STANDING COMMITTEE ON LEGISLATION

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

TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 31 JANUARY 2007

Members
Hon Graham Giffard (Chair)
Hon Giz Watson (Deputy Chairman)
Hon Ken Baston
Hon Peter Collier
Hon Sally Talbot

Hearing commenced at 10.05 am

DELANE, MR ROBERT
Deputy Director General (Biosecurity & Research),
Department of Agriculture and Food, examined:

RICHARDSON, MR CHRIS
Chairman, Agriculture Protection Board of Western Australia, examined:

PICKLES, MR GREG
Director, Border Biosecurity and Emergency Response,
Department of Agriculture and Food, examined:

COLLOPY, MR DAMIAN
Manger, Invasive Species,
Department of Agriculture and Food, examined:

WALKER, MR RICHARD
Policy Officer, Biosecurity,
Department of Agriculture and Food, examined:

CHAIR: On behalf of the committee, I welcome you to the meeting. Thank you for attending to assist the committee with its inquiries. You will have signed a document entitled "Information for Witnesses". Have you read and understood that document?

The Witnesses: Yes.

CHAIR: Today's discussions are public. They are being reported, and a copy of the transcript will be provided to you. Please note that until such time as the transcript of your public evidence is finalised, the transcript should not be made public. I advise you that premature publication of the transcript or inaccurate disclosure of public evidence may constitute a contempt of Parliament and may mean that material published or disclosed is not subject to parliamentary privilege. If you wish to make a confidential statement, you can ask that the committee consider your statement in private. If the committee agrees, the public will be asked to leave the room before we continue. I invite you, gentlemen, to make an opening statement to the committee. I think there have been some discussions with our office and there is some anticipation that you will give us a general overview and take us through the key elements of the bill. We will then ask some more specific questions after that. We will need to adjourn today's hearing at about 12.15 pm, if you are still here by then.

Mr Delane: Thanks for that. I will make some general comments about the development of the bill and it might be useful to the committee for Richard Walker to walk everyone through the way the bill was structured and why. We can then open it up for a broader discussion. The Agriculture Management Bill, as it was coined at the time, had its genesis in 1997-98. The former director general Graeme Robertson, in consultation with me and others, developed a proposal at the time that we in fact bring together 14 existing acts to form a single piece of modern legislation. At that time the proposal included the Soil and Land Conservation Act, but that has since been removed. The overall proposal was to modernise and integrate the majority of legislation dealing with

agriculture. Today we have legislation that dates back as far as 1914 and the Plant Diseases Act; legislation which is utilised by our operational staff, which was written at different times, in different ways and has different processes, starting right from the authorisation process through to operational processes. Of course, it impacts on landholders and producers in different ways. There is a great deal of inconsistency, which leads to confusion and inefficiency. It is also in parts quite antiquated. The Plant Diseases Act, when written in 1914, did not have any vision of rapid airfreight and passenger movement and the advent of electronic clearances and transactions etc. A number of things are simply missing from the legislation. It is also quite constrained in a number of areas. The agricultural resources protection legislation, which the Agriculture Protection Board oversees, is limited very tightly to agriculture, and yet animal pests do not impact only on agriculture. There have been a number of situations in which we have had to push the legislation right to its limits to be able to meet the community's requirement to look after its assets.

The other aspect of it is that the vast majority of the operational requirements of legislation are written into the legislation itself - they are not in regulations - so they are quickly outdated, very difficult to change and do not meet the requirements of the community through its government and regulatory agencies, and often do not meet the needs of industry and landholders. A proposal was developed to achieve integration, modernisation and flexibility by bringing all the legislation together, by developing it in a way in which the major heads of power were built into legislation but the operational detail, to the extent it was sensible, was built into regulations, so that the legislation could continue to be modernised and adjusted to meet the needs in what is a pretty rapidly changing operating environment.

That is the genesis. It has had a long gestation. For quite a number of years we were caught in the loop of it being a government policy position to develop the legislation but not being able to get the necessary sequence of approvals in place to get the drafting resources applied to it etc. That was all overcome about two years ago; in fact, the legislation has been drafted and put out for public consultation. It has now been debated in the Legislative Assembly and has been introduced to your house.

I think that is probably enough from me in the opening comments. It might be useful if Richard just outlines how the legislation is structured and why it is structured that way, and then over to you, Chair.

CHAIR: Before we turn to Mr Walker, could you give us one example, to assist my understanding? You talked about the majority of requirements being contained in the legislation. What sort of instance were you alluding to?

Mr Delane: For example, the Agriculture and Related Resources Protection Act 1976 has the penalties and fines written into the legislation. Things have changed a lot since then. That is a simple example.

CHAIR: Sure.

Mr Walker: I will give an overview of the bill. This will take about 20 minutes. It is worthwhile walking through the bill and looking at the major clauses established under it, so that you can gain a good understanding of it. The purpose of the bill is to provide effective biosecurity and agriculture management for Western Australia; that is, to control the entry, establishment, spread and impact of harmful organisms. The term "organism" under clause 5 of the bill is given a broader meaning than it would ordinarily be given, in that it includes diseases as well as things that are ordinarily taken to be organisms, such as animals and plants. The bill also provides for the control and use of agricultural and veterinary chemicals and generally ensures the integrity and safety of our agricultural products. The bill will replace 17 acts. A list of those acts can be found in the explanatory memorandum for the BAM (Repeal and Consequential Provisions) Bill, if you would like to cast your eyes over those at some stage.
[10.15 am]

Looking at part 1 of the bill, clause 3 outlines the relationship of the BAM bill with other acts. Under subclause (1), three acts must be read in addition to the BAM bill in relation to the imposition of declared pest rates. Several acts are listed under subclause (2) that are important in relation to human health, public safety and the use of poisons. The provisions of those acts are in addition to the BAM bill and if an inconsistency arises, those acts will take precedence. Subclause (4) binds the Crown as it has responsibility for 54 per cent of the area of the state. It is important that government agencies take control of declared pests and also comply with the other aspects of the legislation, so the Crown is bound in all of its capacities.

Clause 5 outlines the meaning of terms in the act. I have already explained "organism". I will not explain too many more except to mention that "biosecurity" itself is not referred to in clause 5. This is because the term is not used substantively in the operational provisions of the bill. It is mainly used in the title of the legislation.

Part 2 deals with biosecurity. Clause 10 establishes a provision to allow the minister to declare an organism to be a permitted organism and, as it suggests, those types of organisms will be permitted into Western Australia. On making a declaration, the minister must publish a notice of the declaration in the *Government Gazette*, and that notice may be published in accordance with clause 158, which allows for a notice to the given in the *Government Gazette* if the declaration is lengthy in nature, and the details of the declaration will be contained on the department's web site. Clause 11 allows the minister to declare an organism to be a prohibited organism. These are organisms that may have a negative impact on other organisms in the state, such as crops or livestock, and on human beings and the public amenity surrounding them, the environment, and agriculture, fishing or pearling activities. So the biosecurity parts of the bill have wide application. A prohibited organism is by essence of the term prohibited from being brought into Western Australia except in accordance with an import permit or the regulations. There may be some reason why we need to bring harmful organisms into Western Australia; for instance, the statutory zoo exhibits a large number of animals that are of interest to the public and for educational purposes.

A notice of a declaration of prohibited organism must again be published in the *Government Gazette* in accordance with clause 158. Before making a declaration, however, the Minister for Agriculture and Food must consult the Minister for the Environment and the minister in charge of the Conservation and Land Management Act - obviously they are the same minister - in respect of an animal other than fish that is native to Australia. In respect of fish, the minister must consult the Minister for Fisheries. Any organism that is not specified under the list of prohibited organisms or permitted organisms is taken to be an unlisted organism. Unlisted organisms may also not be brought into the state as they may have the potential to threaten other organisms or agricultural activities or some other aspect of our economy or environment. Therefore, until an assessment is made of the potential threat of those organisms and they are assigned to either the permitted or prohibited list, their entry into the state will ordinarily be prohibited.

Division 2 relates to the importation of organisms into Western Australia, and clause 14 outlines the import restrictions that apply to prohibited organisms, understood organisms and potential carriers. I have largely covered those matters except for the term "potential carrier". A potential carrier is something that may carry an organism or that may carry something that can carry an organism. Things such as agricultural machinery can carry soil that can carry soil-borne funguses as well as organisms. Stock that has been introduced can carry seeds on its hide and also carry diseases. Clause 14(3) allows regulations to be established to set conditions for the import of prescribed potential carriers and those that are specified under the regulations. These conditions would ordinarily be set by the director general and published on the department's web site, so there really is ease of access for the public and importers to be informed of the import conditions as they apply to potential carriers.

