

BIOSECURITY AND AGRICULTURE MANAGEMENT BILL 2006
BIOSECURITY AND AGRICULTURE MANAGEMENT (REPEAL AND CONSEQUENTIAL PROVISIONS) BILL 2006
BIOSECURITY AND AGRICULTURE MANAGEMENT RATES AND CHARGES BILL 2006

Cognate Debate

On motion by **Hon Kim Chance (Leader of the House)**, resolved -

That the Biosecurity and Agriculture Management Bill 2006, the Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Bill 2006 and the Biosecurity and Agriculture Management Rates and Charges Bill 2006 be taken cognately.

Second Reading - Cognate Debate

Resumed from 2 November 2006.

HON BRUCE DONALDSON (Agricultural) [9.13 pm]: I am the lead speaker for the opposition on these bills. However, one member of the Legislation Committee, Hon Ken Baston, will be absent on parliamentary business for the next two days. I wish to stand aside this evening to allow Hon Ken Baston to make a contribution to the second reading debate because he may not otherwise get the opportunity in the next few days.

HON KEN BASTON (Mining and Pastoral) [9.15 pm]: The Biosecurity and Agriculture Management Bill 2006 has been around for some time. It has taken some nine years to get to this stage. It brings together 17 acts, which has been a task of some difficulty. The Legislation Committee, in considering this bill, still came out with another 34 recommendations, even after that period of nine years. Consultation took place with all the various parties. The government actually split the work among various reference groups, which considered this bill in detail. It is a skeletal bill, and the regulations will tell the whole tale. Of course, we have not yet been privy to the regulations, but we will watch with interest as they are introduced. The idea of this bill is to enable quick action in the event of a biosecurity issue. A management plan would be set up to respond to a biosecurity problem involving animals, plants or fisheries. The plan would need to be able to be acted upon quickly and regulations to implement management plans would need to be declared.

The biosecurity of this state and, for that matter, of this nation, is absolutely paramount. Protection of agriculture is very important, and flowing on from that is the health of consumers of agricultural products. Western Australia's natural isolation is a huge advantage, and it is important that we continue with strict quarantine inspections of imported goods, whatever they be. This bill contains hefty fines for offenders, and I was interested to see the way in which those fines will be applied. One of the problems I have with this bill is that those fines are able to be applied to landholders but not government departments. In this day and age when we seem to be tending towards converting government departments into authorities that can make profits, I believe that those authorities should also face the same consequences for breaking any laws about weeds or feral animals on lands they control, such as in the case of the Department of Environment and Conservation. That has come out in one of the recommendations in this report. Submissions from landholders also requested this measure.

There is a huge list of declared species of plants. The list we were given contained only the generic names. One of the requests made in the report is that the common names of the plants also be given, as well as pictures of the plants. It is interesting that agricultural farming land is rapidly being cut up and a lot of new landholders are coming into the industry. They may be only hobby farms and not larger farms, but the hobby farmers are expected to know all the weeds and diseases that are likely to occur on their farm. If they do not disclose the names of the weeds that they have on their property or an animal health issue, they can face hefty fines.

One would hope that the Department of Agriculture and Food would ensure that all people on the land are advised, either through rural journals or websites, on what to expect. There will need to be a consistent education program to make sure that they do not face a fine for something about which they were not aware. It will involve good management for the small landholders to be kept informed. I guess the Department of Agriculture and Food will need to play a major part in that management.

Another issue that came up in the report was that government departments that have large landholdings in the pastoral areas need to take responsibility for that land. That is what I was alluding to when I referred to imposing fines on government departments that are in breach of the legislation.

It is interesting that I found a November 2005 report of the House of Representatives Standing Committee on Agriculture, Fisheries and Forestry titled "Taking Control - a national approach to pest animals". One of the submissions presented to that committee was from Warrawagine Station in Western Australia. The report states -

... local pastoralists expressed concern that camel shooting is not allowed in national parks. The committee was informed that huge populations of feral camels are building up in national parks, where they cause tremendous environmental damage. The committee was shown photographs of camels that have fallen into waterholes ...

