BIOSECURITY AND AGRICULTURE MANAGEMENT BILL 2006

Committee

The Chairman of Committees (Hon George Cash) in the chair; Hon Kim Chance (Minister for Agriculture and Food) in charge of the bill.

Resumed from 8 May.

Clause 12: Consultation with other Ministers and Biosecurity Council -

Progress was reported after Hon Kim Chance had moved the following amendments -

Page 18, lines 26 and 27 - To delete ", other than a declaration relating to a fish,"

Page 18, line 28 to page 19, line 1 - To delete the lines.

Page 19, line 2 - To delete "other".

Page 19, lines 8 to 16 - To delete the lines.

Hon GIZ WATSON: Perhaps I could speak to this suite of amendments in general terms and refer to the matters raised by the Standing Committee on Legislation. We are dealing with this matter ahead of formally responding to the standing committee's response, so it is important for members to understand what the Standing Committee on Legislation observed in this respect. These amendments relate to consultation with other ministers and the Biosecurity Council. At page 27 of the standing committee's seventh report, we began our discussions on what is a core matter for this bill: which ministers will be consulted and in relation to which matters, and also the consultation requirements with the Biosecurity Council. The committee's report said the following on page 28 in regard to consultation with ministers -

> The green BAM Bill's equivalent of clause 12 mandated consultation with both the Minister for Environment and the Minister administering the *Conservation and Land Management Act 1984* (**CALM Act Minister**) before making every declaration as to permitted organisms and prohibited organisms. If the proposed declaration involved a fish, the Minister administering the *Fish Resources Management Act 1994* (**Minister for Fisheries**) also had to be consulted. Other Ministers were only required to be consulted if the Minister considered that they had a relevant interest in the proposed declaration.

The report goes on to talk about the text of the equivalent clause. I will refer to this because the clause was in the original green bill. It states -

> **12. Consultation with other Ministers and Biosecurity Council**
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> *Before making a declaration under section 10 or 11 the Minister must consult with -*
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> *(a) the Minister for the Environment;*
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> *(b) the CALM Act Minister;*
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> *(c) if the proposed declaration relates to a fish, the Minister for Fisheries;*
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> *(d) any other Minister who in the opinion of the Minister has a relevant interest; and*
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> *(e) if the Minister is of the opinion that such consultation is necessary for the purpose of properly informing himself or herself as to whether or not the declaration should be made, the Biosecurity Council.*

That was in the original draft. Although the majority of the committee has supported the minister's amendments that we are currently debating, I argued that the proposition in the green bill was better. I made a minority comment to that effect. The report goes on to say -

> When addressing the operation of the green BAM Bill, the DOF submitted that it is a:
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> > *critical requirement for extremely rapid action in respect of potential introduced aquatic pests, …* [meaning] *… that mechanisms for section 10, 11 and 21 declarations must be efficient and effective. Accordingly, it is essential that sections 12(a), (b) and 21(4)(a) and (b) of the Bill are amended to remove the additional requirement to consult with the listed Ministers in respect of fish."*

I am sure many members are aware of the longstanding turf war between the Department of Fisheries and the former Department of Conservation and Land Management, the Department of Environment and Conservation.

This is part of the same debate about which department should rightfully be involved in decisions that involve aquatic environmental management. The report goes on to say -