Clause 18 outlines the obligations on commercial passenger carriers before they enter the state. There is a requirement for a commercial passenger carrier to inform the passengers of Western Australia's biosecurity laws and to provide disposal bins so that they may remit any potential carriers such as fruit on their person. The commercial passenger carrier is required to dispose of that fruit in a secure manner that does not necessarily entice the spread of diseases. There are also obligations under clause 19 for commercial carriers. If required by the regulations, commercial carriers may be required to give notice of the transport of a prescribed potential carrier or a declared pest. Under clause 20, there are further requirements for reporting and presenting imports that have been brought into the state, and prior notice may be required in respect of an importer who is not necessarily a commercial carrier as such. The regulations can also require a declaration to be submitted by an importer on the contents of a consignment if it is not convenient to open and inspect that consignment. Many bulk containers arrive in the state daily and our inspectors try to ascertain which containers should be inspected as they may carry high-risk material.

Clause 21 in division 3 deals with biosecurity in the state. We have two key areas of biosecurity - at the border and within the area of the state. This is quite different from our existing legislation, which deals separately with livestock and plants and animal and plant diseases. We now deal with biosecurity at the border and within the area of the state. Clause 21 allows the minister to declare an organism to be a declared pest for an area of the state, which may be the whole of the state or a small area. He may make that declaration on the same grounds as he may declare an organism to be a prohibited organism. Again, a declaration has to be published in the *Government Gazette*, and the requirements under clause 158 also apply. Upon making a declaration, the minister may assign a declared pest to a category. Three categories are proposed; these will be set under regulations. The first category is exclusion, where a pest is not known to exist in an area but may impact on agriculture or other aspects of human endeavour or the environment in that area and therefore the introduction of that organism into that area should be prevented. For instance, the Ord River irrigation area is free from Mediterranean fruit fly and it is important for our market access that that area continue to remain free. So Mediterranean fruit fly would be assigned to the exclusion category in that area and conditions would be set on the movement of potential carriers, being fruit, into the Ord River irrigation area. In other areas of the state Mediterranean fruit fly is abundant and it would be managed if necessary. The second category is eradication. This category would be applied to an area if it was considered feasible to eradicate the declared pest in that area. The third category is management. This category would be assigned to a declared pest if it was necessary to prevent the spread of an organism in the area or alleviate the impact of that pest, but it was not feasible to eradicate the pest in that area. That is the general plank, if you like, of how we would manage biosecurity within the state. Before making a declaration or declaring an organism to be a declared pest, the minister must consult with other ministers and if necessary the proposed Biosecurity Council.

Clause 22 establishes a prohibition on the keeping, breeding or cultivation of declared pests. This is not absolute as clause 24 may allow a person to keep a declared pest. We have various species that have the potential to impact on agriculture and environment, such as deer, and those animals should be subject to keeping conditions - for instance, security fencing to prevent their release into the wild. Clause 23 establishes restrictions on the introduction or supply of a declared pest and, if there are any such introductions, they must be set under regulations or a management plan.
[10.30 am]

Clause 25 requires a person to report a declared pest, and this duty is placed on not only the owner of a thing or land, but also a person who finds or suspects a declared pest to be present on any place or thing. Clause 26 establishes a new instrument. This is known as a pest exclusion notice. This notice may be issued by the director general to ensure that a place or agricultural product remains free from a particular declared pest. It is important that we have this provision to ensure that preventative measures can be taken to prevent the spread of diseases surrounding a property that is

infested. Apple scab is a good example of a disease for which there may be a requirement to spray a fumigant on surrounding orchards at opportune times during the spread of the disease. There is increased provision throughout the bill for a State Administrative Tribunal review of a direction given under an instrument issued under the bill, and one exists for pest exclusion notices.

There are obligations on individuals and public authorities to comply with any instruments under the bill. One exists for pest exclusion notices, and failure by a person to comply would result in a penalty being imposed. The penalties for pest exclusion notices are, I think, set at $20 000. However, in other instances pest control notices are set at a much higher amount, and that reflects the seriousness of the offence involved. If a government authority fails to comply with a notice issued under the legislation, the director general may include a report of the failure of the department to apply in his next annual report. This will be done after consultation with the public authority and may include any explanation offered by the authority as to why it failed, as well as any recommendations on how the authority's failure should be addressed or prevented from occurring in the future.

CHAIR: You are talking about pest exclusion and pest control. You said a moment ago that one was more severe.

Mr Walker: Yes, the penalties for pest control notices are $50 000 -

CHAIR: Where is that? What provision is that?

Mr Walker: It is clause 31(1).

CHAIR: Okay. I was looking at clause 29. There are a lot of $20 000 fines there.

Mr Walker: That is right. That is the penalty for a pest exclusion notice.

There is a duty to control declared pests and this duty is imposed on the owner or person in control of an organism or other thing that is infected or infested with a declared pest - that is, the owner or occupier of land or a person conducting activities on land. This latter clause is particularly useful in relation to public utility companies that are conducting work on private land so as to prevent the spread of declared pests, particularly weeds.

Clause 30 establishes an instrument known as the pest control notice. This notice would facilitate compliance with a person's obligations to control pests. A pest control notice may be given to the owner of land, a person conducting activities on land, or a person in charge or control of a thing. I have outlined the penalties for failing to comply with a pest control notice, and the penalties in relation to a public authority.

Clause 34, as I mentioned previously, allows a notice to be given to ensure that a person who is keeping a declared pest complies with any terms or conditions of an authorisation that is given for the keeping, breeding or cultivation of that declared pest. It could ensure that they establish good security fencing for the keeping of deer, for instance. Clauses 35 and 36 establish review arrangements for pest keeping notices and pest control notices. Initially, a person aggrieved by a direction given under either type of notice can approach either the Director General of the Department of Agriculture and Food or the State Administrative Tribunal for a review of the requirements of that notice. If the person approaches the director general and remains aggrieved following his decision, the person can then go to the State Administrative Tribunal for further review of the requirements of that notice. Clause 37 allows the director general to take remedial action if a person has failed to comply with a pest exclusion notice, a pest control notice or a pest keeping notice. Upon taking such action, the director general can recover the cost involved in doing so from the person involved.

Clauses 42 and 43 provide some flexibility to the legislation, in that the director general may give urgent measures under clause 42 for the control of declared pests. Such measures are specified to an inspector, who is then ordered to carry them out. They may not be prescribed measures, but

those that are necessary to deal with a particular situation. Upon giving such a direction, the director general must advise the minister of his actions. Under clause 43, the director general may approve alternative measures that are required to deal with urgent situations and that are not specified by the regulations or a management plan. I will mention management plans later on. They are a similar instrument to regulations. If an alternative measure is taken, the period in which it can remain in force is not more than six months, and again, the director general has to report the taking of such action to the minister.

Division 5 relates to management plans. Management plans are an instrument that may be used rather than regulations, and may be used in relation to the control of declared pests that are abundant throughout an area of the state, such as wild dogs, foxes, rabbits, and blackberry - that type of thing. A management plan is subsidiary legislation for the purpose of section 42 of the Interpretation Act. The minister is responsible for issuing a management plan and must publish the detail of that plan in the *Government Gazette*. The management plan must identify the pest to which it relates, the area covered by the plan - it may be the whole state or simply part of the state - the purpose of the plan, and the practices that are to be followed under the plan. It will also specify any obligations on persons who are required to implement the plan, whether they are individuals or public authorities. Before issuing a plan, the minister must, in the case of fish, seek the approval of the Minister for Fisheries. In the case of a native animal, the minister must seek the approval of the Minister for the Environment. The minister must also consult persons and public authorities that are likely to be put at cost as a result of the plan, before it is issued.

Clause 47 establishes a Biosecurity Council. As Chris Richardson mentioned, the Biosecurity Council will replace the Agriculture Protection Board when the Agriculture Protection Board Act is repealed. It will be the source of independent advice to the minister - and, if the minister so directs, other ministers - on biosecurity issues within the state. The council will be established by an instrument of appointment, and that instrument will specify any matters relating to the operation and procedures of the council that the minister considers necessary. Members of the council are eligible for remuneration, and remuneration will be set on the recommendation of the Minister for Public Sector Management. The membership of the council will comprise persons of a general or specific interest and expertise in the management of biosecurity in Western Australia, and will include members of community and producer organisations such as WAFarmers and the Western Australian Local Government Association. Others such as the Conservation Council of Western Australia may be involved. The Biosecurity Council will be required to make an annual report to the minister, and that report is to be tabled in Parliament; this would cover the business of the council throughout the preceding year.