It is interesting to note that the report also states -

The obligation of state government agencies not to allow pest animals on their land to cause nuisance for adjoining landholders has been given judicial recognition in Victoria. In the Supreme Court case of *Stockwell v State of Victoria*,⁹ the plaintiff Ron Stockwell sued the Victorian Government for failing to properly control wild dogs on its land. The Stockwells had lost substantial numbers of stock as a result of the build-up of dogs on neighbouring Crown property. The court held that the government was liable for private nuisance and common law negligence because it knew of the presence of the wild dogs, it was foreseeable that the Stockwells would suffer damage if nothing was done, and the government failed to take reasonable measures to rectify the problem.

I can see that happening in the Western Australian rangelands, as a large number of them are owned by the Department of Environment and Conservation. I was advised by way of an answer to a question that I asked in this house last year that the funding that is available for those properties is only \$1 million. That is not a lot of funding to manage those large areas of land. In addition to that, I attended a meeting at Mt Magnet on Friday and a representative from DEC said that it needs another 46 per cent of representative biodiversity areas of the Gascoyne-Murchison. Therefore, more properties will need to be purchased to achieve that. The management of that is very important. For that reason we must be adamant that government departments are accountable and face the same fines as an individual landholder. I do not believe that reliance on a government department being named in an annual report to be tabled in Parliament will have the effect that is needed for that department to operate properly.

There are other issues in the bill. The Minister for Agriculture and Food must refer a matter related to fisheries to the Minister for Fisheries; the bill specifically states "Minister for Fisheries". It was felt by the majority of committee members - I certainly believe it - that the current minister is a fairly credible minister. One would hope that in the future there will also be credible ministers for agriculture and that they will have enough nous when drawing up management plans to automatically report to the relevant departments any biodiversity issue affecting people's health, the environment or fisheries. I foresee the requirement in the bill for the minister to report to a specific minister or the Department of Environment and Conservation becoming bogged in the system of bureaucracy. The whole idea of the bill is to give the minister and the department of the day the power to act quickly so that they can take control of any problem that occurs. In some cases, of course, the action may be to implement a mild management plan for the control of a specific weed. However, some new diseases could break out in this country and who knows what they would be? The legislation must be flexible and be spread very widely so that the minister and the department can act in any direction.

I will watch with interest as we go through the committee stage - if the bill has not been dealt with by the time I return to Parliament - to hear the response of the minister and his advisers to the committee's 34 recommendations. I note also that Hon Giz Watson has added a couple of amendments to the supplementary notice paper since the committee published its final report.

Recommendation 4 of the committee's report states -

The Committee recommends that the Biosecurity and Agriculture Management Bill 2006 be amended by inserting an objects clause. The clause should explicitly state that the regulation of pests and diseases which affect only human health is not covered by the bill.

The report also states -

The Committee suggests that the Minister's Second Reading Speech for the BAM Bill would be a useful starting point for the formulation of an objects clause:

The purpose of the bill is to provide effective biosecurity and agriculture management for Western Australia ... by establishing an effective means of controlling the entry, establishment, spread and impact of animal and plant pests and diseases; controlling the use of agricultural and veterinary chemicals; allowing standards to be set to ensure the safety and quality of agricultural products; and enabling certain funds to be raised for biosecurity-related purposes.

That is actually a very good objects clause, as it allows people to understand the intent of the bill. I hope that recommendation 4 is included in the bill.

The committee recommended defining "biosecurity". We noted that there was not a definition of "biosecurity" in the New Zealand bill and that there seemed to be some angst regarding someone from the department telling

someone else what biosecurity is. The committee made a recommendation that is already contained in the bill. The committee favoured the following definition of “biosecurity”, as recommended by the Department of Agriculture and Food. Paragraph 2.37 of the report states in part -

“biosecurity” means protection from the adverse effects referred to in sections 11(1) and 21(2).

There was certainly some discussion on that matter, and the general consensus was to support that definition.