> The clause 12 which is now before the Committee is significantly different in that the Minister for Fisheries is the only Minister who must be consulted before a proposed declaration relating to a fish is made.
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> The Department of Health (**DOH**) suggested that clause 12 be amended so that the Minister is also required to consult the Minister for Health before declaring an organism (including a fish) to be either a permitted or prohibited organism. The suggestion was made on the basis that the Minister for Health has a specific interest in ensuring that activities, including agricultural and biosecurity activities, do not adversely impact on the health of the population. In response, the DAF indicated that clause 12(1)(c) ("*any other Minister who in the opinion of the Minister has a relevant interest*") already authorises consultation with the Minister for Health:
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> > *To require consultation with the Minister for Health in relation to pests that have no human health impacts is an unnecessary administrative burden and may be counter-productive, particularly where a declaration needs to be made quickly to deal with an urgent, high - risk situation. Clause 12(1) requires consultation with the Minister for the Environment and the CALM Act Minister (which will usually be one and the same) and the Minister for Fisheries because these Ministers are responsible for managing two key areas that are covered by the Bill. i.e. the protection of the environment and fish resources against the impacts of harmful organisms.*
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> The Department for Environment and Conservation (**DEC**) recommended to the Committee that clause 12(2) be amended so that the Minister is also required to consult with the Minister administering the *Environmental Protection Act 1986* . . . before declaring a fish to be either a permitted or prohibited organism. The suggestion was made on the basis that the Minister for the Environment is responsible for the protection of the environment, including the aquatic environment, and the conservation of biodiversity generally. Any decision by the Minister to declare an organism either a permitted or prohibited organism could then benefit from, and incorporate, the knowledge held by the Minister for the Environment and the DEC. The DAF again relied upon the Minister's option to consult any other Minister where relevant . . . It appeared, from the DAF's response to this issue, that clause 12 of the BAM Bill had been amended from the green BAM Bill as a result of the DOF's concerns:
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> > *The Department of Fisheries specifically requested that clause 12(2) only require the Minister for Agriculture and Food to consult with the Minister for Fisheries before declaring a fish to be either a prohibited or permitted organism, as the Fisheries Minister has primary responsibility for managing the aquatic environment. The Department of Fisheries maintains that the Bill should not impose a mandatory obligation on the Minister to consult with the Environment Minister on every proposal to declare fish. Some declarations may need to be made quickly to deal with urgent, high - risk situations.*

Again, that is an ongoing debate between the Department of Fisheries and the former Department of Conservation and Land Management about whose responsibility it is to deal with the aquatic environment. The minister has already spoken about this to the extent that he said that CALM basically deals with oxygen-breathing organisms and fisheries deals with fish. Nothing is quite that simple. The whole lot slosh around together in the same soup. I put the case that the Department of Environment and Conservation has an equal interest in marine and aquatic environments. It has obligations to maintain biodiversity both in terrestrial and aquatic environments, including marine environments.

The committee basically had this dilemma about whether we level it all by saying that the agriculture minister can have the call and consults with whichever department is considered relevant. That is the effect of the amendments we are pursuing now. I wanted to express as a minority view that the first proposition was better and included that balance. My concern is that this bill is trying to balance the objectives of protecting agricultural production from pests and our environment with the decision-making power resting with the minister, being the Minister for Agriculture and Food, with the discretion to consult other ministers totally in the control of the Minister for Agriculture and Food. To my view, that has tipped the balance too far in the direction of agriculture. I appreciate that I will probably not win this argument given the numbers in this place. Seeing that the majority of the committee support this direction, I simply say that I realise that the argument was put that urgent decisions on whether to list an organism or declare an organism require rapid action in a number of cases.

That was part of the argument people put forward, saying they want it to rest with one minister who may consult if it is considered the other ministers have a relevant interest. I argue that the original green bill better addressed this balance. I will leave my comments at that. I oppose the amendments.

Hon MURRAY CRIDDLE: I wish to make a couple of remarks. It always worries me when we get into this issue of having a number of ministers responsible that we take a long time to make a decision. I am very much in favour of a primary minister being in charge of the decision making and consulting with other people rather than just having a maze where there is no primary decision maker. I would not like to see a situation like that develop as a result of passing these amendments. I understand that a minister will make the final decision. I hope that is the basis of the amendments.

Hon KEN BASTON: I support some of the things that Hon Giz Watson said. The important thing is that we need to be able to move quickly. One would hope that the minister of the day would always be able to control and would notify any of those departments that were affected. We will certainly be supporting the amendments to clause 12.

Hon GIZ WATSON: I have one further question on these amendments. It relates to one of the core matters that this legislation deals with. Clearly, I concede that it is better to level the playing field by saying that we will remove the obligations to consult with the Minister for Fisheries on matters to do with fish and the Minister for the Environment as well. At least it has been levelled. I do not know whether the minister can answer this question. Another piece of legislation is keenly anticipated for this state - namely, the biodiversity conservation bill. Can the minister foreshadow how this provision will interact with requirements under that bill? I realise that it might be slightly difficult. I am asking a hypothetical question. How will the obligations to protect WA's biodiversity, which I understand is the main purpose of that bill, interact with this bill? As I say, my primary concern is that the ultimate decision will be given to the Minister for Agriculture and Food, whereas this bill is supposed to be about biosecurity and agriculture. Biosecurity is very much a matter that is of concern to the minister administering environmental legislation.