Part 3 of the bill relates to residues on land, chemical products and the adulteration of stock food and agricultural products. Part 3, division 1, relates to residues on land, and this part relates to the management of organochlorines and other chemical products that are found present in the soil and that are likely to affect agricultural products, including stock produced from that land, and result in those agricultural products containing residue limits that are above the prescribed maximum amount allowable for that product. Those maximum residue limits will be set under the regulations of the act.

Clause 51 allows the director general to give a residue management notice to an owner of land whose land is affected by chemical residues. The residue management notice must advise the owner of the land of the type of chemical that has been found on his land, and must direct the owner to take such measures as are necessary to restrict the production of agricultural products so that they do not become contaminated. Clause 54 allows for the placing of a memorial on land that is affected by chemical residues, and no dealings on that land can occur without the consent of the director general. This clause is provided to give the director general the opportunity to inform the new owner that there are chemical residues on the land and that the new owner must comply with the residue management notice.

Part 3, division 2, deals with chemical products. The manufacture and supply of agricultural and veterinary products is controlled under the national registration scheme, which is administered by the Australian Pesticide and Veterinary Medicines Authority. The control of use of agricultural and veterinary chemicals past the point of sale is a matter for the state, and therefore the Biosecurity and Agricultural Management Bill will impose regulations on the use, storage, supply, handling and transport of chemical products. Those regulations are under development, as are all regulations proposed under the bill.

Part 3, division 3, deals with the adulteration of agricultural products for animal feed. This clause was necessary to prevent people tampering with agricultural products, in particular stock feed, for political protest. There has already been a case in Portland, Victoria, in which some sheep feed was contaminated with pig fat. Clauses 60, 61 and 62 establish offences for the adulteration or purported adulteration of goods to cause public alarm or economic loss.

Part 4 deals with inspection and compliance. I am not sure whether I need to go into too much detail in this section, other than to mention that in carrying out or facilitating an inspection, entry into a dwelling, which includes any place used for normal residence - including a mobile home, if it is in a permanent or temporary position - requires the consent of the person or an entry warrant. A "dwelling" does not include a vessel, so fisheries officers can enter a yacht, for instance, and that arrangement is consistent with the Fish Resources Management Act. Also, before entering a place - ordinarily land - other than a public place, the inspector must take reasonable steps to inform the owner or occupier of the place of his intention to enter the land and carry out an inspection. This does not have to occur where it would defeat the purpose of inspection which may include evidentiary collection and give the person the opportunity to dispose of evidence.

[10.45 am]

There are various powers under this part that allow for the seizure, treatment, destruction and recall of agriculture products if they are infested with declared pests or suspected to be infected or infested with declared pests or if they are contaminated with chemical residues. Again, there is opportunity for a SAT review in the case of seizure and forfeiture to the Crown.

Clause 87 allows the director general to take remedial action and to recover the cost of taking that action if a person fails to comply with a direction to take an agriculture product or prescribed potential carrier to a specified place for treatment if it is infested or infected with a declared pest. He can also take remedial action if there is failure to comply with a direction to treat something, destroy it or otherwise dispose of it and if there is a failure to comply with a recall notice if an agriculture product has been supplied and a notice issued for recall of that product if it is contaminated or infested or infected with a declared pest.

Part 5 deals with legal proceedings. Again, I will summarily look over this part. Clause 104 is worth mentioning. It allows the director general or the person authorised by the director general to commence prosecution for an offence under the act. Clause 105 allows prosecution to be commenced within five years after the date that an offence was committed or within five years after evidence to suggest that an offence was committed becomes available.

Clauses 110, 111, and 112 deal with the liability of body corporate officers, agents and employers. If a body corporate is charged with an offence, an officer who is a director or secretary of the corporation or a person involved in the decision making of that corporation may also be charged with the offence. The same liability arrangements exist for agents and employers under clauses 11 and 12. Of course the director, agent or employer would have to be in the requisite position for that liability to be imposed upon them.

Part 5, division 3 deals with evidentiary provisions and contains the various averment provisions that are necessary to ensure the success of a prosecution. Those are not any more onerous than those contained in the existing legislation. During the consultation process many organisations

indicated that they were unaware that these types of provisions existed and were alarmed when they first saw them. We pointed out that they already exist and that they are available to us. Of course, we would not instigate a prosecution unless it was necessary and unless there was no alternative way to deal with a biosecurity threat or the management of a contaminated agriculture product or other risk managed or regulated under the act.

Clause 26 deals with infringement notices and allows for an infringement notice to be issued within 21 days of a prescribed offence being committed. If the alleged offender does not wish to be prosecuted, he or she must pay the amount of the modified penalty specified in the notice within 21 days of its issue.

Part 6 deals with financial provisions. This is a key aspect of the legislation and one that we are obviously keen to progress in its current form. Under this part there are three different financial matters: a land rating system, which is known as the declared pest rate; industry funding schemes; and a modified penalties revenue account. Division 1 establishes the declared pest account for the land rating scheme. This scheme is already in place under the Agriculture and Related Resources Protection Act and allows for rates to be imposed on pastoral leases. The money derived from that rate is used for the management and control of declared pests in that area.

Under clause 130, the minister may determine a rate for a financial year on land in a prescribed area. When the act commences initially only the pastoral areas will be prescribed. No part of the south west land division will be prescribed unless the government decides to do so. It would not ordinarily do so without the support of rural communities. It provides an effective means to raise funds and build capacity for the coordinated control of declared pests. A rate determination must be published in the *Government Gazette* and, as with management plans, it is subsidiary legislation for the purposes of section 42 of the Interpretation Act. It has to be tabled in Parliament and may be disallowed as if it were a regulation. The purpose of the rate is obviously to put funds into the declared pest account. Different rates may be determined for different areas and different classes of land. In the pastoral area, if freehold land exists, a rate can apply to the freehold land and a separate rate can apply to the pastoral land. Before determining a rate, the minister must consult with the owners of the land to be rated and any other prescribed person. A rate may be a flat rate - and therefore each landholder is charged the same amount - or it may be an ad valorem rate based on the unimproved value of land. The flat rate cannot exceed a maximum amount specified under the regulations and an ad valorem rate cannot exceed 10 per cent of the unimproved value of pastoral leases and two per cent of the unimproved value of any other type of land. Under the Agriculture and Related Resources Protection Act pastoral leases are rated at an amount that is well below four per cent. There is plenty of opportunity for growth until the act is reviewed 10 years after it commences. However, the limit is set and prescribed under the principal piece of legislation.

Clause 134 was an additional clause. It is a new provision that allows for multiple ratings. They might occur where land is subject to a mining tenement, a petroleum production licence or an exploration permit, and it is also subject to some other type of tenure such as pastoral lease or freehold. Rates can be applied to miners as well as the person who is the owner or lessee of that land. This obviously recognises the risk posed by miners as a result of the movement of machinery and equipment in that they may cause the spread of a particular declared pest plants. The rates are payable to the Commissioner of State Revenue in accordance with the Taxation Administration Act and the Land Tax Assessment Act. The moneys to be paid into the declared pest account include rates that are collected, any rates that are recovered and a matching amount from the consolidated fund. For every dollar collected from rural landholders, an equal amount is submitted by the government from the consolidated fund. Currently in the pastoral areas the rate raises about $900 000 and the government contributes an equal amount. The combined funding of $1.8 million goes towards the control of declared pests in that area. That is an effective and successful program. We would like to extend that to other areas, but we will not do so unless there is support from government and rural communities.

The use of money in the declared pest account is specified under clause 138. It may be used for the control of declared pests on prescribed land in prescribed situations to raise public awareness about certain declared pests and to purchase capital equipment for the purposes mentioned previously, and also to refund the Commissioner of State Revenue for the cost of assessing and collecting rates.

Clause 139 establishes the requirement for government to match any contributions that are raised from rural landholders from the consolidated fund.

Part 6, division 2 is very important. It establishes a scheme to allow sectors of the agriculture industry to fund biosecurity programs and to compensate producers for losses they might suffer as a result of a declared pest. This division allows regulations to be established that set out the detail of the scheme. Eventually the industry funding scheme established under the Cattle Industry Compensation Act and the Plant Pests and Diseases (Eradication Funds) Act, which deals with skeleton weed, will be repealed and replaced by the appropriate regulations under this legislation.

Clause 134 establishes a requirement for an account to be specified under regulations for a particular sector of agriculture and for contributions from producers to be paid into that account. The role of the management committee will be to advise the director general, the administrator of the account, and to exercise any other functions that are conferred upon it. The membership of the committee will include producers from the relevant sector of agriculture. The scheme would also require or facilitate payment of contributions to the account.