A Biosecurity Council will be set up. It is interesting that the Biosecurity Council will advise the minister when a declared pest declaration is to be made. The minister does not have to consult with the council, but it is there as a backup. The minister will appoint the members of the council. One of the witnesses, Mr Walker, stated -

Ordinarily the minister would consult widely with the department or persons within a particular area in other public authorities before making a declaration. If some contention existed - Hon Giz Watson mentioned buffel grass, which would be a contentious declaration if it were made - the minister would seek the advice of the council. I am not sure whether he or she would need to do it in each and every instance. We are trying to lift the view of the council so that it deals strategically with biosecurity issues and ensures that adequate arrangements are established in each sector so that they can respond to, assess and manage biosecurity threats.

Buffel grass is, of course, valuable. Hon Giz Watson probably disagrees with me, but it is a valuable source of protein that has made many areas of the rangelands highly productive.

Earlier I said that the minister must consult with the Biosecurity Council. I believe there is a recommendation to change that. Recommendation 10 states -

The Committee recommends that clause 158 of the Biosecurity and Agriculture Management Bill 2006 be amended so as to require the declarations published pursuant to that clause to refer to organisms by both their common and scientific names, and to include a representative photograph or picture of, and any other aids for identifying, any named organisms.

That is a very important provision that would allow people to identify exactly what we are talking about. Recommendation 11 is along very similar lines.

Recommendation 13 states -

A majority of the Committee (comprised of Hon Giz Watson, Hon Ken Baston and Hon Peter Collier MLCs) recommends that clause 28 of the Biosecurity and Agriculture Management Bill 2006 be amended so that public authorities are subject to a fine of up to \$20,000 for failing to comply with a pest exclusion notice.

When witnesses were asked why they did not agree with that provision, they said that it was inappropriate to fine other government departments. However, I believe that a precedent was set when the Water Corporation was fined for pumping waste into the Swan River. If we are really serious about biosecurity, we need to make one rule for all, particularly as so many areas are controlled by national parks and reserves etc.

This bill also allows for mining companies to be rated. That is interesting in itself. We have pulled the three bills together if it also becomes necessary to raise the rate for agricultural areas. I stand here as a former pastoralist. This issue caused a fair degree of angst amongst pastoralists because the pastoral industry has been rated for years and agricultural lands were not. We always felt that there should have been some rating. If somebody reads *Hansard* tomorrow -

Hon Kim Chance: Both sectors used to be rated historically. The agricultural areas opted out of the rating process and, as a result of that, didn't get the matching funds from government. That was the difference.

Hon KEN BASTON: With skeleton weed, pastoralists raise the rate themselves.

Hon Kim Chance: With skeleton weed, the farmers pay the lion's share of the rating. If they spend about \$3.5 million in a year, the government will pay only about \$0.5 million of that. That is in kind. It is almost all funded and run by the farmers.

Hon KEN BASTON: As more organisms and diseases etc possibly come in, especially if we are importing products from overseas, we need to be ready in case there is a necessity for raising funding in the agricultural areas.

Hon Kim Chance: Our risks are huge.

Hon KEN BASTON: They are; I agree with the minister. Some of these fines that are recommended, such as a duty to control declared pests, are up to \$20 000. I refer also to paragraphs 2.98 and 2.99 of the report that relate

to clause 29 and the director general's discretion to report non-compliance by public authorities. I alluded to this before. Paragraph 2.98 states -

This clause prescribes the ramifications for failing to comply with prescribed control measures in relation to a declared pest. A person who does not comply with the prescribed control measures 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** include a summary of the public authority's non-compliance in the DAF's next annual report.

Paragraph 2.99 states -

The Committee refers to the discussion and comments at paragraphs 2.91 to 2.97 in this Report as they are applicable to this issue.

The committee recommended that that be applied and it be in the department's next annual report. However, the majority of the committee - comprising Hon Giz Watson, Hon Ken Baston and Hon Peter Collier - recommended that clause 29 of the Biosecurity and Agriculture Management Bill 2006 be amended so that public authorities would be subject to a fine of up to \$20 000 if they fail to comply with prescribed control measures in relation to a declared pest. I have alluded to why I believe that should be the case.

The report goes on to deal with clause 31, "Compliance with pest control notice", and the director general's discretion to report non-compliance by public authorities. Paragraph 2.101 states -

This clause prescribes the ramifications for non-compliance with a pest control notice issued under clause 30. A person who receives a pest control notice and does not comply with it may be liable to a fine of up to \$50,000 (or up to \$100,000 and imprisonment for 12 months if the pest control notice involves a high impact organism).

