Wednesday 7 August 2019

The President, **Mr Farrell**, took the Chair at 11 a.m. and read Prayers.

TABLED PAPER

Government Administration Committee B - Tasmania's North-East Rail Corridor - Report

Ms Armitage presented the report of the Government Administration Committee B inquiry into Tasmania's North-East Rail Corridor.

Report received and printed.

CRIMINAL CODE AMENDMENT (BULLYING) BILL 2019 (No. 5)

VEHICLE AND TRAFFIC AMENDMENT BILL 2019 (No. 19)

LAND ACQUISITION AMENDMENT BILL 2018 (No. 59)

First Reading

Bills received from the House of Assembly and read the first time.

LEAVE OF ABSENCE

Members for Murchison and Prosser

[11.05 a.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council)(by leave) - Mr President, I move -

> That the member for Murchison, Ms Forrest, be granted absence of leave from the service of the Council for today's sitting and the member for Prosser, Ms Howlett, be granted leave of absence from the service of this Council for the remainder of the week's sitting.

Motion agreed to.

SUSPENSION OF SITTING

[11.06 a.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I move -

That the sitting be suspended until the ringing of the division bells for the purpose of briefings.

Motion agreed to.

Sitting suspended from 11.07 a.m. to 12.06 p.m.

BIOSECURITY BILL 2019 (No. 15)

Second Reading

Resumed from 20 June 2019 (page 35)

[12.06 p.m.]

Ms RATTRAY (McIntyre) - Mr President, during a recent adjournment of this Chamber, I concluded my contribution on this large and important bill. I believe someone else is going to make a contribution. I wish the member for Nelson all the best.

Mr PRESIDENT - Honourable members, before I call the member for Nelson, I remind all members that this is the honourable member's inaugural speech, a very important occasion for that member. I also note that there is only one person in this Chamber who has been present when the inaugural speech of a member for Nelson was given, and that is our Clerk. This is a special opportunity because we have not had an inaugural speech from a member for Nelson for a long time.

INAUGURAL SPEECH - MEMBER FOR NELSON

[12.06 p.m.]

Ms WEBB (Nelson - Inaugural) - Mr President, before I speak to this bill I take this opportunity to deliver my inaugural speech. I begin by acknowledging the Mouheneener People as the original owners and custodians of the land on which we meet today, nipaluna/Hobart, in lutruwita/Tasmania. I pay my respects to their elders past, present and emerging, and I pay my respects to any members of the Tasmanian Aboriginal community here today.

I acknowledge the continued connection of the palawa, the Tasmanian Aboriginal people to this land for over 40 000 years and the rich and enduring culture that lives in that connection. I acknowledge that after invasion by Europeans this land was never ceded by the Tasmanian Aboriginal people.

Mr President, I stand here with a genuine sense of privilege to be the new member for Nelson. Nelson is an electorate of great beauty and sense of place, from the slopes of Mount Nelson to the shores of Sandy Bay, from the riverside beaches and foreshore stretching from Sandy Bay through Taroona, Kingston to the bluff at Blackmans Bay, rising in the foothills of kunanyi/Mount Wellington, which provides a beautiful background vista for many of the suburbs that make up this distinctive electorate.

Nelson is a diverse mix of old families and new arrivals, small businesses, public servants, entrepreneurs; it has growing suburbs, young families, thriving schools, and a multitude of community groups and passionate sporting clubs. I know the people of Nelson are well-informed, creative and hardworking; they have strong opinions but are welcoming and engaged.

As I campaigned I heard clearly that this community has high expectations of its elected representatives. I have no doubt many of my constituents will be keeping a close eye on me and my progress in meeting these expectations. Jim Wilkinson, the longstanding member for Nelson who recently retired, has kindly provided me with some very big shoes to fill. During campaigning as I talked to thousands of Jim's constituents throughout Nelson, I found he was regarded with genuine warmth and respect for his service to the community.

Today I add my personal thanks to Jim for his contribution during his time in the Legislative Council, a contribution that benefited not just the people of Nelson but also our whole state. With Jim's retirement an opportunity presented itself for a new representative and, my word, once we had all come out of the woodwork, the people of Nelson were certainly spoilt for choice.

I make particular note here today of the exceptional field of people who offered themselves as candidates for the seat of Nelson in the recent election. The quality of candidates was demonstrated throughout the campaign period; it was seen in the robust discussion of key policy issues in the public domain, in the vision and aspirations expressed for the community and for our state, and in the thoughtful and committed engagement of the candidates with the people of Nelson.

I express my heartfelt thanks and admiration to the other candidates for their public service in putting themselves forward for office. It is a courageous decision to do so and a significant personal investment on every level from the candidates and their families.

I speak for many Tasmanians when I say that the quality field of candidates in Nelson fills me with optimism and excitement for the future of democracy in our state.

Mr President, as you and other colleagues know well, an election campaign is an immersive experience - not just for the candidate but for their family. I owe an immense debt of gratitude and no small number of apologies to my family for their support and love during my campaign. My family is very important to me. I would not be standing here today as an elected representative without the benefit of their efforts, provided to me so graciously and generously.

I want to acknowledge the members of my family, many of whom are here today. To my sister, Kate, and my brother, Josh, for their help every step of the way and in whatever form was needed - practical, financial, familial, moral and even existential - thank you.

To my eldest daughter, Sophie, who gave daily moral support from afar in Canberra and who came down for a stint of doorknocking and worked her charm on a few Nelson neighbourhoods. She was here at my side on election day and she is here today to share these special moments with me. Sophie, you set me on my path in life and I am so fortunate to have you as an inspiration. Thank you.

To my daughter, Indy, and my son, Atticus, who had their mum practically disappear for many months during campaigning and almost never got cross about it. They were mature and capable enough to keep themselves on track. Throughout the campaign I would tell them that I was setting an example for what it takes to follow your dreams with hard work and passion. That lesson came

at a high cost to them and I am very grateful for the loving and supporting kids you are. I cannot promise that I will not be very busy in this job but I can promise you that you will always be the most important thing to me and an inspiration for me to do this job well. Thank you.