Clause 144 allows for regulations to be established that prescribe the manner in which the contributions will be collected. As with the skeleton weed program, an amount is applied on the tonnes of grain that are delivered to a grain receiver. A contribution of 30c per tonne of grain received is imposed. Although these schemes are compulsory in the first instance, they are optional. A person may decide to opt out of a scheme and may seek a refund of his contribution even though he has to make it in the first instance. If he decides to do so, he would not be eligible for any compensation payable through the scheme.

Clause 145 deals with the purposes for which money standing in credit of an account may be applied. The money may be applied to the payment of compensation for any losses, costs or expenses incurred of a prescribed kind that are suffered or incurred as a result of an animal agriculture product or other thing being infested or infected by a declared pest that is specified in those regulations. The money may also be applied to the cost of destroying something that is infested or infected, the cost of other programs and measures approved by the management committee, the purchase of capital assets, a refund of contributions if a person decides to opt out of a scheme and the repayment of any money charged to the consolidated fund. That money may go towards the cost of administering the account. The Treasurer may make an advance to an account if there is a deficiency in funding. The consolidated fund can also meet the cost of an eradication program and then subsequently an account could be established to repay the consolidated fund for any costs it has incurred.

There is a requirement under clause 147 for any regulations that are in place to be reviewed at least every five years. This is to ensure that they do not continue in operation for any longer than is necessary.
[11.00 am]

Part 6, division 3 deals with a modified penalty account. Moneys raised through infringement notices are paid into that account and may be used for the enforcement of the act, for the training of inspectors or for the cost of measures to control pests and the cost of programs to promote the public awareness of the requirements of the act.

Part 7 deals with administration. Clause 150 establishes a WA ministerial body; that is, a statutory corporation that is established to perform those functions that are ordinarily, or more conveniently, dealt with by a corporate body rather than an individual, being the minister. That might include

entering into a contract or agreement with another party, acquiring property, or developing and turning into the account any intellectual property at the department's disposal. The ministerial corporate body will replace the existing corporate body of the director general of agriculture, as established under the Agriculture Act 1988.

I have previously mentioned clause 158, which deals with the publication of declarations of organisms and which allows for a notice to be published in the *Government Gazette* rather than a full declaration if that declaration is quite lengthy. The details of the declaration are then published on the department's web site. This is a very cost-effective approach for informing the public of which organisms are declared as either permitted or prohibited organisms or declared pests.

Clause 166 deals with quarantine facilities. It allows the director general to make arrangements with a public authority or other person for the use of a place. That place must be a secure place. If an agricultural product or prescribed potential carrier is infested or infected, the inspector can direct a person to move that organism or potential carrier to a place for treatment, inspection or analysis.

Clause 167 allows for inspection points to be published in the *Government Gazette*. These are points to which a person must take an organism or prescribed potential carrier if they are importing them into the state. These inspection points include the port of Fremantle, the Perth Airport, the Perth mail exchange or the border checkpoints in Eucla and Kununurra.

Division 5 deals with advisory groups and recognised biosecurity groups. Clause 169 allows the minister to appoint an advisory group for any matter that is regulated by the act. Those groups are to carry out such functions as are specified in the instrument of appointment. Clause 170 allows the minister to recognise an existing group as a biosecurity group. That arrangement makes the group eligible to receive funds from the declared pest account for the purposes of controlling declared pests in the area in which they operate. This type of arrangement will replace the existing role carried out by the zone control authorities under the Agriculture and Related Resources Protection Act. When making funds available to a recognised biosecurity group, the director general must give written notice of the purpose for which the money is to be used and any other directions about the use of the fund, and the reporting on the use of those funds. A report presented to the director general by a recognised biosecurity group must be published on the department's web site in accordance with clause 172.

Division 7 deals with general matters. I will mention only a few clauses in this division. Clause 182 allows the minister to delegate, and an express power of sub-delegation is provided. For example, if the minister delegates the power to the deputy director general, the deputy director general may delegate that power further to an officer of the department. Clause 183 also allows the director general to delegate his powers. The power of sub-delegation is limited so that it exists only when a power is delegated to a CEO of another agency. This arrangement was put in place because it is recognised that the Department of Fisheries will largely be responsible for the biosecurity arrangements that relate to fish and aquatic environments. Therefore, the executive director of fisheries will need the power to sub-delegate to his officers so that they can adequately administer those parts of the legislation. Clause 184 is important to us because it allows the minister or director general to make arrangements with ministers and administrators in other states and territories to assist in the administration of the act. Arrangements that might be entered into include the recognition of plant health certificates, the use of quarantine facilities and the provision of quarantine services.

Part 8 of the bill relates to regulations, codes of practices and local laws. Clause 188 gives a general power to make regulations. The specific matters for which regulations may be made are specified in schedule 1. Clause 189 allows for regulations to cover prescribed high-impact organisms. They are the most serious organisms and include foot and mouth disease, branch broom rape and organisms which may seriously affect the viability of a sector of agriculture or which may significantly impact on the environment. Members will notice that throughout the legislation very

high penalties will apply for failing to comply with a requirement of the act regarding high-impact organisms. The maximum penalty is a sentence of 12 months' jail. Clause 190 allows the regulations to adopt codes or subsidiary legislation issued under other acts. The codes would include any rule or standard that has been published by a public authority or another person but which by itself does not have legislative effect. For instance, there could be a code of practice for the production of a certain type of agricultural product to prevent it becoming contaminated with a chemical. The regulations could require the producers in that particular sector to comply with that code, and an offence would be created for failing to comply with it. Clause 191 allows the minister to either issue or approve codes of practice that are issued by another law, body or person. If the minister decides to issue or approve a code, he must publish the details of the code in the *Government Gazette*. Before establishing regulations or issuing a code of practice, under clause 192 the minister is required to consult with the persons who will be significantly affected or who are interested in the regulations or code of practice. The extent of consultation is up to the minister. The minister would decide the extent of consultation depending on the number of stakeholders involved and the types of consultative mechanisms that might be best used to reach those stakeholders. Clause 193 deals with local government by-laws. Under part 9 of the Agriculture and Related Resources Protection Act, a local government can prescribe a plant in the municipal district as a pest plant under the Local Government Act if that plant adversely affects the value of property or the convenience of the inhabitants of the district. A local government authority can prescribe a plant as a pest plant only if it is not already a declared pest under the future Biosecurity and Agriculture Management Act. The arrangements under the BAM act continue the existing arrangements under the Agriculture and Related Resources Protection Act.

Part 9 deals with miscellaneous matters. Under clause 194, the minister is required to review the operation and effectiveness of the act, particularly the adequacies of any penalties specified in the act, each 10 years from the commencement of the act, and to provide a report to Parliament.

That is basically it, other than to again mention that schedule 1 is at the back of the bill. The schedule regulates matters for which regulations can be made. Sorry about the length of that summary, but it is a quite complex bill and is probably worthy of a lengthy overview.

CHAIR: Thank you. Have the bills before us been amended substantially since they were first introduced as green bills?

Mr Delane: A range of amendments have been made, most of which are minor. Yesterday we provided the committee with a document that is just over a page in length and that summarises the changes that were made as a result of the public consultation process. There is also another summary of amendments that were made in the assembly. We have picked up a number of very useful points out of the consultation process. For example, we had not specifically mentioned that it would be an offence to adulterate water. Although it is an offence to adulterate feed for sheep that are being sent to the Middle East with pork fat, it was not an offence to adulterate the water that was also being consumed by the sheep. Some of those types of matters have been picked up. We have made amendments that have been sent to the Biosecurity Council to open up its ambit so that it can give advice to the minister on anything it chose to give the minister advice on. That prevents a minister from being constrained from receiving advice on only the areas that the minister wanted to receive advice. The committee has received the very detailed consultation report of all the issues that were raised during the consultation process and the responses we recommended as appropriate to those issues, which backs up the summary of the amendments that were made following the consultation.

CHAIR: Are you aware of any proposals from the government regarding any further amendments?

Mr Walker: In the council?

CHAIR: Yes.

Mr Walker: I am not across the detail of the amendments, but the parliamentary counsel's office and the State Solicitor's Office have had an ongoing debate about the operation of the clauses that relate to the ministerial body and whether they are appropriate. Therefore, some amendments might be made to those clauses. Some minor amendments might be made also to require the payment of registration fees on memorials placed on land. From my understanding, they are the only amendments that we are contemplating at this point.

Mr Delane: The APB has written to this committee also suggesting that because of a change in the attitude of local government, it may be sensible to include a provision under this legislation that would enable local government to collect rates for the purpose of the pest rate. We have been quite open on that matter. Initially, local government was very strongly opposed to it, based on its experience with the fire services levy. Local government is opposed to having a role in collecting rates. However, in our assessment there has been quite a change in the attitude of local government on that matter. Chris Richardson and I will soon meet with representatives from WALGA to find out whether they have moved on to a point at which we can put that provision in the legislation. It does not have to be invoked, but the provision would be there if the community, through its various government processes, decided that that was a more efficient or effective way of collecting the rate than through the state revenue office or another mechanism.