Hon KIM CHANCE: I will deal with that last question first. It is an interesting question and I cannot answer it other than in an in-principle way, because the biodiversity legislation, which I know is keenly anticipated, is needed to replace, as this legislation will, outdated and difficult-to-work-with legislation - principally the Wildlife Conservation Act 1950 - as well as other legislation. In principle, the issues of conflict that the member referred to ought not exist, because these two key pieces of modernising legislation are designed to be complementary to each other and to sit side by side, with a much clearer fence drawn between the areas of responsibility. We will have, on the one hand, modern legislation dealing with biosecurity and agriculture, and, on the other hand, separate legislation which quite clearly deals with issues concerning biodiversity, but which includes all the objects of the Wildlife Conservation Act. Whether that will be realised in practice, of course, will depend upon how well it is drafted, and that has not been done yet. However, the in-principle issues should not be difficult to separate. In reflecting on Hon Giz Watson's reference to a degree of conflict between the Department of Fisheries and the Department of Environment and Conservation, I do not believe, and I never have believed, that there is any area of legal conflict.

Hon Giz Watson: It is not so much legal.

Hon KIM CHANCE: A simple reading of the Fish Resources Management Act quite clearly shows where the responsibility for fish lies. To the extent that the Department of Environment and Conservation has a responsibility for the same animals and plants, it is a much more general responsibility, and, in law, specific always overrides general. I do not see the conflict in law and I never have. I was always bemused by the arguments that were made because there is no conflict. One clearly has a responsibility, but let us not dwell too much on that. I will not go back through the issues that I debated on Tuesday. My comments are on the record, so I will not revisit them.

Although I agree with Hon Murray Criddle and Hon Ken Baston that, when dealing with emergencies, it is desirable to have that emergency power vested in a single minister - that is why the legislation is drafted the way it is - we are unnecessarily raising issues about who should be involved in the decision. The fundamental error we are making is that we are assuming that the flow of information and authority travels only from the Minister for Agriculture and Food to the other agencies and ministers. In point of fact, when dealing with marine species, the flow of information will be the other way. Although it might not be a flow of authority, in law it will in fact be a flow of authority, because the authority with which the information comes to the Minister for Agriculture and Food will make that minister's decision a fait accompli in my view. I will give an example. A couple of years ago the dredging of Geraldton harbour began with dredges from the Caribbean. They had been lying idle in the Caribbean for some years, and it was not until after the dredges arrived in Geraldton harbour that it was realised that they were infested with the black-striped mussel, which is a disease that would devastate our

pearling industry, and probably also our scallop industry. Fisheries officers discovered the black-striped mussel, which is clearly an animal that is both commercially and ecologically a threat to Western Australia. It could also have been discovered by officers of the then Department of Conservation and Land Management, but, in fact, it was discovered by fisheries officers. The Department of Fisheries dealt with the matter quickly, and that is exactly how this legislation is designed to work. There may have been some delays in getting approvals through, but such was the emergency status of that discovery that it was dealt with immediately. This legislation is designed to give certainty to that process. That is an example of how the flow of information would not be from the BAM act minister across to other ministers. The flow of information in fact would be reversed; it would be from the Minister for Fisheries or the Minister for the Environment - whoever was responsible for the discovery - to the BAM act minister, and action would be immediate. I do not think there is any real reason for concern about that. The single-minister responsibility is important because someone ultimately has to be accountable. However, the flow of information is the more important issue.

Hon MURRAY CRIDDLE: I was not pointing out which way the information was going to flow. What I am concerned about is any delay in the decision making at the end. That is the point I was making. I have seen these things time and again. There can be delays, and there needs to be a mechanism whereby someone is in charge to overcome those possible delays.

Hon KIM CHANCE: That was my point when I said that I agreed with Hon Murray Criddle and Hon Ken Baston; that is, it is important to have a single minister with responsibility and authority.

Hon GIZ WATSON: I will briefly explain the conflict in the marine environment because I think there is a problem. The assumption that there is no conflict rests on the premise that fish can be taken out of a system without it affecting the rest of the ecosystem. The Department of Fisheries has the same conflict of interest that CALM had when it managed forests. The lead agency that manages the biodiversity of the marine environment cannot at the same time exploit it.