To my incomparable dad, Tony Webb, who threw himself into every aspect of my campaign. He was out with me on my first day of doorknocking in February and on the very final campaign day in May, and many, many in between. He also turned his hand to every non-technological aspect of the campaign and supported our whole household in a multitude of ways. For believing in me 100 per cent, thank you, dad.

Finally, to my partner, Peter Horsman, without whom my campaign would not have been possible. Peter, you were involved in and supported every aspect with your skills, your time, your sheer hard work and your thoughtful input. You held our home and families together with patience and humour. Your love and support were unbounded. Thank you does not even come close.

Mr President, I spend time acknowledging my family today because they are essential in my life and have shaped who I am. They have provided me with the values that form my character and that have always been the driving force of my work. They have been instrumental in delivering me to this place.

I believe that our values inform the way we conceptualise the world and our place in it. They are the lodestar of our personal stories.

I would like to share some of my story to shed light on the things in my lodestar. I will begin, if you would indulge me, with a little bit of family history on my mother's side. I want to tell you a little about my great-great-aunt Maud Donnelly. I have learnt of her in recent years and she holds great personal resonance for me.

So, with thanks to my uncle, Rob, for the family history research, Honora Maud Donnelly, known as Maud, was born in 1882. She was the first of an extraordinary generation of the Donnelly family. They were the grandchildren of a former convict and a famine survivor. During the span of their lives, they would see a cluster of colonies become a federated nation and would personally experience the savage consequence of a war in a far-off land.

They were the generation of Donnellys who made the journey from a frontier life of the previous two generations to the modern suburban life that we recognise today. Many in that generation made that transition with a particular concern for justice. It seems to have been in their blood.

In the twentieth century, Donnellys were found in the sawmills and logging camps of the south, calling workers to join union movements and arguing for a fair wage and an eight-hour workday. The eldest of that generation, Maud, became a political activist with a hunger for practical justice and a determination to put the concerns of women on the political table. She held key positions of leadership in the Women's Non-Party League, the Country Women's Association, the Tasmanian Housewives' Association and the women's branch of the Australian Labor Party.

At a time when women were barred from jury service, Maud was appointed a justice of the peace and she presided at the Children's Court as a special magistrate. Maud's activist spirit was likely the product of the circumstances of her childhood and early adult life and the struggle she

witnessed in her own mother's life. Her mother, Mary Donnelly, carried and gave birth to 16 children in 19 years; three of those children died in infancy.

Maud's experience growing up in that environment had an obvious impact on the causes she pursued in her adult life. She campaigned and raised funds for the Bush Nursing Association, so people in the bush could receive professional medical care where they lived.

Maud was involved in radio broadcast in Hobart, focused on educating people about health and nutrition. I like to think that if she were here today, she might be doing podcasts. She campaigned for accommodation for country girls so they could stay in Hobart and continue their education. She raised funds and ran a kitchen during the Depression so that children could eat breakfast before going to school. She campaigned for well-resourced early childhood education. She was also a businesswoman, providing accommodation for tourists and longer term residents over a number of years at various locations around Hobart.

Maud held significant positions in the Women's Non-Party League in the 1920s. They were a group that looked at public policy and resourcing with an emphasis on women's perspectives. The idea of a non-party league reflected their ideal that solidarity among women in making their views heard and in gaining greater opportunities for civic participation should have precedence over any party-political approach or allegiances. The women of the league could be found throughout the 1920s and beyond, lobbying state and federal ministers about a broad range of issues, including issues related to the plight of war widows and their children, the lack of resources for poor families, the poor state of public schools and hospitals, the need for a social welfare safety net and improved access to education, particularly for young girls.

Their aspirations did not end with making their voices heard through lobbying though; they wanted to see women on hospital boards and in the police force, and appointed as justices of the peace and special magistrates. They wanted to see women in positions of power where they could be directly involved in the debates, judgments and legislative processes that had a direct bearing on the nature and direction of the Tasmanian community.

Maud died in 1951, 23 years before I was born. I stand here, an embodiment of her efforts and those of countless other women. My heart sings with admiration for Maud's lifelong commitment to social justice, to her community and to public service.

I cherish the hard-won progress that came from her work for Tasmanian women and families. I am inspired by her vision for equality of participation of Tasmanian women and I take pride in being an expression of her legacy as the first woman to hold the seat of Nelson and in doing so, for the first time in its history, establishing a majority female representation in the Tasmanian Legislative Council and thereby both Houses of our parliament.

We women in this Chamber are an embodiment of the committed advocacy of our foremothers. From the suffragettes of the 1800s through to women like Maud in the 1920s, 1930s and 1940s, we stand testament to the tenacity of their vision and dreams. But even as we stand here as beneficiaries, the work begun by these women is not done. We have not yet fully realised their dreams. In my campaign I made a commitment to bringing a particular focus to my role in this place - to explicitly examining the impact of public policy and legislation on women in our community. I look forward to delivering on that commitment, collaborating with my colleagues in this place and within the community to bring it to fruition.

Mr President, those who know me well will have noted the personal connection I share with many of the themes from Maud's life of advocacy and service. Perhaps we can take it as confirmation that in some cases at least blood will out. I share her passion for social justice and addressing disadvantage. Like Maud, I have seen firsthand the impact of poverty and inequality on others in our community.

I come here after working in the community sector for close to 20 years. I began my time in that sector working in community aged care for the Salvation Army, providing hands-on care for some of the most disadvantaged older people in our state. Through the intervening years, I moved through many roles and arrived at my most recent role, managing the Social Action and Research Centre for Anglicare Tasmania. Across the breadth of that work in the community sector; I have seen the toll taken by the exhausting daily struggle of many fellow Tasmanians to meet their basic needs and those of their families.

Beyond that, and even more cruelly, I have seen the discrimination and judgment all too readily poured on those who are struggling in this way - judgment that then becomes yet another barrier to overcome. Insidiously I have seen in this daily sentence of poverty and disadvantage that the ultimate casualty is hope - hope for the future. For far too many, this hopelessness is a prison from which there is little prospect of release.