[11.15 am.]

CHAIR: In light of the emphasis on prohibitions contained within the bill, can you advise the committee what relationship that has with national competition policy and how it sits with it?

Mr Delane: Only two pieces of legislation are particularly affected. An example is the Cattle Industry Compensation Act, which has been covered, which has provided for government to have a compulsion to provide assistance to that sector. For example, the Cattle Industry Compensation Act is based on stamp duty, which has constitutional issues, but it also provides specific assistance, and government has to match that to that particular sector. That has been picked up in the National Competition Council, I think. All the others, including the Agriculture and Related Resources Protection Act, were deemed in the assessment to be not impacted by that legislation. It has been an imperative but it has not been a central imperative to this reform.

Hon GIZ WATSON: Is an example that if an organism were banned from being brought into the state, that would not then conflict with the requirements under the competition policy for free trade within Australia?

Mr Walker: As long as we can justify the basis on which the organism is prohibited from entering the state. Ordinarily, an organism that is prohibited would not already be present within the state, or if it were present, if would be under effective control, so it would not ordinarily be something that is regularly traded; although, having said that, the nursery and garden industry obviously wants to get its hands on all manner of weeds. We are particularly concerned about its views on how they might impact on the environment. Any prohibition is justified technically.

Mr Delane: It would be illegal under the interstate trade provisions for free trade and under international law under the sanitary and phytosanitary treaty arrangements for this state to impose unjustifiable regulation on the movement of any goods where it could not be adequately justified on the basis of biological risk.

Hon GIZ WATSON: That is based on some level of risk assessment. I am thinking of the case of imported salmon in Tasmania. Could you envisage a similar scenario?

Mr Delane: Exactly; this is a micro and sometimes a larger political issue. It is no surprise to members of this committee, I am sure, that local industries would like us to use quarantine provisions to stop all manner of things, such as cherries, bananas and a range of things coming into the state, usually for a combination of biosecurity reasons but also for economic reasons. We apply a pretty rigorous, risk-based approach to that. We are obligated not to recommend, and the

government is obligated not to put in place, regulations that are more than necessary to manage that risk. The same applies under the international treaty and the obligations there of the Australian government as a signatory to that treaty to not have what are called second-tier arrangements in place, so that Western Australia does not exclude produce from this state when it cannot be justified adequately on scientific grounds under the provisions of that treaty. Perhaps the more relevant test case for us has been New Zealand stone fruit. We have been negotiating for some time with New Zealand on stone fruit and only relatively recently put in place regulations that, for example, enable apricots to come in from New Zealand. We also have a number of other areas. Apples are a classic case. Apples cannot come into Western Australia from eastern Australia, and a number of other produce items cannot come into Western Australia from the rest of Australia, because of our assessed biosecurity risk and, therefore, state regulation. If they were imported from overseas to Western Australia, they could also not come.

Hon GIZ WATSON: Will this new act change the existing situation; for example, would the same powers apply to apples as currently apply?

Mr Delane: Exactly. In those cases this does not change the powers but it modernises them, so that they can be more consistently and efficiently managed. It does not change the policy decision; that is, does the science justify the exclusion of apples because of pest risk and, therefore, should apples be covered by this legislation?

Hon GIZ WATSON: I have some questions in the same sort of area. If you look at the kind of dual objectives of having biosecurity legislation that relates to both agricultural and environmental interests, what happens in the scenario of arguably monothetic, competing interests? I used the example earlier of buffel grass, which is a massive environmental weed, but I do not think that we are suggesting eradicating it. Pastoralists would probably have a fit! How are those issues actually resolved in the context of this bill?

Mr Walker: There is a requirement for the minister to consult with other ministers if he considers it relevant in respect of a declaration. If buffel grass were to be declared in the northern part of the state and some sort of management requirement imposed, then the minister would consult with the Minister for the Environment. I am not sure whether our minister would be the one who would initiate that move.

Hon GIZ WATSON: It is the other way round, is it not?

Mr Walker: Yes, certainly the Minister for the Environment could initiate that movement. There may be some controls to prevent the cultivation of buffel grass in environmentally sensitive areas. It is a matter of consultation. If there was no agreement between the minister and his counterpart, then the minister could seek advice from the Biosecurity Council. That is obviously a source of independent advice and would include interests involved in agriculture and involved in conservation, as well as other areas.

Mr Delane: Or the council could choose to volunteer that advice.

Mr Walker: Yes.

Hon GIZ WATSON: Could you point to where in the bill that exchange between the ministers is recognised in respect of the example we have just raised? I can see how the advisory group fits into that picture.

Mr Walker: Clause 21 establishes it, from memory. If you look at subclause (4), it says that before making a declaration for a declared pest, the minister must consult with the Minister for the Environment, the CALM Act minister, and any other minister who, in the opinion of the minister, has a relevant interest; and if, in the opinion of the minister, it is necessary, to consult with the Biosecurity Council.

Mr Delane: One of the very important advances in this legislation, which fits with both state and national trends, is to seek to achieve a complete continuum of provisions across all sectors. At the moment we have got some very agriculture-focused provisions, and in fact have had to use provisions designed for agriculture to try to protect the environment. There is a whole range of weed issues, and in fact some animal pest issues, which we would probably prefer someone did not try to test in court, because we, in the public interest, need to use whatever legislation is available to try to achieve that outcome. We use agriculture provisions for fisheries protection, so there are some inconsistencies and some gaps. At a state level the consultation arrangements we have in place with this legislation with the overarching reference group I think are a good expression of achieving that continuum. We have brought all sectors together to make sure that in the state's principal biosecurity legislation, which is also agriculture legislation, we cover the full spectrum of need. We are also in the final stages of completing a state biosecurity review, which involves the same broad consultation and is being supported by a partnership with all the relevant departments, which will be a very important precursor to the work of the Biosecurity Council. Exactly the same approach is being taken nationally, where primary industry agencies are now working with environment agencies to deal with the problems and the outcomes rather than to stay within their territories. I think that is the way this has been developed. Rather than being an agriculture management bill, which deals with biosecurity, it is a biosecurity and agriculture management bill.

Hon GIZ WATSON: That also raises to me the question of the interaction of this legislation with the proposed biodiversity conservation act. How are they proposed to mesh together?

Mr Delane: We have worked very closely with the Department of Environment and Conservation to ensure appropriate interface - that is, that there are no gaps and no conflicts with the proposed legislation, given that they are at different stages of development. Ultimately, it will be your house more than us who will determine the finalisation of that legislation and whether some consequential amendments will be needed to this legislation if and when that other legislation gets to your house.

Hon GIZ WATSON: I am aware that the discussion paper on the proposed biodiversity conservation act suggested that the Minister for the Environment have the powers to control biological entities. That proposal is superseded by this bill coming forward for debate first -

Mr Delane: It will depend on the definition of a "biological entity" under that legislation.

Mr Walker: We have got to the point at which the Department of Environment and Conservation is happy to utilise this legislation, but some provisions will be built within the biodiversity conservation act that will allow that department to regulate "biological entity" if the matter is not covered by this legislation.

Hon GIZ WATSON: That is arguably what you would define as "organism".

Mr Walker: Yes. Different terminology, same outcome.

Mr Delane: We have needed to be that general because there are emerging infectious diseases. For example, if you start to prescribe fungi and bacteria, we might be dealing with a virus or a mycoplasma or whatever. Also, to achieve consistency across the legislation, it has been much more constructive to go with a general approach, rather than having, if you like, a territorial definition approach to the legislation.

Hon GIZ WATSON: Will the bill deal with pathogens and such things that impact on humans directly rather than indirectly -

Mr Delane: It will be the case only when they impact on other organisms.

Hon GIZ WATSON: Only then?

Mr Delane: What we call zoonotic diseases that can affect animals and humans; it does not deal with human-specific diseases.

Hon GIZ WATSON: You have perhaps partly answered my other question by saying that this is primarily a biosecurity bill, with agriculture added. It is more overarching. I am aware that New Zealand has a Minister for Biosecurity. Has any consideration been given to that approach - namely, across-department overarching importance being placed on biosecurity?