In the case of a non-complying public authority however, no criminal penalty can be imposed; instead, the Director General may include a summary of the public authority's non-compliance in the DAF's next annual report.

I do not know how frightened public authorities are of seeing their name in an annual report, but I do not believe they really take it that seriously. It continues -

The Committee refers to the discussion and comments at paragraphs 2.91 to 2.97 in this Report as they are applicable to this issue.

The committee made the following two recommendations for a pest control notice -

Recommendation 16: The Committee recommends that clause 31 of the Biosecurity and Agriculture Management Bill 2006 be amended so that it is compulsory for the Director General to include a summary of every failure by a public authority to comply with a pest control notice in the Department of Agriculture and Food's next annual report.

Recommendation 17: A majority of the Committee (comprised of Hon Giz Watson, Hon Ken Baston and Hon Peter Collier MLCs) recommends that clause 31 of the Biosecurity and Agriculture Management Bill 2006 be amended so that public authorities are subject to a fine of up to \$50,000 (or up to \$100,000 if the declared pest is a high impact organism) for failing to comply with a 2.102.

I suppose there have been examples of what was alluded to earlier, such as pests that come out of national parks or reserves.

I have touched on the Biosecurity Council and its membership.

Hon Kim Chance: Can I take you back a moment to that last issue. How did the committee envisage that would be done? Did it envisage that would be done on a block-by-block basis? Did it envisage that blackberry on CALM land would be reported in the annual report on a block-by-block basis, or that the report would be simply to the effect that CALM has blackberries on some of its south west land? How do you see that reporting occurring?

Hon KEN BASTON: I see it more about a pest that could be spread into adjacent land.

Hon Kim Chance: Such as blackberry.

Hon KEN BASTON: Yes; such as blackberry, if that could affect a neighbour. I will put it this way: if Hon Kim Chance has blackberry on his property and can be fined as an ordinary landholder, the same ruling should apply to public authorities. If the normal landholder can be fined, then what is good for the goose should be good for the gander.

Hon Kim Chance: I understand that. You probably make a good point. However, physically, would you want that done on a location-by-location basis, or simply have it noted in the report that DEC has blackberry on its land in the Bridgetown shire, for example? Would that be sufficient? Otherwise, the annual report will be very thick. That is what bothers me.

Hon KEN BASTON: I see. The requirement for mention in the annual report is in the bill. I was only making the point that a “bad-boy” reference in an annual report that is read in Parliament is insufficient, because most of the annual reports come through in droves and just pile up. Mention in an annual report is not reasonable if a private landholder can be fined for the same thing. Should a private landholder be treated the same; namely, with mention in an annual report?

Hon Kim Chance: We will discuss that more, obviously, in the relevant committee stage. I would like you to think about how it should be reported and in what form.

Hon KEN BASTON: Yes; fine. I note the following comment in the report -

- (1) *The Biosecurity Council must-*
 - (a) *be comprised of members who, in the opinion of the Minister, have a general or specific interest and expertise in the management of biosecurity in the State; and*
 - (b) *include members of community and producer organisations.*
- (2) *The regulations may make provision for the nomination of members referred to in subsection (1) by prescribed community and producer organisations.*

I guess that members from various organisations will certainly have the minister’s ear when it comes to the membership of the Biosecurity Council. It is obviously quite an important body and should be broadly represented. It also needs representation by people with various science degrees. It is seeking fairly broad representation. It will be interesting to see how it turns out.

I have mentioned that this legislation pulls in 17 different bills, including those relating to the Agriculture Protection Board and chemicals and poisons. It was an enormous task, and I can assure the minister that it was quite a job for members of the committee to get their heads around the legislation in a short period of time, bearing in mind that the department had been working on it for nine years.

Hon Kim Chance: You did a very good job.