Like Maud, I have a deep abhorrence for the inequity that exists in our community and feel called to practical action advocacy to address it. Inequity is not an inevitable condition; it is in most part created and sustained by structural factors, by the choices we make in our public policy. Among us we have the resources to ensure all members of our community have a good life, a home, enough to eat, a well-educated and developed skill set to their full capacity, support to participate and be part of the social fabric we weave together, and care and support to maintain health and wellbeing. These are things that we who live in this most fortunate of places should have as a birth right - that so many of us do not is an indictment on the governance and policy choices we have made. An exhortation to do better - I take this exhortation to heart and it will sit at the very centre of my approach to this role.

I come to this place as a committed independent. I share Maud's belief that to achieve real outcomes for our communities in fundamental areas such as health, education and the elimination of poverty, we must rise above the adversarial approach of party politics. To make genuine progress on our state's biggest challenges, we need long-term collaborative policymaking and investment.

I want to work with colleagues in this place to deliver that. Dismay at party-political argy-bargy was the sentiment I heard echoed most commonly as I doorknocked in Nelson. People spoke to me of their frustration at what they described as the squabbling, bullying and petty pointscoring they saw taking up the time and energy of their political representatives. They expressed disillusionment as to whether their communities' best interests really sat at the heart of this party-political approach.

As a true independent, the people of Nelson will never have reason to question whose interests I am putting first. I will not be in a position to have to balance their interests against parties' interests. I am free to undertake my role in the Legislative Council without being directed to a party position. I will never have to agree or disagree on any particular policy simply on the basis of who has proposed it, but genuinely on the basis of whether it is good public policy. I am heartily glad of that.

It is powerful that our Legislative Council has never been party-dominated. In thousands of conversations during campaigning I heard very clearly that our community values the independence of our upper House. They recognise that its functions of review and scrutiny are best delivered through a Chamber made up of independent representatives. I adamantly share this view. With the greatest respect and absolutely no personal reflection on other members, I would not wish to see further encroachment of any party representation in this place - the function of this Chamber is to be neither a rubber stamp nor an entrenched obstruction, and party dominance inevitably would lead us to being one or the other. Our upper House is a check and a balance, an additional element of community representation in a chain of robust governance. The more independents sitting here, the better.

About 10 years ago I had the opportunity to shift from frontline roles in the community sector to roles focused on social policy and research and advocacy. To me this was a natural extension of what has always been at the heart of my work: a drive to make a positive difference in people's lives. It is the same drive that has seen me arrive here 10 years later. I come to this place with an enduring passion for good evidence-based public policy. Through my work I have had the opportunity to develop an in-depth understanding of policy across many of the foundational issues affecting the lives of Tasmanian people. Indeed, the focus of my policy and advocacy career has encompassed that range of issues we might well describe as the bread-and-butter issues of Tasmanian families - health, housing, aged care, disability support, education, transport, social services and the economy. The people of Nelson can be assured that this background will stand me in good stead as a fierce and well-informed advocate for good public policy and accountable governance across these and many other areas.

One topic prominent in my work in recent years, and for which I am known to be an active and vocal advocate, is poker machine reform. I will not prosecute the argument for reform at this time but I mention it now because it illustrates the kind of public policymaking in this state that is the polar opposite of what I want to contribute to and be associated with in my time as a parliamentarian.

Each iteration of the policy, legislative and regulatory approach taken on poker machines in this state has been, and continues to be, an example of bad public policy: policy made against all credible evidence, to the detriment of tens of thousands of Tasmanian families and solely in the interest of currying favour with an influential, financially powerful industry. It has lacked, and it continues to lack, economic, social and moral credibility. It lacks even the bare minimum in transparency and accountability in governance.

Over decades we have witnessed our state governments of both stripes flagrantly mislead the Tasmanian people on this issue; they have tied themselves in knots to justify the policy and regulatory capture they have allowed to prosper in relation to this industry. Time and again, they have failed to demonstrate the common decency required to put the lives of Tasmanian people before the profits of a small number of well-connected donors. In fact, this area of public policy stands as an exemplar of our worst fears when it comes to the operation of power and influence in our political processes.

In recent years, I believe, the bedrock of our democracy has cracked on this issue. In the context of electoral donation and funding laws that are far too opaque - the most lax of any state, in 2018, we saw a single industry make a financial incursion into our political process. This should give all of us pause, including those who may be seen to have benefited from it in the immediate sense. Having happened once, our democracy remains perpetually overshadowed by the threat that

it may happen again. This threat in itself acts to warp our political functioning, and that cannot be ignored.

As a member of the Tasmanian community and as an elected independent representative in the Tasmanian Parliament, I never again want to see the overwhelming financial support and raw political influence of a particular industry install any party as the government of this state or cause any opposition party to be cowed to the point of inaction. Therein lies the death of our democratic foundation.

No party or political actor should baulk at the prospect of contesting a fair, transparent and accountable election. To fail to deliver a robust legislative framework that guarantees this for the Tasmanian people well before we face another state election would be a clear message that political self-interest trumps public interest in this state. Instead of the worst of any state, here in Tasmania we should have the best election donation transparency and accountability laws in the country. I stand ready to participate in delivering that highest standard to the Tasmanian people and I call on my parliamentary colleagues to do the same.

Transparency and accountability matter. Not only do they stave off corrupt behaviour, but even more importantly, they build trust. Trust is a precious and fragile commodity between our community and their political representatives. We are entrusted by the community to act and make decisions on their behalf, decisions that will chart the course of their lives, no less. In the interests of openness, let me state that I am daunted by that responsibility - daunted and humbled. In a certain place in my heart, I am scared by it. I am scared of not living up to expectations; of letting people down who have placed their trust in me; of not making the best of this incredibly fortunate opportunity. I am scared because I know that inevitably I will do each of those things. In my time here, I will experience many other failures besides because life is complex and none of us is perfect.

While I find this fear uncomfortable, I know the presence of these feelings is healthy. If a day comes that I no longer feel at some place in my heart those feelings of being daunted and scared by the magnitude of what has been entrusted to me in this role, I believe that will be the day I no longer warrant that trust.

Mr President, there is a strong general perception - it has been communicated to me frequently since the election - that involvement in politics changes and likely harms those who enter into it. I thank those who have expressed concern for me on that front. Let me say this in response: travelling through life inevitably brings change. I will certainly be changed by my time here but let me mention three changes that I plan on guarding against.