Hon Kim Chance: That is very 1980s thinking.

Hon GIZ WATSON: It is very 1980s thinking. How did we sort out the problem with CALM and the forests when we have not sorted out the problem with fisheries and the marine environment? My point is that when a department takes out a chunk of the biomass, it is inevitable that that will affect the rest of the ecosystem, and that is the responsibility of the Department of Environment and Conservation, but I will leave it at that.

Hon Kim Chance: I don't think we're going to agree on this one.

Hon GIZ WATSON: We probably will not agree on this one. I have some very good scientific papers that I could provide to the minister, if he likes.

Hon Kim Chance: We have all been plagued by them!

Hon GIZ WATSON: I will now respond to the minister's comments about the relationship between this legislation and the biodiversity conservation legislation. The minister's comments seemed to indicate that the objective was to create clear boundaries, whereas I thought that the objective of both pieces of legislation would be to provide integration. The biodiversity conservation legislation will be very much about biosecurity, in the same way as this bill is attempting to be about biosecurity. If we do not deal with biosecurity, we will not maintain Western Australia's biodiversity. As we know, invasive pests and weeds are right up there in their impact on not only agriculture, but also the viability of our ecosystems. We probably cannot resolve this question during this debate, but it will be essential that the two bills mesh in lots of way.

Hon Kim Chance: And probably complement each other.

Hon GIZ WATSON: Yes, and complement each other.

Hon Kim Chance: We agree.

Hon GIZ WATSON: Yes. If the declaration of weeds and pests rests ultimately with the Minister for Agriculture and Food, that will potentially be a problem in how the biodiversity conservation legislation is constructed. Does the minister get my point?

Hon Kim Chance: Yes, I do.

Hon GIZ WATSON: I seek some reassurance that the biodiversity conservation legislation will have a significant say in biosecurity issues as well. My worry is that because we are dealing with this bill first, the biodiversity conservation legislation might be short-changed on biosecurity matters. I am trying to address the big picture here. I have not got a sense from the government about how that integration or separation will be worked through. I do not know whether the minister could add anything to that.

Hon KIM CHANCE: I have captured the essence of what the member is saying. I believe the member is right, and I can see areas in which the existence of the two acts will from time create some interesting issues. The existence of the two acts does not in itself create the issues, because those issues are already there. Usually those issues are not being dealt with well. We hope that if we have two modern pieces of legislation, each drafted in the context of the other - something we currently do not have - the legislation would be designed to deal with each side of the issue in dispute. With both being modern pieces of legislation, and roughly equal in their power, better outcomes will be achieved. For example, there are plants which to one sector, such as the agricultural sector, are things of great beauty-

Hon Margaret Rowe: Buffel grass.

Hon KIM CHANCE: Such as buffel grass. I wondered when it was going to come up again. Buffel grass is seen by pastoralists as a plant of great value; inestimable value. On the other side, from a biodiversity point of view, all of us would recognise that buffel grass dominates the landscape and clearly causes issues around biodiversity. That is acknowledged even by the agricultural side. At the moment, we do not have two pieces of legislation that are capable of dealing with that issue, in my view. Agencies and agency employees must sort of rattle around in a legislative limbo in coming to terms with how to deal with that. That is not fair to them. From the chief executive officer down to the rangelands officer in the field; it is not fair to any of those people. The difficulty will be drafting legislation that is more capable of dealing with the issue and we might fail at that. However, I think we need to at least make an attempt to get those two pieces of legislation drafted in the context of these issues and how we might deal with such issues. It is a debate for another time, but I thank Hon Giz Watson for raising it. The buffel grass matter is not an island; there are a number of similar issues. I think it is worthwhile raising it, and I feel confident that the member will raise it when we get to the biodiversity legislation.

Hon GIZ WATSON: I do not think the buffel grass is going away either. In the reading that I have done in relation to this bill, it is recognised that Western Australia is probably leading the country in terms of biosecurity. That is recognised by the conservation sector as well as the agriculture sector. I am not trying to cast aspersions; I am just trying to work out how these things will mesh together. With this amendment, the clause will now read that the minister must consult with any other minister who in the opinion of the minister has a relevant interest. What would the repercussions be if a declaration was made and then one of the other ministers who believed that they had a relevant interest was unhappy with that decision, and considered that they should have been consulted? I am just anticipating that it might arise. How would that situation be resolved?

