherwise lawfully allocated to another person. For example, it is not intended for Crown land which is the subject of a pastoral lease to be included in ‘Crown land’ for the purposes of proposed section 28A. The DAF indicated to the Committee that it proposes to introduce an amendment in order to clarify the intent of proposed section 28A.

The committee was satisfied that that would accommodate the concerns. We understood that this amendment would come forward.

**Hon Kim Chance:** I am glad you picked it up because it is an important point.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clauses 90 to 96 put and passed.**

**Title put and passed.**