First, I will guard against the loss of idealism in the face of pedestrian pragmatism. Second, I will guard against a battle-scarred hardness of heart in the place of compassion. Third, I will guard against a presumptive sense of entitlement to the many privileges afforded to us in this place.

While eschewing these things might not make me a more successful politician, I hope it will help me continually strive to be a better representative for my community.

Thank you, Mr President, for time today; thank you to the members and the staff of the Legislative Council for their warm welcome and their generous support and patience. I conclude by stating my support for the Biosecurity Bill and thank those who have worked to achieve it. Thank you.

Members - Hear. Hear.

Mr PRESIDENT - I thank the member for Nelson for her contribution. I am sure it has given us all a lot to think about. Now the member has given her inaugural speech, she is free to speak freely on any issue. We certainly look forward and welcome that opportunity. I welcome the member's family and friends who have joined us in the Chamber today to share this very proud moment.

Bill read the second time.

BIOSECURITY BILL 2019 (No. 15)

In Committee

Clauses 1 and 2 agreed to.

Clause 3 -
Objects of Act

Mr DEAN - Under Objects of this Act, clause 3(c)(iii) reads -

> supports an evidence-based approach to the assessment, prevention and management of biosecurity risks and biosecurity impacts …

What is evidence-based in these circumstances? Is it more than just hearsay evidence? Is it more than just third-hand information? I will be referring to the Fox Eradication Program during the Committee stage of this bill probably about 50 to 60 times. We were told on a number of occasions that setting up this program for nothing was evidence-based. The evidence given was that somebody overheard somebody at the back of a truck on a grand final day making some comment about foxes brought into the state. I want to be assured here that the evidence-based information is real, demonstrated evidence to show that it is the case. I want to know to what extent it is out there.

I go to clause 3(c)(iv) as well. I will need to do this because I will speak on a number of these clauses while I have the time to do it.

What do we mean by 'to be proven with full certainty'? What do we mean by 'full certainty'? If we are certain about some matter, we are certain about it. How can we be more certain than certain? To me, the word 'full' is superfluous. I do not see the need for it. Maybe you can explain it to me. There is no degree of certainty, if you look at the dictionaries and so on; I wonder why we have the word 'full' included here. My point is that 'certain' is indisputable. It means sure, convinced, confident - all those things, so why have we included the word 'full'? Could I be given some information in relation to that matter?

I think that is all for clause 3.

Mrs HISCUTT - Having an object as evidence-based is an improvement in this legislation. It has not existed before. The precautionary principle will cover this here. It is very well established in public policy, and it is in other state and federal legislation. Regarding the full certainty, it is not

100 per cent but it still needs good, sound, evidence-based understanding of what the risk is. Again, it is the precautionary principle.

Mr DEAN - Can the Leader explain the difference between 'certainty' and 'full certainty'? I can see no difference whatsoever. If you are certain, you are certain.

Mr Valentine - It is like the Scouts - belt and brace -

Mr Gaffney - But I am only half-certain you are correct.

Mr DEAN - Why has it been included? Why do you put in words that add nothing to a clause? It is like saying 'satisfied' - you are either satisfied or you are not. You are certain or you are not.

Mrs HISCUTT - It is a well-established term in public policy and it is in other state and federal legislation. I believe it might be in some international legislation. It is used as an international instrument and it is a drafting. It is an established term.

Clause 3 agreed to.

Clause 4 -
Principles for performing functions under this Act

Mr DEAN - I refer to clause 4(c), which says -

> in the reasonable opinion of the person, the manner of performing the function is no more intrusive, restrictive or expensive than is required in the circumstances ...

I refer to the blueberry rust inquiry and the Schwind property, where a decision was quickly made to almost bulldoze the property. I am concerned that without supporting evidence or support being given to an individual, a decision could be made on the spur of the moment. We now know in the Schwind case that what happened would not have occurred. What checks do we have? What tests are there to stop a similar thing occurring, where this decision can be made on the say-so of one person? What else would need to be done to ensure that action is reasonable in the circumstances? In hindsight, the Schwind case was probably a great thing. It was one of the earlier ones but the decision taken then has since been questioned by many people. How can we be assured that in future these decisions will be reasonably well tested?

Mrs HISCUTT - It is an important principle to have there. It was requested by stakeholders during the consultation process. A 'reasonable opinion' means the opinion of a reasonable person in the circumstances. Again, this is a standard drafting phrase that is well understood by everybody. We have talked about it before in other legislation. It requires objective facts of evidence to support the decision.

Mr DEAN - There is nothing there to say it has to be the decision of a reasonable person. All it says is 'in the reasonable opinion of the person'. The person could be a fairly new person in the area or it could be a person only recently authorised to carry out and conduct these functions.

If it said 'in the reasonable opinion of a senior person' or 'in the reasonable opinion of an experienced person', I could accept that. Here, we could have a person with very little experience making this decision. As we know in the Schwinds' case, this practically ruined their business.

Mrs HISCUTT - At the top of clause 4, it says:

> A person performing a function under this Act is to ensure that -
>
> …
>
> (c) in the reasonable opinion of the person …

The opinion must be reasonable and that would be of the officer. It requires the objective fact of evidence to support that decision. The opinion has to be reasonable and would more than likely be that of the officer. A person performing the functions of this act would have to have a reasonable opinion, which would have to be based on evidence and fact to support the decision.

Clause 4 agreed to.

Clause 5 agreed to.

Clause 6 -
Extraterritorial operation of Act

Mr VALENTINE - Extraterritorial operation of act. Please explain to me how this can be -

> It is the intention of Parliament that the operation of this Act should, so far as possible, operate in relation to each of the following:
>
> (a) land situated outside Tasmania, whether in or outside Australia;

What jurisdiction do we have for this to be enforced or for this act to be followed when we are dealing with land outside our territory? The same goes for clauses 6(b), (c) and (d).

Mr Dean - In police parlance, the Ways and Means Act.

Mrs HISCUTT - The Australia Act 1986 enables the state to pass legislation that has extraterritorial operation where the relevant matter has a sufficient connection to Tasmania. It has to be relevant to Tasmania or have a sufficient connection to Tasmania, and the Australia Act 1986 allows that to happen.