Mr Delane: There has been some discussion in that regard, and we certainly looked very closely at New Zealand. Our experience is that Western Australia and New Zealand are world leaders in terms of the management of biosecurity; we are both very fortunate in that we have much more ability to handle things than is the case in other jurisdictions. Right at the start we looked at New Zealand's biosecurity legislation and what it offered for us, and we have drawn quite heavily from it. The consultation that we have had, and the discussions we have had with various ministers, suggests that Western Australia is not yet at a point at which it would take the New Zealand model, in which there is a biosecurity minister who has some directive powers across all sectors; also, the New Zealand Director-General of the Ministry of Agriculture and Forestry has some power across all sectors, including public health, mosquitoes etc.

[11.30 am]

The advice we have taken back is that Western Australia is not quite ready for that, but we have started a process that might get to that point. We now have very healthy arrangements in place for consultation at my level. We have not yet established a CEO's group in biosecurity matters, but there is much more active dialogue between ministers on how to deal with biosecurity matters across the board. That has helped, of course, because we are dealing with concerns about avian influenza and problems such as cane toads, which are dealt with under our legislation but are in fact dealt with by DEC. We deal with European house borer problems - but they are really outside our bailiwick - and wasps and starlings, which are largely environmental issues. The problems are increasingly across sectors and our resources are being applied outside the agricultural sector. I think it is a developing area and it may well end up in the New Zealand situation in the next five years. The Biosecurity Council really achieves that, particularly as it has the independence to give advice as it sees fit on biosecurity matters, and there is also an obligation for it to report and for the minister to provide the report to the Parliament.

Hon KEN BASTON: I think, Mr Walker, you referred to clause 25 and government authority pest control notices, and that if the authority did not comply with the notice it would be mentioned in a report. Why would a government authority not be fined like anyone else?

Mr Walker: It is a point of contention. The government is unlikely to establish provisions that allow an authority to be fined, except in extreme circumstances where human life is involved, or something almost as extreme as that. I believe penalties can be applied to public authorities in relation to animal welfare. It is a funding issue rather than a legal issue. If a penalty were imposed on a public authority, the money would go into the consolidated fund; it would not deal with the problem. Instead we have proposed a mechanism which reports on the performance of a public authority and allows Parliament to scrutinise the performance once a report is included in the Department of Agriculture's annual report, and highlights the plight of agencies such as the Department of Environment and Conservation in terms of funding for biosecurity purposes.

Mr Delane: This is an issue that is raised quite a lot by landholders and producer stakeholders. Our research internationally has not turned up a situation we have been able to draw from where for this type of matter one department or its chief executive has been open to fining and potential legal action because the department has not carried out controls. That is quite different from the more social issues, such as animal welfare and occupational health and safety etc, where those sorts of provisions are well accepted in communities all over the world. Stakeholders may say differently but our take on their feedback is they now recognise it is a resourcing issue, not a willingness issue. Ultimately when government is funding two arms, to ask the government to prosecute the Department of Environment and Conservation because it is not carrying out controls seems to be a little ridiculous, and certainly for us to take them to court.

Hon KEN BASTON: I guess it is up to the Parliament to bring about that severe reprimand.

Mr Delane: Which it must provide to the government because the government is appropriating the resources.

Hon GIZ WATSON: Would there be a problem if there was a mandatory requirement to publish it in the annual report rather than giving discretion to do so?

Mr Delane: That was debated. The conclusion that was reached and recommended was that it would not be overly instructive to require the Director General of Agriculture to report that and to list it. The Biosecurity Council is in place and is well positioned to provide advice to the minister of the day and also to the Parliament on the effective functioning of this legislation, including whether the government has the appropriate allocation of resources to deal with pests on public land, for example, or on utility corridors. Our conclusion was that there was adequate transparency in place and it would be very surprising, if that continued to be an issue, if the Biosecurity Council did not include it in its report and it was brought to the attention of the Parliament and every other stakeholder who chose to take up the argument with the government of the day.

Hon GIZ WATSON: I believe the legislation contains certain requirements to publish matters on the web site. What about requiring that sort of reporting to appear on the web site?

Mr Walker: It is already there. The annual report is published on the web site.

Hon GIZ WATSON: But there is discretion to have it in the annual report. I am suggesting it should go directly onto the web site.

Mr Delane: It would start to get rather messy if we published every misdemeanour of all landholders on the website for all the world to see. We need to be able to use web sites to facilitate community and economic activity and the function of this act. At the same time we need to avoid using web sites to inform people elsewhere in the world about information they might use against us. We have sought to utilise the web site to help with that, but if there are issues that can be dealt with only through the Western Australian parliamentary and political processes, that is the way they should be dealt with rather than circulating them for debate around the world.

Hon GIZ WATSON: Is notification in the annual report intended to be the exclusive remedy for these circumstances and does it override any rights of a third party to enforce the act in the courts?

Mr Delane: It is not the only remedy. This is replacing legislation which was developed in the days of letters, pushbikes and steam trains at best, and so it was a very slow-moving process. In our experience and I am sure that of land managers who are alleged not to be controlling pests, they are exposed to pressures, as I am sure are ministers, from stakeholders by every communication means available including the houses of Parliament. I think your question possibly relates to a case that occurred in Victoria where landholders brought legal action in the Supreme Court against the government for not controlling wild dogs. I guess that remains an option, but it probably has to go to the area of negligence rather than best endeavours under the legislation. I guess that always remains an option where someone can take another party to court. Increasingly in our sphere of operation, and I am sure it is the same with most other regulators, an increasing number of people are prepared to take us to court, even when our actions seem to be squarely centred within community expectations and tightly centred within the legislation, if it is impacting on them. They are prepared to take us to court or to threaten to do that. One of the important advances of this legislation is that it clarifies a whole range of areas where we have been operating far too close to the edge of the legislation than we are comfortable with.

Hon KEN BASTON: My second question deals with clause 51 in part 3 and relates to residue management notices. Does that mean that all farmlands will be tested? Do you have any base for it?

Mr Walker: We already have good knowledge about which lands are affected with chemical residues and we put in place measures to ensure that agricultural products derived from that land do not contain chemicals beyond the maximum residue limit. There will not be any wide survey of agricultural land in the south west land division. That is not contemplated. If chemicals are detected through traceback mechanisms in stock at abattoirs and agricultural produce, that product can be traced back to a property and tests can be undertaken.

Mr Delane: This largely applies to chemical residues around power poles from now outmoded treatments.

Hon KEN BASTON: I was thinking of arsenical sheep dips from old swim-throughs. If you do find land is affected with chemical residue, where would registration of that land occur? If I were a purchaser of land and I wanted to make sure I did not purchase affected land, where would I find that information?

Mr Walker: It is registered on the title.

Hon KEN BASTON: Clause 132 deals with minimum and maximum rates. Does that rate apply to CALM land in pastoral areas, particularly pastoral properties that CALM has purchased?

Mr Walker: No, it would not. It does not apply to public lands as such. It would apply only to rateable land and I think that is specified under either the Land Administration Act or the Taxation Administration Act. It would not allow for the land under the control of a public authority, such as a shire or a government agency, to be rated, or land under the control of an educational institution or church. There are several other tenures of land which are not rated.

Mr Delane: Which brings us back to the previous discussion about the obligations of the public landholder to carry out pest management. Chris Richardson has been leading the finalisation of a new operational policy which clarifies, in the rangelands for example, what are the obligations of public land managers such as the Department of Environment and Conservation for wild dog control. It puts some practical parameters around that and also makes it transparent at a regional level, through what are called zone control authorities but under this legislation will become recognised biosecurity groups, the level of control that regulators believe is necessary to be carried out, and therefore exposes that agency to meet that obligation or to be held accountable for it.

Hon KEN BASTON: Would that be in the regulations?

Mr Delane: It is already in the legislation. They have responsibility for pest management on public lands. Wild dogs will certainly be a declared pest under this legislation; therefore, that obligation exists. Pastoral leaseholders have that obligation to control. They have a mechanism to contribute rates, matched by the government, so that a collective control program will be carried out. That does not fulfil all their individual obligations. It enables a coordinated program in effect to protect them from others but it does not remove their obligation to make sure that wild dogs, for example, on their pastoral lease are not generating in such numbers as to impact on their neighbours. I guess the same obligation exists on DEC or any other public land manager.

Hon KEN BASTON: If they did not, you would just put them in the report?

[11.45 am]

Mr Delane: If they did not, we would consult and negotiate with them and bring them to the table at the zone control authority, which is what happens now. Pastoralists hold their regional people accountable if they cannot get their senior managers there. Pastoralists hold them accountable through the minister directly or via our minister. A whole range of mechanisms are used to bring about that accountability. Additionally, it would be open to the Biosecurity Council to give advice to the minister and Parliament on whether the system was working adequately in the rangelands.

Hon KEN BASTON: I refer to division 5, page 116. You raised the point about advisory groups. Are the advisory groups virtually similar to the zone control authority? Is that the type of role they will play?