Hon KIM CHANCE: In a civilised world, that would be resolved around the cabinet table.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 13 put and passed.

Clause 14: Import restrictions -

Hon MURRAY CRIDDLE: I want to refer to this clause, but it seems to me that my comments also relate to clause 22 with regard to introducing or supplying declared plants. It mentions accordance with an import permit, regulations and so forth. When will we see those regulations? Will there be obviously listed information in those regulations so that we know what we are complying with? The other thing is the relationship with issues such as the fire blight issue. Is that related to this particular clause of the bill?

Hon KIM CHANCE: Until such time as the bill gains royal assent and the regulations are completed, the provisions of the Plant Diseases Act will remain in place. Issues concerning fire blight, for example, were dealt with partly as a result of the Plant Diseases Act, not the agriculture, fisheries and forestry legislation. The Plant Diseases Act is to be read together with the equivalent federal act, the Quarantine Act. This point struck me six or seven years ago -

Hon Murray Criddle: I think we've had this discussion before.

Hon KIM CHANCE: Those two acts are clearly designed to run parallel with, and complementary to, each other. I had to determine that in my own mind to ensure there was no possibility of a section 109 issue of a conflict between commonwealth and state authority. I reviewed it in my own mind, and I am not a High Court judge, but that was not a possibility in the event that New Zealand apples were permitted to be imported into other parts of Australia. The Plant Diseases Act is quite good legislation, so the absence of regulations under this legislation is not a ticking time bomb by any means. Could it be better? Absolutely. However, it will be done as soon as we possibly can. I would imagine that we would get regulations completed as a priority. I am assured that is the case, because it is one of the key areas of the legislation.

Hon Murray Criddle: That's why I asked the question.

Hon KIM CHANCE: Yes. It is one of the key areas, but I cannot predict exactly when that will be. However, there is no ticking time bomb.

Clause put and passed.

Clauses 15 to 20 put and passed.

Clause 21: Declared pests -

Hon KIM CHANCE: I move -

> Page 24, lines 6 and 7 - To delete ", other than a declaration relating to a fish,".
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> Page 24, lines 8 and 9 - To delete the lines.
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> Page 24, lines 16 to 24 - To delete the lines.

These amendments give effect to recommendation 9 of the Legislation Committee, which we just spent time discussing, and ensures the requirement for the minister to consult the other relevant ministers prior to declaring an organism to be a declared pest, and is consistent with clause 12 relating to prohibited organisms. The three components of this amendment have that effect.

Hon GIZ WATSON: I made a minority finding regarding this recommendation and favoured the approach adopted in the green Biosecurity and Agriculture Management Bill. However, I will not speak any more on this matter because I have covered the comments that I wish to make.

Amendments put and passed.

Hon ANTHONY FELS: Clause 21(1) states -

> A prohibited organism is a declared pest for the whole of Western Australia.

Could an organism be a problem in the south west or high rainfall areas but not be a problem in the north west? Would a situation arise whereby such a pest would not be a declared pest for all of Western Australia?

Hon KIM CHANCE: The answer is absolutely yes. The evidence for that is to be found at clause 21(6), which states -

> The area for which an organism is declared to be a declared pest may be the whole or part of the State.

Some animals are declared pests on one side of the Albany Highway but not on the other side of the Albany Highway. Sometimes the divisions seem arbitrary. It is absolutely the case that a part of the state can be subject to a declaration. A very recent example of that is the rainbow lorikeet, which until a month or so ago was not a declared animal in Perth but which was a declared animal everywhere else in the state. We have taken away that differential. It is now a declared pest in Perth also.

Hon ANTHONY FELS: I want to ensure that clause 1 does override clause 6. If a prohibited organism is a declared pest for the whole of Western Australia, does it not clash with clause 6?

Hon KIM CHANCE: It depends on the nature of an organism. If an organism is such that it would not be appropriate to declare it as a pest for particular parts of the state, such as the hydatid cyst or whatever, we would not want it in any part of the state. Therefore, it would be declared as a pest over the whole state and we would have to have that legislative power. However, some organisms can exist safely in some parts of the state or are already naturalised in that part of the state. We do not want to have to control those types of organisms. That is a possibility, but it is a matter of giving the regulators flexibility and options about how they operate and of not creating ridiculous situations that would involve uneconomic control measures being enforced on people when there is no economic return.