Mr VALENTINE - Under the circumstance with the act you have just mentioned, what power is given to what the state might wish to do? Where does the head of power come from so we can set this in place? Yes, there is that act, but is there a part of this act that actually says other states have to follow whatever Tasmania wants to do under that circumstance? I do not understand the head of power.

Mrs HISCUTT - The jurisdiction of the bill is over all land, water and dealing and activities in Tasmania. If someone outside Tasmania wants to import plants into Tasmania, the Australia Act enables us to enforce requirements for information compliance with Tasmanian laws. The Australia Act says if you import something from Victoria to Queensland, we cannot have any influence on that - it is only from another state that actually affects Tasmania.

Mr DEAN - The issue raised by the member for Hobart is one I was going to ask. Does the Australia Act you referred to give us authority?

Where do we stand with that? Referring to the blueberry rust inquiry and the fox program, I understand they probably were the reason this clause has been included in this legislation. That was one reason for it, and we will give that to you in the briefing. With the fox situation, all the material was brought from the mainland; not one single piece came from here. With the blueberry rust inquiry, the initial plants carrying the rust were brought in from a nursery in Victoria. If that act has been in place for a long time, why could we not have carried out these investigations at that time rather than having to wait for this to be included in this bill? If what we have been told is right, with that act in place, why could we not have carried out some of these inquiries and investigations in Victoria?

This clause also deals with actions outside Australia in other countries. It says -

> land situated outside Tasmania, whether in or outside Australia …

Does that act also provide for that opportunity if there is an issue in New Zealand or China, which could be the case with the movement now of produce and importing? Does this give the right to this department to undertake inquiries in other countries? That is how far-reaching it is. What other agreements are in place with these other countries if this is the situation? I need to understand a lot more about exactly what is meant by this clause.

We were told during the blueberry rust inquiry that they could do little to follow up the situation with Victoria, that we had to rely on the Victorian minister and other authorities in that state to pursue some of these issues.

Mrs HISCUTT - The presumption is that state legislation only applies within the state. You would have to have a specific clause like clause 6 of this bill to displace that presumption. The New South Wales Biosecurity Act also has the same provision. It can operate overseas to the extent international laws allow. You would have to look at the laws of the country it was coming from, the international conventions and things like that. If there were an importation from New Zealand, for example, we could take some action when it reached our borders.

Mr DEAN - The Australia Act you referred to has been in place for a long time; I understood from what you said that it gives the authority for certain actions to be taken.

Mrs HISCUTT - It gives you the authority; you make legislation and this is it.

Clause 6 agreed to.

Clause 7 agreed to.

Clause 8 -
Interpretation

Mr VALENTINE - Clause 8, 'authorised analyst mean' - there is a typo; it should be 'means' - 'a person …'

Sitting suspended from 1.00 p.m. to 2.30 p.m.

QUESTIONS

Eastern Bypass

Ms ARMITAGE question to LEADER of the GOVERNMENT in the LEGISLATIVE COUNCIL, Mrs HISCUTT

[2.31 p.m.]

Mr President, I have a little a preamble and I hope for some leeway here. There are questions relating to the idea of an often-mooted eastern bypass. Traffic congestion in the state's north due to excessive overuse of urban and suburban roads by heavy vehicles has long been an issue. Research papers go back to the 1960s outlining the problems and suggesting solutions.

In recent decades, report after report by government departments, private enterprise and lobby groups has consistently advocated for the need of some kind of traffic solution to improve safety and quality of life, provide investment opportunities and promote residential and commercial development away from large and heavy vehicles.

Will the Leader please advise -

(1) What progress, if any, has actually been made by the Government since it came to power in 2014 to get on with developing a plan to construct an eastern bypass, including assessing funding options?

(2) If no progress has been made, what will it take for the Government to take steps towards the construction of an eastern bypass?

(3) What feedback from the general community and stakeholder organisations has the Government received regarding northern-based traffic congestion and possible solutions?

(4) Does the Government intend to leverage the extensive existing background research, stakeholder feedback and survey data to take steps towards a tangible plan for an eastern bypass or other traffic solution?

(5) Will the $1.5 million pledge by the federal Liberal government to assess the feasibility of an eastern bypass now be put to use?

ANSWER

Mr President, I thank the member for Launceston for her question.

(1) The Tasmanian Government is working in partnership with Greater Launceston councils to develop a transport vision to provide guidance for decisions around transport policy and investment. This vision will provide guidance for a coordinated approach to transport planning and provision of transport infrastructure and services to meet the future needs of Greater Launceston.

The vision will comprise two distinct elements:

The vision is a description of the shared view of the future transport system for Launceston and agreed key planning principles.

The strategy is a plan to implement the vision, including actions and priority projects.

(2) The department has undertaken extensive studies over a significant period of time on various options for an eastern bypass. The latest of these, the Launceston Traffic Study 2012, concluded a full eastern bypass was neither the highest priority project nor the most cost-effective investment when considering future traffic forecasts for Launceston. The study showed travel times via the eastern bypass would typically be higher than via Bathurst Street or Wellington Street and therefore, without additional incentives, the bypass is unlikely to be the fastest or most effective route for through-traffic, including freight.

The preferred option identified in the Launceston Traffic Study was the connection of Hoblers Bridge Road to the West Tamar Highway because this link would be required to meet future east-west traffic demand and deliver the greatest travel time and economic cost-benefits.

A consultancy has just been initiated to undertake traffic modelling, collect data and commence the feasibility study into the second Tamar River crossing. This will add to the information we already have and will assist in determining the most appropriate actions to pursue.

Data will also be collected to establish heavy vehicle movement origin and destination. It is important to note the primary cause of traffic congestion in Launceston is private motor vehicles, not freight. Since 2003 the proportion of freight vehicles on Goderich Street has remained relatively stable, ranging from 6.6 per cent to 7.7 per cent of average daily vehicle movements.

(3) The department is currently working with the City of Launceston, other northern councils and the RACT on a number of elements of the transport vision and implementation of projects identified to improve the movement of traffic in the City of Launceston.

To date, consultation has been on project-by-project basis. These projects include the Mowbray Connector intersection upgrade and the Goderich, Forster and Gleadow intersection upgrades.