Hon KEN BASTON: I refer now to officers entering properties. My experience is that if officers are given a little bit of power, it goes to their heads and they become very officious people. The committee said in relation to recommendation 34 -

The Committee considered that an officer’s entry into orchards pursuant to proposed section 12A of the *Plant Diseases Act 1914* may involve concerns for that officer’s safety which are similar to those voiced in relation to inspectors entering properties under section 65 of the BAM Bill. Accordingly, the Committee suggests that clause 64(2) should also insert a requirement for an officer entering pursuant to proposed section 12A to take reasonable steps to warn the owner or occupier of an orchard of the officer’s intention to enter the orchard, prior to the entry.

The committee therefore made the following recommendation 34, which states -

The Committee recommends that clause 64 of the Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Bill 2006 be amended so that it also inserts a requirement for the officer entering an orchard pursuant to proposed section 12A to take reasonable steps to warn the owner or occupier of the orchard of the officer’s intention to enter the orchard, prior to the entry.

I think this is a courtesy that should occur rather than having these gentlemen springing out of the scrub and visiting without any form of notification.

It was an interesting committee to be on, and we received many submissions, although not a lot of witnesses appeared before us. That may have been an indication of the consultation that had taken place beforehand. Organisations such as the Pastoralists and Graziers Association of Western Australia and the Western Australian Farmers Federation did not front before us. I think they had obviously had a large amount of input into the committees, which helped to alleviate some of their problems with issues such as the Cattle Council of Australia’s funds, and the security of those funds and their rollover. When we get to the committee stage, I will be interested to hear the minister’s comments on how the groups that will replace the zone councils will be elected and will operate. There seems to be an opinion that they will be elected rather than appointed by the minister, which means that people will have a say on who will be on those groups, if that is the case. They will come under the Biosecurity Council and play a role as biosecurity groups - I think that is the name for them - that the zone councils played, particularly in the rangelands. There is certainly an opportunity to establish a

better mechanism that will deliver solutions, particularly with regard to the wild dog problem in the rangelands. I will watch that with interest, and I hope that will be the case.

Hon Kim Chance: If you are looking for a precursor for what these groups will look like, you could do worse than look at how the skeleton weed committee is run. The skeleton weed policy formation unit is now essentially farmer owned. We took the view that because the farmers are paying the money, they should be given the call on how the program is managed. That has worked extremely well, because farmers who have a problem are more ready to approach their peers about how to deal with the problem than they were to approach the regulatory authority. We hope that will be the model that we will follow for these groups.

Hon KEN BASTON: This is a skeleton bill. The regulations will be paramount in determining how it will operate. I reiterate that each management strategy that will be implemented for a particular problem will be governed by different regulations. That will provide greater flexibility for the future.

HON BRUCE DONALDSON (Agricultural) [9.53 pm]: The Biosecurity and Agriculture Management Bill, the Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Bill and the Biosecurity and Agriculture Management Rates and Charges Bill have been a long time in gestation, as Hon Ken Baston would be well aware. I remember that in about 1999, when we were in government and I was chairman of the coalition rural committee, we had access to some of the early chapters that were written on these bills. Some of those chapters we did not like. After a long period of consultation, a green bill was put out. That was a very wise move by the minister, because it provided the stakeholders with the opportunity to debate the proposed changes. Although a number of changes were made to the green bill, there were not as many changes as I thought there would have been.

Hon Kim Chance: I think it is true to say that we were all a bit surprised about that.

Hon BRUCE DONALDSON: The minister probably reflected on that and it gave him a bit of a glow to think that the final bill was not too far away from the green bill that had been put up.

Hon Kim Chance: The process was actually very similar to the process that your government went through with the Fish Resources Management Bill, because in that case also, the green bill and the final bill were not very different from each other.

Hon BRUCE DONALDSON: No. The minister referred to the Fish Resources Management Bill. Consultation is very important when it comes to major bills such as these bills. Of course, after the green bill had been presented, the bill was referred to the Standing Committee on Legislation of the Legislative Council for consideration and report. That was a very good move. The committee made 34 recommendations. It is my understanding - I stand to be corrected, and probably will be - that the overwhelming majority of those recommendations will be supported by the government.

Hon Kim Chance: We will be seeking the support of the house to change four of the recommendations that were made by the committee. However, we can probably live with those recommendations if we have to.