Clause, as amended, put and passed.

Clause 22 put and passed.

Clause 23: Introducing or supplying declared pest -

Hon KIM CHANCE: I move -

> Page 26, lines 10 and 11 - To delete the lines and insert instead -
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> (c) a potential carrier of an organism that is -
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> (i) a declared pest for the first-mentioned area; and

(ii) prescribed by the regulations or specified in the management plan.

Page 26, lines 24 and 25 - To delete the lines and insert instead -

(c) a potential carrier of an organism that is -

(i) a declared pest for the area; and

(ii) prescribed by the regulations or specified in the management plan.

I wanted to check something that I said on Tuesday, and I knew I was right. This amendment gives effect to recommendation 7 of the committee that the bill be amended so that -

. . . a 'potential carrier' is 'prescribed' by regulations and 'specified' by management plans.

The second part of the amendment also gives effect to recommendation 7. When I spoke about this matter on Tuesday regarding the difference between the words "prescribed" and "specified", I made the point that "prescribed" relates to anything arriving from regulations and "specified" relates to something that arises from a management plan. I said then that in future these will be referred to as the recommendation 6 issues, even though it is now in recommendation 7. It comes up in numerous places in the legislation.

Hon GIZ WATSON: It is difficult for those of us who worked on this bill for several months to now grapple with these changes at such relatively short notice. I need some further clarification. The new wording of paragraphs (c)(ii) in both cases state -

prescribed by the regulations or specified in the management plan.

That makes the differentiation that the committee referred to in recommendation 7 on page 27 of the report. Will the minister explain why it has been split into subparagraphs (i) and (ii)? I am not quite sure of the effect of new paragraph (c)(i). I am sure there is a technical reason why it has been done that way. Does that make any substantial difference? Why does it need to be -

(i) a declared pest for the area; and

(ii) prescribed by the regulations or specified in the management plan.

Why does it not state "a potential carrier of an organism that is prescribed by the regulations or specified in the management plan"? That would cover the whole lot.

Hon KIM CHANCE: I am sorry that it took us a little while to work it out. It is simply a matter of the nomenclature. If the member goes to the very beginning of subclause (1), she will note that it refers to "regulations or a management plan". Since then, and adopting recommendations 6 and 7, we have now split the terms by which we refer to the instruments of regulations as "prescribed" and in management plans as "specified". It was necessary for us to break up paragraph (c) in that manner so that it would be intelligible, but continuing to recognise that two different instruments could be used.

Hon GIZ WATSON: That does assist. It seems to me that with this amendment we will lose another word. Subclause (1)(c) refers to "specified potential carrier" and the words proposed to be placed in its stead are simply "potential carrier". Is there a difference between "specified potential carrier" and "potential carrier"?

Hon KIM CHANCE: It is an outcome of the nomenclature. The original wording could use "specified" because we were talking only about the declaration of an organism that was a declared pest in the area. Here we are talking about one that may be either prescribed or specified. So the word "specified" is still there, but it applies only to a management plan.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 24 to 26 put and passed.

Clause 27: SAT review: pest exclusion notice -

Hon KIM CHANCE: I move -

Page 29, line 21 - To delete "specify circumstances" and insert instead -

prescribe circumstances relating to a matter of emergency or urgent need

This amendment gives effect to committee recommendation 3 so as to restrict the regulating making power to prescribing only circumstances of emergency or urgent need in which a right to seek a State Administrative Tribunal does not apply. This will occur again and again; therefore, subsequent amendments for this purpose will be referred to as a recommendation 3 amendment.

Hon GIZ WATSON: I appreciate that the government has accommodated this committee recommendation. Just to be totally pedantic, recommendation 2 actually refers to clause 27. I think a lot of the other amendments are in recommendation 3. That is just to show the minister that I am reading the report as we go ahead!

Hon Kim Chance: Thank you so much for that!

Hon GIZ WATSON: Recommendation 2 recommends that clauses 27, 36, 74 and 75 be amended.