The most consistent traffic issue raised by stakeholders has been congestion at the Lindsay and Goderich streets intersection adjacent to Bunnings, which will be improved when the Forster and Gleadow streets intersection upgrades are implemented.

(4) The department is currently working with the City of Launceston to develop a network operations plan for the inner Launceston area. This plan will provide a basis for the management of various routes through Launceston and indicate which modes of transport are given priority at certain locations.

(5) The Tasmanian Government will work with the Australian Government and the City of Launceston to determine the most appropriate use of the Australian Government's $1.5 million commitment to the feasibility of an eastern bypass.

Premier's Disability Advisory Council

Ms SIEJKA question to LEADER of the GOVERNMENT in the LEGISLATIVE COUNCIL, Mrs HISCUTT

[2.37 p.m.]

Can the Leader update the House on the Premier's Disability Advisory Council - PDAC?

(1) How many applications were received for the 2019 positions?
(2) Have interviews taken place for these?
(3) When will new members of PDAC be announced?
(4) When will the first meeting take place with the new 2019 members?

ANSWER

Mr President, I thank the member for Pembroke for her question.

(1) The number of applications received was 13.

(2) Ms Donna Bain, the former PDAC community chair, and Mr John Stevens, the current PDAC community chair convened a selection panel to assess the 13 applications. Support was provided by Communities, Sport and Recreation in the Department of Communities Tasmania, which provides ministerial support to PDAC. The selection panel assessed the applications and then made recommendations to the Premier. The selection panel took into account the quality of the contribution that candidates could make to PDAC and the range of disability experience reflected on PDAC, the regional representation of members and the gender balance, based on the advice of the selection panel, interviews were not considered necessary.

(3) Recommendations have been made to the Premier and an announcement will be made shortly.

(4) The next meeting of PDAC is scheduled for 6 November 2019.

Liberal Party Brochure - Free Bus Travel for Students

Mr DEAN question to LEADER of the GOVERNMENT in the LEGISLATIVE COUNCIL, Mrs HISCUTT

[2.38 p.m.]

My questions relate to a Liberal Party brochure. In asking this question, it was indicated to me that this might have been a set-up. I am hoping it was not.

The questions concern the Liberals' free bus travel for students as articulated in an election brochure. I am not sure when the brochure came out; it reads -

> Under a Hodgman Liberal Government, all Tasmanian primary, secondary and college age students will be able to catch a bus to and from school free of charge.

(1) Will the Leader please advise whether it remains an intention to honour this stated position?
(2) If not, why not?

(3) If yes, what stage is it at and when is it likely to happen?

ANSWER

Mr President, I thank the member for Windermere for his question, which is very interesting.

(1) to (3)

The Government is not aware of any election commitment made or Liberal Party material distributed during the 2014 or 2018 election campaigns that supported a policy of free bus travel for school students.

The member for Windermere kindly provided a copy of the pamphlet he quotes in his question to assist in preparing this response. While the pamphlet presented by the member for Windermere does not contain a date, there are several indicators that it substantially predates the election of the current Liberal Government and it is most likely material relating to the 2010 state election, which was followed by the installation of the Labor-Greens government.

As such, the policy position stated in the pamphlet cannot be considered an election commitment of the Hodgman Liberal Government, which was first elected at the 2014 state election. The policy in question is likely to have been developed before the 2010 state election, and not revisited in the following elections in 2014 and 2018.

The Government points out that Tasmanian school students have access to reduced fares for bus travel, with the standard child student fare now set at $1.80 per trip. Students who use a Greencard or a Smart Card or who purchase a 10-ride ticket receive a further 20 per cent discount, equating to $1.44 per trip.

In responding directly to the member for Windermere's question, students who meet eligibility criteria are able to apply for a free travel bus pass that allows them to travel between home and school and the return journey for free.

As of August 2019, approximately 13 930 Tasmanian school students receive a free travel bus pass.

Publicly Owned Irrigation Schemes - Management

Ms RATTRAY question to LEADER of the GOVERNMENT in the LEGISLATIVE COUNCIL, Mrs HISCUTT

[2.42 p.m.]

Recommendation (1) of the Legislative Council Select Committee Inquiry into the future management of waters and associated assets administered by Tasmanian Irrigation Pty Ltd says -

1. Facilitate a clear pathway for each scheme to determine its own future, whether this be:

    - self management;
    - a hybrid model using the resources of TI; or

- management remaining with TI.

The Government's response in January 2019 indicated there is currently consideration for potential models that could be utilised to provide for greater self-management of publicly owned schemes where local interests seek greater involvement.

My questions are -

(1) What progress has been made with two of the 16 local irrigator groups and which groups are involved in negotiations?

(2) Is draft legislation being prepared to address the issue of existing legislation not currently providing a legal framework to facilitate greater irrigation involvement in managing publicly owned irrigation schemes?

(3) If not, why not, given the Government has indicated support for greater self-management of publicly owned schemes?

(4) Does the Government see any impediments to progressing self-management, a hybrid model or the local irrigator self-management of publicly owned schemes?

ANSWER

Mr President, I thank the member for McIntyre for her question. I find the questions very interesting.

(1) Legislative Council members will recall that in response to the select committee inquiry into the future management of water rights and associated assets administered by Tasmanian Irrigation, the Government supported facilitating, where appropriate and feasible, greater irrigator involvement in the operations and management of publicly owned irrigation schemes, and for the ownership of the associated assets to be retained by the Government through Tasmanian Irrigation.

The Department of Primary Industries, Parks, Water and Environment - DPIPWE - has been working with Tasmanian Irrigation to examine possible models to increase irrigator involvement in scheme management. While a permanent legislated approach remains the longer term aim, TI has also been progressing work on an interim approach which is likely to be available more readily.

TI has been proactive in keeping irrigators informed on progress and options. TI management has been in regular and frequent contact with the Winnaleah Board and the Dial Blythe Irrigator Consultative Committee. The most recent discussions and updates were provided in mid-to-late July to both groups.

(2) and (3)

The Department of Primary Industries, Parks, Water and Environment, in consultation with TI, is considering the complex matters that must be resolved to finalise legislation drafting instructions to give effect to the changes needed to put in place a robust, long-term irrigator self-management model.