Hon BRUCE DONALDSON: It will be interesting to see what happens when the legislation comes to fruition. A new act is certainly needed to deal with these issues. Over the past nine years, many separate acts and regulations have dealt with biosecurity, agriculture, veterinary chemicals and standards for agricultural produce. There were some crossovers, inconsistencies and inefficiencies. The view of the minister, Hon Kim Chance, and his department, was that that situation should not continue. I guess time goes by and legislation becomes a bit antiquated and a bit inflexible, and really does not meet the changing conditions as we move forward with technology and some of the other issues that arise. I believe that has been evident in the general support that this legislation has received.

During the debate in the other place, a number of issues were mentioned that had been raised by the Pastoralists and Graziers Association and also the Western Australian Farmers Federation. Some of those issues were picked up and amendments were made in the other place. However, I am led to understand that there is general in-principle support for the legislation and how it is to be carried out.

As we all know, the legislation will replace 17 acts. I think that was the difficulty in the lead-up to this legislation. People were getting a bit nervous. When 17 acts were to be repealed or abolished, we all became a bit nervous, I guess, and that is understandable. What did it really mean? Did people see it as a super act that might have a broad-brush approach, whereas in earlier days those separate acts provided protection, to our way of thinking? I do not know. However, that was my assessment. That is why there was a bit of nervousness about the whole deal, even when we started work on the legislation.

The legislation will provide a single regulatory scheme to manage the harmful organisms that not only impact on primary industries, but also may affect the environment, the economy or public safety or amenity. It will deal consistently with the different types of biosecurity threats, whether they be animal and plant pests, weeds, or animal and plant diseases. As we all know, these were previously dealt with in a different way under the various

pieces of legislation, leading to unnecessary loopholes and inconsistencies. As we all know, we are very blessed by Australia being an island nation. As long as we maintain our very strict quarantine service and do not become complacent, we will ensure that that protection that we have because of our isolation remains one of the key factors in ensuring that our agriculture and primary production of any other sort continue to be protected. I believe that we all recognise that. That in itself has been a key part or plank of this legislation, and I think it is important that it be so.

Under the new scheme, I have difficulty with the use of the word “organism” in a broad sense. It is not just animals, plants and other living things commonly understood as organisms, but also animal and plant diseases. I noticed that in the Assembly, Dr Graham Jacobs used a different terminology; namely, “prion”. I must check *Hansard* at some stage before I finish my speech. He lost me a little. I think it might be a medical term or something like that. However, he talked about the difference, and it was probably a bit beyond me; I do not know. I do not know whether anybody else understood it.

Hon Kim Chance: I certainly didn't.

Hon Ed Dermer: Normally, diseases are caused by micro-organisms.

Hon BRUCE DONALDSON: Yes, but what is a prion? I will have to look that up afterwards.

Some of the processes to be introduced will be management plans for declared pests and pest exclusion notices. The review of administrative decisions will be extended. Industry funding schemes will be established for declared pest control and compensation, and the successful declared pest rating scheme will be extended from the pastoral areas to other areas, if agreed by industry and government in due course.

I have noticed that one of the things the associations have raised is a concern that, under the levies, stakeholders may suffer from a reduction in consolidated funding in which industry itself is picking up all the costs. That relates to the fact that land adjacent to farmlands comes under the Department of Environmental Protection. It is quite staggering. I do not know whether the figures are correct - the minister will know - but only seven per cent of the state is freehold land.

Hon Kim Chance: Yes.

Hon BRUCE DONALDSON: I guess that of the remaining 93 per cent, a lot of it is pastoral. It is all owned by the Crown.

Hon Kim Chance: I think that about 38 per cent of the crown land is under pastoral lease or was under pastoral lease.

Hon BRUCE DONALDSON: That adds up to 45 per cent. Is the other 55 per cent wrapped up in crown land?

Hon Kim Chance: Yes.

Hon Ken Baston: Unallocated crown land.

Hon BRUCE DONALDSON: That is interesting. I am sure that the minister will explain that there is a major concern that the penalties for private landowners cannot be imposed on the Department of Environmental Protection for its control of land if it is not carrying out its responsibilities. Let us face it; there was criticism of the Department of Conservation and Land Management.

Debate interrupted, pursuant to standing orders.