Mr Delane: Yes; with opportunity for broader participation. Currently, under the Agriculture and Related Resources Protection Act the specifications for zoning control authority etc are very prescriptive, and membership is quite limited. They all carry out that function, including recommendations for pastoral rates and the expenditure of funds, but there will be more flexibility in operation. Chris Richardson is spending a lot of time on this issue and he might want to comment.

Mr Richardson: The intention is that under the proposal for recognised biosecurity groups, which is the paper I sent to you, the groups will become autonomous. They would be incorporated bodies basically under the control of the levy payers. Those levy payers would elect the committee that, if you like, runs the business on their behalf. It also has the capacity to involve, if you like, DEC and other interested bodies such as mining companies, local authorities. It could also have the capacity to involve federal groups and other interested bodies. Members of the board see it as a way of achieving better outcomes for the investment, with more flexibility. It will be more focussed on dealing with issues that are important to the local groups.

Mention was made earlier about the model in New Zealand. New Zealand's model is focused pretty much on exotics - things that do not exist - and not so much on endemics, things that are here. Many of the Western Australian agriculturalists or pastoralists are more focused on endemics - things they must manage that are here. Exotics are things that are not here; they are things that should be looked after nationally by departments such as AQIS. Our focus for these recognised biosecurity groups is to deal with issues that we are dealing with daily that are endemic to the issues and considering how to best deal with them and how to achieve better outcomes. One of the great weaknesses in the past system was the inability to involve CALM or DEC closely in the planning and operational process. Going forward as part of the main legislation, which sets the policy, DEC will be closely involved in all those regions in both the planning and joint delivery of a program. Going forward, one of the critical roles of the Biosecurity Council will be to make sure the government allocates sufficient funds to DEC to deal with those issues of biosecurity across the state, not only in their own patch. It will also make sure that, once sufficient funds are allocated to that area, DEC delivers on what is required. The Director General of the Department Agriculture and Food will name a department if that is required. If he is unwilling to do so for whatever reason, I am sure the Biosecurity Council will not hold back if it thinks there has been inappropriate action or performance. As Rob mentioned earlier, that was one of the key issues in consultation. Most people made the same point as you made; namely, why should they be penalised and have to pay a fine or what have you, while the government land manager is doing nothing and not being pinged?

It is my observation that government departments do not like being named in Parliament as non-performers. If they were named repeatedly and nothing was done, there would be something wrong within government if it did not make sure that was rectified. This legislation will enable us to have a more inclusive approach to planning and dealing with issues. With the biosecurity groups, we will reach a position of having an agreed plan within a region such as Carnarvon or Kalgoorlie indicating how we wish to deal with the biosecurity issues over the next five years. A five-year plan will be agreed on showing how we will deal with it on government lands and on private lands, if you like. In some cases that will be via a joint effort and in other cases it will be by the government department doing its thing and the landholders doing their thing. At least they will know what is going on and they will be able to monitor the situation and raise issues. We have found that, to date, it has been a very productive way to go about it. The Department of Environment and Conservation people who live in the regions do not like going out every other day and being belted by the rest of the community who say they are not doing this and they are not doing that. They are keen to have it done. Our challenge is to identify what resources are required

to adequately address what must be done. That is part of the biosecurity review we have been going through. What has come out of that is that a significant amount of additional investment is required annually from where we are at the moment.

Hon KEN BASTON: If someone wanted to establish an advisory group in the agriculture area, would it have to be rated before the advisory group could be established?

Mr Richardson: No.

Mr Delane: No. The APB has control of the authorities variously operating. Some operate very well and some are all but moribund within the agriculture area now. However, they are largely advisory and leadership groups because they have no control of any resources. There are some supporters of this and some opponents. We are doing a rewind back to 1976. Until that point, pest rate provisions applied across the whole state. In converting the Noxious Weeds Act and the Vermin Act to the Agriculture and Related Resources Protection Act in 1976, it was debated in Parliament and that provision was constrained to the pastoral area. In 1978, I think it was, a number of agricultural area councils lobbied to have that provision put back but it was not successful. Therefore, since that time that rating mechanism has been available only in the pastoral areas. In our experience, that has led to a disconnect in responsibility and a culture developing where it became the responsibility of the APB and now the Department of Agriculture and Food to control pests, whereas, legally, it has been with the landholder since the vermin and noxious weeds legislation was implemented in, I think, the 1940s.

Mr Walker: One of the reasons the previous rating system did not work was that it was based on individual municipal districts. We are looking at basing it on wider areas; for instance, the Kimberley zone incorporates four municipal districts in the pastoral area, so it is a wider area from which to draw revenue and from which to plan to deal with declared pest management.

Mr Delane: The world has moved on quite a lot even in the past few years. Four years ago we proposed a regional model, which was a precursor to this debate around the legislation. That was when the regional national resource management groups were just being established, and the timing was not right. They were trying to find their feet. They saw the APB infrastructure as a bit of a threat, if you like. That process has developed a lot since then. In fact, we have seen a very strong convergence of so-called agricultural protection issues with natural resource management issues, which is what we expect when dealing with foxes, wild dogs, weeds and the like.

Hon GIZ WATSON: Can you give any indication of what kind of funding is allocated for implementation. You acknowledge there would be a need for more funding to carry out the work once something like this is in place.

Mr Richardson: If we talk about the issues of managing wild dogs on the government lands that are joint pastoral leases in the Kalgoorlie zone, for instance, which is one of the five pastoral zones, the investment on managing dogs on government land in the past couple of years, as opposed to what is agreed between both the pastoralists from the zone control authority and the DAFWA staff and DEC staff, we need to lift the investment on the government lands by a factor of two and a half from where it is now. We could end up with quite a large number so we are looking across the state and targeting the areas where we need to do the work. For instance, there are 88 million hectares of unallocated crown land across the state. At present investment to deal with issues of weeds and feral animals is in the cents per hectare. We need at least multiple cents per hectare to deal with those issues.

Hon GIZ WATSON: You mean over 10 cents!

Mr Delane: The Minister for Agriculture and Food has been on the public record and in front of the press following previous work emerging out of state weed plan and work we did with CALM at that time to develop a budget proposal. The figure estimated then, which was really to deal with animal and plant pests adequately, was in the order of $15 million a year. The work we have been

doing with the biosecurity review is holistic across marine aquatic forestry, agriculture and terrestrial natural systems, so the figure is substantially more than that. The figure is what the group that has developed it and made recommendations to the reference group, which is chaired by Professor Mel Nairn, believes is what is required to have an excellent biosecurity system that deals with all those issues. It is not quite Rolls Royce, but it would be the world's best biosecurity system by a significant margin if we went to that figure. Clearly, whichever figure you choose, it is a lot more than is currently provided.

Hon GIZ WATSON: When landowners are causing biosecurity problems, is there a cost recovery component? I am thinking of - I do not know whether the bill deals with this - species introduced from ballast water. If that was implemented could the cost of that scheme be recovered from the shipping companies, for example?

Mr Walker: Yes, absolutely. It is proposed that regulations be introduced for the management of ballast water and to ensure that hulls and sea chests and other potential carriers of marine pests and diseases are inspected at the point of arrival into the state if they are from another Australian port. That activity already occurs for international movements, and the cost of those inspections could be recovered or a standard charge could be imposed.

Hon KEN BASTON: In clause 134 concerning multiple rating, reference is made to rating mining leases. Will they be rated or can they be rated?

Mr Delane: They can be rated.

Mr Walker: It will be a decision via the government following consultation with that sector and further consultation with other pastoral interests. This certainly provides the opportunity for that to occur, but because of the matching requirements from the consolidated fund, any revenue raised from mining leases would have to be matched. The Treasurer will need to decide whether he wants to provide that money and whether it is economically viable to assess and collect rates on mining leases as well. The Commissioner for State Revenue would have to assess the cost of establishing a recovery model and the ongoing administration costs. We have not gone down that path yet. The provision is there though to allow it to be utilised. There is certainly interest among pastoral lessees for the government to impose rates on the mining industry.
[12 noon]

Mr Delane: This is a sort of future-proofing provision really. In the Kalgoorlie area, on current trends, there will not be a lot of pastoral activity in that area, and presumably pastoral lease values will be quite low and the rating therefore will be quite low - so it will enable that to occur. I think both Chris and I are optimistic that with the more flexible provisions of biosecurity groups, rather than the very restrictive ones of zone control authorities, we will actually get, in the main, a partnership of landholders in those regional areas, and mining companies will come to the table because they can be part of that organisation and they can be heard. At the moment, the mechanism is set up for agriculture or pastoralism. Mining companies cannot sit at the table except as observers. Whether these provisions ever need to be invoked remains to be seen, but they are there if the community, through its government, decides that it needs them.