Matters that must be considered include dispute resolution mechanisms; appropriate ministerial step-in powers; necessary governance, compliance and reporting requirements across environmental and business aspects of the schemes; governance structures; district support thresholds to opt into self-management; and policy on what constitutes 'appropriate and feasible'.

(4) Notwithstanding the previous answer, advice from DPIPWE and TI is that they currently do not see any particular impediments to establishing a viable framework that will allow for self-management models to be implemented where feasible and appropriate.

BIOSECURITY BILL 2019 (No. 15)

In Committee

Resumed from above.

Clause 8 -
Interpretation

Mrs HISCUTT - Madam Deputy Chair, earlier the member for Hobart noted a typographical error in this part of the clause; minor typos that are clearly mistakes can be fixed in the vellum stage of the process, after the bill has been passed by both Houses but before the act receives the royal assent. There is no need for a formal amendment but I thank the member very much for his sharp eye.

Mr DEAN - I might have overlooked something and need some guidance. In relation to this clause, import means -

> in relation to any biosecurity matter, carrier or other thing -
>
> (a) to import the biosecurity matter, carrier or other thing into Tasmania (excluding Macquarie Island) from Macquarie Island or from another State; or
>
> (b) to import the biosecurity matter, carrier or other thing into Macquarie Island from another part of Tasmania or from another State; or
>
> (c) to cause, permit or enable anything in paragraph (a) or (b) to occur;

Is there a reason territories have been missed out? We could bring stuff in from territories, particularly the ACT and the Northern Territory. Has this been deliberately left out?

Mrs HISCUTT - Further in clause 8, the definition of 'State' is 'State includes a Territory', so while it seems like a bit of a conundrum, it is explained later.

Mr Dean - Right, that covers that. Thank you.

Mr VALENTINE - Out of curiosity more than anything, the definition of 'organism' in this clause means -

any organic life form, including a human, whether living or dead.

Is this term ever referred to in relation to humans? Why would we have 'human' in there? Is it something to do with hydatids?

Mrs HISCUTT - It is to explain the difference between organic matter and inorganic matter. This includes humans. Humans are organic. Further in the bill, at clauses 12 and 13, there is a further explanation of what it means and what it excludes. You will find it excludes humans in much of that. This is a broad coverage that is drilled down into in those clauses.

Mr VALENTINE - Later in clause 8, plant product includes -

(a) the whole, or any part, of a flower, fruit, nut, seed, leaf, bulb, corm, tuber, stem, spore or pollen that has been separated from a plant ...

It does not say 'and/or manufactured'. Does that leave us open when referring to part of a plant product that might have been manufactured into another article? I need a little comfort there.

Mrs HISCUTT - Whether it is manufactured or not, it will still contain the whole or any part. Subclause (a) should explain that.

Mr Valentine - So there is no loophole?

Mrs HISCUTT - No. Whatever is manufactured will contain some of that in it.

Clause 8 agreed to.

Clauses 9 to 17 agreed to.

Clause 18 -
Meaning of *suitable person*

Mr DEAN - Madam Deputy Chair, I had a number of briefings with the department and as a result a number of questions were asked of the department and answers came back. I will be asking some questions for the purposes of those answers being recorded. Many of my questions on clause 18 come from Karen Brock, who, I think, helped put some of this bill together. She is a great businesswoman and a wonderful person.

She raised concerns that clause 18 is too restrictive in relation to controlling the people who should be able to be involved. Her question related to where the person has been found guilty of an offence under any other act or law that is an offence punishable by imprisonment for a term longer than six months. This is concerning because there is no reason for someone guilty of hooning 10 years ago now not being suitable for a dog kennel licence. Human rights are removed because the term has been served and now it is a life sentence for another act.

I put that question to the department. The answer was that this has been changed by substituting the word 'may' for 'is to', which makes these criteria of suitability discretionary.

I cannot find where 'is to' has been substituted for 'may'. Maybe I have that wrong. I am referring to page 49 of the bill. The answer came back from the department that the work 'may' has

been removed and 'is to' has been included. The only 'may' I could see was in the beginning meaning 'of suitable person'. I think I have the bill that was presented and signed.

Madam DEPUTY CHAIR - That is the same as the one I have.

Mr DEAN - Where is 'may' substituted for 'is to'? The rest of that answer is -

- Note also that in both interstate and other Tasmanian legislation the 6 month prison is the accepted threshold for identifying a 'serious offence': e.g. see definition of 'serious offence' in s6 of the Civil Liability Act 2002 (TAS).

- Section 18(f) has also been amended to add relevancy test; new paragraph reads as follows:

  (f) any other matter that the person considering the application or making the decision, considers relevant for the application or decision.

  In virtually every situation where the suitability of an applicant is a requirement there is a right of (merits) appeal to the RMPAT.

For example, application for a permit or renewal of a permit see section 259, application for approval as auditor, section 258; and biosecurity registration, 260.

The suitable person test now also applies to the appointment of authorised officers under the act, which is a discretionary decision of the secretary. This is not subject to merits appeal to RMPAT.

It is good to include that in the *Hansard*. Could I be given the information on where 'may' has been changed to 'is to'?

Mrs HISCUTT - I think it is a mistake. The bill previously used the words 'is to'. That was substituted with 'may' so that gives the flexibility you were looking for. Your answer is around the wrong way. It has now been changed from 'is to' to 'may' and that gives it the flexibility because these matters may be taken into account.

Mr Dean - I am sorry; I might have misread that because that is what is says in my answer.

Clause 18 agreed to.

Clause 19 -
Permitted matter

Mr DEAN - Madam Deputy Chair, there are a number of concerns relating to 'permitted matter' under this bill. There has been much discussion about it and I raised it with the department. Will I read the information provided by Karen Brock here; do you want me to read that answer into the *Hansard*?

Mrs Hiscutt - Whichever way you would like, member for Windermere.