Hon Kim Chance: Yes.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 28: Compliance with pest exclusion notice -

Hon KIM CHANCE: I move -

> Page 29, lines 28 to 30 - To delete "may include, after consultation with the authority, a summary of the authority's failure in the department's next annual report" and insert instead -
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> > , after consultation with the authority, must include in the department's next annual report a statement on the performance of the public authority in relation to compliance with this Division
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> Page 30, lines 1 to 6 - To delete the lines and insert instead -
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> > (3) A statement under subsection (2) may include -
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> > (a) any explanation offered by the authority in relation to its compliance with this Division; and
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> > (b) recommendations as to how compliance could be improved.

These amendments give effect to committee recommendation 12, but it does not give effect to the recommendation in its entirety. Recommendation 12, together with recommendations 14 and 16, would require every instance of noncompliance with a notice and prescribed control measures by a public authority to be mentioned in the Department of Agriculture and Food's next annual report. Clauses 28(2), 27(7) and 31(2) allow the director general to include in the department's annual report a summary of a failure by a public authority to comply with a pest exclusion notice to take prescribed control measures or to comply with a pest control notice.

The intention of these clauses is not to name and shame a public authority every time it fails to comply with the relevant requirement; rather, the clauses are intended to provide a mechanism for the director general to report on the overall performance of an authority that has, for some reason, failed in this regard, and to highlight to Parliament the reasons for the noncompliance, particularly when an authority lacks the resources to adequately control declared pests on lands for which it is responsible. To do this, it is unnecessary to include in an annual report the provision of a summary for every single event of noncompliance. Hence, the director general has given discretion to whether to include mention of a particular noncompliance. The government believes that if it is to be obligatory for the director general to report on the noncompliance of public authorities, then the provisions should be couched in terms of a general requirement to report on the level of compliance of public authorities with the requirements of this division of the bill; not in the current terms of a summary of each failure to comply. Therefore, this amendment will amend clause 28 of the bill so that the director general is required to include in the department's annual report a report of the overall performance of an authority that has been noncompliant in some respect. The same amendment is proposed for clauses 29 and 31.

Hon Bruce Donaldson asked a question, not in relation to this clause because he has not spoken on it, on this general issue. He asked what steps other than the reporting measures proposed by the bill could the director general take if there is a failure by a government agency to comply with the pest control notice or prescribed pest control measures. If the question relates to the control of high impact organisms, which are those organisms that have the potential to seriously threaten primary industries, the environment or public amenity, the Department of Agriculture and Food would undertake measures to contain and eradicate those organisms until such time as the extent of an infestation or infection is thoroughly assessed and the likelihood of containing or eradicating the pest or disease is known. These are emergency response steps. They are necessary before government or industry commits funding towards the cost of potentially very expensive and/or long-term containment or eradication programs. The Department of Agriculture and Food will undertake such action regardless of whether the high impact organism was found on public or private land. We recently had examples of both of those.

Emergency response measures may also be considered for potentially serious prohibited organisms that are not prescribed as high impact organisms.

Hon KEN BASTON: The Legislation Committee's recommendation to clause 28 was made on the premise that we felt that we were making all these laws for various individuals or corporations, but we were not including, perhaps, many government departments or government authorities. I notice in further amendments that reference is made to an "authority". It is interesting that this has arisen since I made my contribution to the second reading speech and that the Department of Agriculture and Food is heading in a line of authority. I have some concern with that.

Hon Kim Chance: The authority that we are referring to in this legislation is another public authority which has control over the land.

Hon KEN BASTON: No. The government's amendments have been changed since the committee discussed this legislation.

I am disappointed that it has taken nine years to get to this stage and after the committee sat in February and March and pored over the legislation in great detail we now have more amendments other than the 34 amendments that the Legislation Committee recommended.

Hon Kim Chance: This is one of them.

Hon KEN BASTON: Yes, but it is not in the same context that we suggested. It is an improvement. I notice that the amendment states -

> . . . after consultation with the authority, must . . .

In the original amendment the last word was "may" and it is certainly an improvement.

The Legislation Committees' report 7 states the following in relation to clause 28 -

> **Director General's discretion to report non-compliance by public authorities**
>
> 2.89 This clause prescribes the ramifications for non-compliance with a pest exclusion notice issued under clause 26. A person who receives a pest exclusion notice and does not comply with it may be liable to a fine of up to $20,000. In the case of a non-complying public authority however, no fiscal penalty is imposed; instead, the Director General may -

That word is changed to "must" in this amendment. To continue -

> include a summary of the public authority's non-compliance in the DAF's next annual report.