Mr Richardson: On that very point, even though we have the zone control authority in Kalgoorlie dealing with those issues of weeds, there is a view in some areas that there is not enough work going on, so they are actually forming groups called declared species groups. They are groups coming together to deal with issues where people wish to deal with issues. Mining companies are actually instigating those, so there are mining companies, local authorities and adjoining landholders forming groups within the big area to deal with specific issues. They are all putting funding into that. I think that a lot of this is the same thing - it is a matter of enabling the people to get together and giving the opportunity to work together to achieve the outcome.

Mr Delane: It has certainly been our approach in all of this. We have usually referred to it as enabling legislation. It is designed to let the community and industry sectors to either do what they know they need to do, or to do what they may need to do, rather than being prescriptive and having provisions that look like something that would be useful but that are, in fact, not useful. At the moment, I refer to fundraising for the agricultural sector as where they want to do things, either because they just want to or because the government is no longer doing things and there is therefore a need. An example is the Plant Pests and Diseases (Eradication Funds) Act, which raises money for skeleton weed and some other things, but cannot be used to raise funds or expend funds for other weeds. The grain industry has a weed called bedstraw that is causing some concern. It is much more narrowly distributed, but in fact the grain industry cannot apply funds raised through the legislation for skeleton weed, or raise funds specifically for bedstraw through that legislation. We have had to deal with that by allocating resources that we would normally spend on skeleton weed to bedstraw, and then meet more of the costs for skeleton weed. In fact, we have recently had to go to the government to get a substantial ex-gratia payment for compensation and assistance to an affected producer because the legislation is not where industry wants it to be. The same now applies to the footrot eradication program, which is clearly an industry specific program in which the majority of the benefit is to the individual producer. After considerable discussion over a number of years, the industry is now saying that it wants to establish a program, but in fact until this legislation is through, there is no legal mechanism for industry to collect, and we contribute to that program.

Hon SALLY TALBOT: My question arises, Mr Walker, from your comments about the mechanisms in part 2, division 3, concerning appeals to the director general or the State Administrative Tribunal. Without necessarily going into fine details with 17 existing acts, can you tell the committee how those appeal mechanisms differ from the existing legislation?

Mr Walker: In respect of the appeal arrangements under clause 35, there is no formal provision for the director general to conduct a review for an instrument issued under the existing pieces of legislation. The only review provisions exist for the State Administrative Tribunal, and so as a matter of convenience to the public, we have included a provision that allows them to seek a director general review, as it is less costly than the State Administrative Tribunal. However, taking into account the potential for a vexatious correspondent, if you like, to seek review of a number of directions given under an instrument, there is opportunity for the director general not to conduct a review if he desires.

Hon SALLY TALBOT: Would that go straight to the State Administrative Tribunal?

Mr Walker: That would give the aggrieved person the opportunity to go to the State Administrative Tribunal.

Hon SALLY TALBOT: That does not exist under the present legislation.

Mr Walker: That is right.

Mr Delane: Some of the legislation has appeal mechanisms - for example, a neglected orchards provision, in which a minister can actually approve the destruction of an orchard. It is a pretty dramatic step. There is a formal appeal mechanism, but in a lot of cases there is not an appeal mechanism, which then says that the only mechanism available is the political appeal process, which can get rather messy and, of course, has the risk of drawing ministers, ministerial officers and public servants into a situation in which there is confusion around the legislation or perhaps inappropriate interference in what should be a reasonably straightforward regulatory process. We see the availability of a State Administrative Tribunal mechanism as being quite important - that is, to be able to refer people to it. If they have a legitimate appeal, it can be dealt with.

CHAIR: I ask a question that relates to biosecurity and the lack of a definition for it in the bill. I heard Mr Walker explain why that definition is not contained, and we have noted that aspect in the

consultation paper and the explanatory memorandum. I wanted to draw you attention to clauses 48, 49, 152, 155 and 170. I do so because they appear to use the term substantively rather than just in a heading form. For example, persons appointed to the Biosecurity Council must -

> . . . have a general or specific interest and expertise in the management of biosecurity in the State . . .

Why would the operation not be enhanced by having a definition of "biosecurity"? I also draw your attention to the explanatory memorandum, which in part states that "biosecurity" essentially means -

> . . . the protection of the State's agricultural industries, environment, economy, lifestyle and amenity from the risks posed by harmful -

Pests and diseases. This would, if one was of a mind to, put one on the road to forming a definition anyway, so what is the detriment to the bill in including such a definition?

Mr Walker: There simply may be some unforeseen area that will be excluded if we define "biosecurity", and that is clearly not the intention of the bill. It is to be all-encompassing and to provide a broad ambit. We believe a definition of biosecurity, plus an objects clause, might significantly limit the legislation. We are very concerned that if the definition is included, that will occur.

CHAIR: I understand what you are saying; however, will the difficulty in delineating the definition in such a way not simply invite argument when someone says that it is not in your jurisdiction?

Mr Walker: The *Macquarie Dictionary* covers the term. "Bio" is a word form of "life", and "security" is "to protect against a threat". There is, in essence, a very broad definition covered by the *Macquarie Dictionary*, which is the standard used. However, further limiting that definition might be very problematic.

Mr Delane: It is an important point, and we have tended to go to the more broadly used definitions, which are reasonably long. There are quite a number of variations around the explanation that the member read out. It would need to be fairly general, but perhaps we could come back with some advice, perhaps starting with the *Macquarie Dictionary* and providing more detail and more constraint in the explanation. Our preference in the legislation has been to make sure that the definitions were there where necessary, but to avoid over-definition because of its potential to constrain as we go forward.

CHAIR: I would be interested to know whether, on consideration, you thought a broad definition is potentially damaging to the bill.

Mr Delane: It is a term that is very commonly used by the likes of me nowadays, but for some people it is still a very new, perhaps even foreign, term. It is increasingly utilised and will be pretty much part of the lexicon in this area in five years, I think, but that does not necessarily help people who may choose to interpret it differently.

CHAIR: I refer to clause 6, which deals with circumstances in which a thing is considered to be contaminated by a substance, even if no maximum residue limit has been prescribed for that thing in relation to that substance. Those circumstances are to be specified by regulations. My question relates to the term "specified". One might ordinarily expect to use in certain legislation the word "prescribed". Are you giving the same meaning to "specify" or "specified" as "prescribed"? Is the word "specified" otherwise referred to in the bill, and does it have the same meaning throughout?

Mr Walker: That is an interesting question. It appears to be taken as meaning "prescribed". The term "specified" is not defined in the bill. Perhaps we can get back to our lawyer; that is a very technical legal question about whether it has any impact on the legislation.

CHAIR: I refer to clause 12, which deals with the minister's obligation to consult certain people before they declare an organism to be a permitted organism or a prohibited organism. Why is the minister not obliged to consult the Biosecurity Council on each and every occasion, rather than only when the minister is of the opinion that consultation is necessary?

Mr Walker: The number of species that will be listed as prohibited organisms and permitted organisms will run into the tens of thousands, probably, so a requirement for consultation in each and every instance is not practical.

Mr Delane: It would be difficult for the Biosecurity Council to add value in that circumstance, so although practicality will say that there will be some circumstances in which that causes problems, and those will be reviewed, the normal consultation, regulatory and political processes will bring those to the fore, I think. That might be a situation in which the minister refers to the council for some further advice.

CHAIR: Clause 21 deals with declared pests as opposed to permitted organisms. Is it the same sort of volume of matters?

[12.15 pm]

Mr Walker: No, it is not.

CHAIR: Does the response to that same proposition vary in relation to clause 21?

Mr Walker: Only if there is contention in the declaration. 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.

Mr Delane: Our experience in developing this is that we do not want to specify in legislation the things that are adequately dealt with in normal administrative processes. Certainly in my eight or nine years experience, if a recommendation for declaration in any form or imposition to regulation goes forward to the minister of the day without adequate consultation and without detailing who has been consulted and if they had any issues about them, that public servant is being foolhardy unless it is considered a very serious risk and urgent action is required with some ex-post consultation.

Mr Walker: That would also establish a tortuous arrangement in that any prohibited organism is automatically a declared pest for the whole of the state. It would confer responsibility on the minister to consult with other ministers with regard to the declaration of any prohibited organisms.

CHAIR: I am mindful of the time. Thank you very much for your attendance today. The committee has two courses of action in relation to your good selves. One is to invite you back at some stage and the other is to provide you with a list of questions. We will discuss which course of action to take and let you know. Thank you very much for your attendance and thank you for the information and assistance that you provided to the committee.

Hearing concluded at 12.17 pm.