This point was certainly raised by the stakeholders. It was a concern for grower bodies, such as the Pastoralists and Graziers Association and Western Australian Farmers Federation. The concern comes with the Department of Environment and Conservation owning more land in the state and the feeling that it does not have to operate under the same lines. If we were to have it operating under the same lines - that is, to meet the triple bottom line etc - these rules would apply. I admit that this amendment is an improvement but it is not satisfactory as an accountability compliance.

In the second reading debate the minister asked me where I would declare them all. In the fine print we witness in this chamber it would not take long to fill a page up. I do not believe the compliance on a department or authority is successful.

Hon GIZ WATSON: I accept that this amendment is an improvement. I was part of the majority of the Legislation Committee that recommended that these fines be equally applied to agents of the Crown. I realise that this opens up an interesting area of policy and law in applying fines to other agents of the Crown. I will talk about that in more detail in a minute. The principle I support is based on the fact that when we discussed this in the committee there were very few examples of where a transgression by a department was actually followed up with a fine. The only one that we could think of was when the Water Corporation was fined by the then Department of Environment for a sewage spill into the Swan River. It seems to me that that sets an example. The point is one of community perception and fairness in regard to this issue.

Obviously, a department will have a strong disincentive to be harbouring a declared pest or complying with the obligations to remove a pest species if it is to be named in an annual report. The trouble with being named in an annual report is that generally there is a time lag. In the community's perception that is seen as a much lesser punishment than actually being fined. The argument will be that we are taking money from one department and putting it into the public coffers. Perhaps that is an argument for it not being a problem. I realise there will be arguments about the time taken up in court cases that might not be productive.

Perhaps I will start in more detail on this issue by seeking clarification of the term "public authority". It is defined to include ministers, government agencies, corporate bodies established for public purposes, and local

government. Which, if any, of these bodies are subject to the fines in clauses 28 to 31? I touch on all those clauses because this argument applies to each of them.

Hon KIM CHANCE: There are four groups of public authorities listed (a) to (d) in the preliminary to the bill on page 11. This is the interpretation of what a "public authority" is for the purposes of the legislation. Paragraph (a) refers to a minister of the state, who cannot be prosecuted; paragraph (b) refers to an agency or an organisation, as those terms are defined in the Public Sector Management Act 1994 - that is, an agent of the Crown - which cannot be prosecuted. Paragraph (c), refers to a body corporate or unincorporate that is established or continued for a public purpose by the state, regardless of the way it is established. Whether it can be prosecuted depends on how it is established. It would be possible to prosecute many of those; it may not be possible to prosecute some of them. Paragraph (d) refers to a local government or regional local government, and all of those can be prosecuted because they are not agents of the Crown. It is whether an agency is an agent of the Crown that ultimately determines whether it can be prosecuted. That is modified only to the extent that its particular enabling legislation may specify that it can or cannot be prosecuted. The rule of thumb is that an agent of the Crown cannot be prosecuted unless otherwise specified.

Hon GIZ WATSON: The definition of public authority includes local government and I believe the minister is saying that under this bill, ministers or agents of the state cannot be fined. Is that correct?

Hon Kim Chance: Yes.

Hon GIZ WATSON: Then why are local government and regional local government in this list? It was my understanding that individuals can be fined but not public authorities.

Hon KIM CHANCE: No, that is not what I said. The four cohorts that I described all come under the heading "public authority". A public authority may or may not be prosecutable depending on its status. In going through the four cohorts from (a) to (d) and describing their nature, I broke them down one by one. Those two in paragraphs (a) and (b) cannot be prosecuted; one group, those in paragraph (d), can be prosecuted; but those in paragraph (c) are different because with that group of groups, the status depends upon how they were established. Most can be prosecuted, but some cannot.

Hon GIZ WATSON: For my final clarity on this, local government and regional local government can be prosecuted - they can be fined.

Hon Kim Chance: They can be prosecuted.

Debate interrupted, pursuant to standing orders.

[Continued on page 2056.]

Sitting suspended from 3.45 to 4.00 pm