Mr DEAN - This matter has been brought to my attention -

> This occurs in Western Australia and has been used for plant matter only, supposedly to reduce weed infestations. It is headed up by Rod Randall, a list was placed of allowed plants. This list was originally derived from some research that he conducted funded by the World Wildlife Fund. There was no scientific basis for the list, no listed studies done for peer review to scrutinise. A repeated request to DPIPWE, and more recently to Stewart Pedersen, to justify this section has not been responded to.
>
> As an industry, we now have issues wherever the list has morphed from species of plants to cultivars of plants to now providing the genetic heritage of the cultivars. Time for getting the plants onto the permitted list equates to 12 to 18 months. The impost is huge as each year there are 150 to 180 new cultivars in the industry that come up for sale. Western Australia now struggles to get new plants into the state and Tasmania will suffer that same fate.
>
> In this legislation, it can also apply to sheep or any other animal or fish. In the past Dorper sheep embryos were imported into the state and once on the ground, there were a group of Merino farmers who lobbied to have these banned as they might impact on the quality of their wool.

I remember that very well and think we all would -

> The argument was ridiculous and now Dorpers are commonly used for grass reduction on hobby farms that do not have access to shearers. If this was the case with the new legislation, breeds of animals could be banned with no scientific evidence, only by lobbyists. It is fraught with danger.

Karen Brock raised this issue, and it has been discussed at some length. The department provided me with an answer, but I will leave that to the Leader to read, if she would, because it needs to be in the *Hansard*. There is much concern about this; Karen was not the only person who has raised this with me. They are concerned that lobbyists would win their way if this is not done right and we do not have this right. The lobbyists may well win their way when they do not have all the facts and information et cetera. I am not condemning lobbyists, but we know at times they bring information forward that is not quite right.

Mrs HISCUTT - Thank you, member for Windermere, for your concerns because I remember the Dorper debacle.

I will read the answer in. It is the workability of the permitted list system you are inquiring about -

- There already exists a permitted list system in Tasmania for animal imports. It is a simpler and less cumbersome system than the plant import framework under Plant Quarantine Act.

- There is also a Tasmanian Import Requirements Database for plants and plant products and a Plant Biosecurity Manual. With plants the current system is essentially a Prohibited List system, meaning that plants can enter without a risk assessment unless listed.

- The advantage of the permitted list system in the new Bill is when a plant or animal is not on any list, and the biosecurity risk is not known, the plant or animal will be (by default) restricted from import into this State without a permit. This ensures that no plant or animal, or associated products can be brought into the state in an uncontrolled manner - without the biosecurity risks being assessed.

- The Tasmanian permitted list system will be simpler and more user friendly than the WA system (Tasmania focuses on plants and animals and associated products - WA is all organisms).

- Tasmania already has solid processes for risk assessment (on the web) and has been undertaking risk assessments for many years.

- The Bill provides for listing of 'any matter or class of matter'. Thus any matter that is processed in a way that controls risk can be grouped as a listed class of matter e.g. cooked materials such as jams, and processed food.

- Changes in nomenclature in biology are not uncommon. The Bill allows the flexibility to address this. In addition, Biosecurity Tasmania's plant biosecurity group consists of scientists and diagnosticians who are members of the scientific community that determines these changes, and so are fully aware of any of them. Risk assessments would not be required simply because of name change.

- Any other changes to an organism through cross breeding etc. should be risk assessed. To maintain a strong biosecurity status, the precautionary principle should apply but such assessments would be supplementary to the work already done and would not be particularly onerous.

Clause 19 agreed to.

Clause 20 -
Prohibited matter

Mr DEAN - This issue was raised with me and also discussed with the department. At the beginning it says -

> The Minister may, by notice published in the *Gazette*, declare any biosecurity matter, or class of biosecurity matter, to be ***prohibited matter*** if the Minister is satisfied on reasonable grounds that -

The position was put to me that the term 'reasonable grounds' is not strong enough and that it should read 'scientific grounds'. I know there has been discussion on this. It should say 'satisfied on scientific and reasonable grounds' or something like that. There is a concern that even though there may appear to be reasonable grounds, there might be no scientific explanation at all. It could be deficient.

We are not talking about a minor issue. To growers and industry it can be a very important matter. What exploration has been done on the use of the word 'scientific'? I think it has been raised with the department.

Mrs HISCUTT - The term 'reasonable' has a well-established legal meaning. There are plenty of common law precedents on how it should be applied in statutory interpretation. It includes scientific and empirical evidence, and reasoning where that would be appropriate. The term 'scientific' has no clear or established meaning in statutory interpretation and would be the subject of unnecessary debate and uncertainty.

I feel very comfortable that 'reasonable' is explained in that answer.

Clause 20 agreed to.

Clauses 21 to 30 agreed to.

Clause 31 -
Authorised officers

Mr DEAN - Clause 31(3) states -

> (3) The Secretary may only appoint a person as an authorised officer under subsection (1) if the Secretary is satisfied that the person -
>
> (a) is a suitable person to be appointed as an authorised officer; and
>
> (b) holds the qualifications, skills, knowledge and experience to perform the functions of an authorised officer; and
>
> (c) holds any qualifications, skills, knowledge and experience that are prescribed for the purposes of this section.

Are they prescribed in here or prescribed in regulations? Will it be clearly and identified in the regulations?

Mrs HISCUTT - The intent of this subclause is to be discretionary rather than mandatory or prescriptive, otherwise the employment of officers would become excessively cumbersome and bureaucratic. It is already highly restrictive. Clause 31(3) stipulates the minimum requirements and qualifications a person must hold to be appointed an authorised officer. That includes any prescribed skills and qualifications. It also includes a requirement for the secretary to be satisfied the person is a suitable person as set out in clause 18.

Mr DEAN - Thank you, Madam Deputy Chair. I refer to clause 31(9) -

> The Secretary may publish, as he or she thinks fit, details as to what qualifications, skills, knowledge and experience may be required for a person …

That is leaving a lot open to the secretary in the circumstances. One secretary might see fit to do something, but if the secretary changes, a totally different position could be taken.

The people raising this with me say it should read 'the secretary must publish' or something stronger than 'as he or she thinks fit'. What does 'as he or she thinks fit' mean?

Mrs HISCUTT - This subclause was sought by people during the consultation phase and it takes it a bit further than most other legislation. Its intent is to be discretionary so as to be flexible to whatever the breach may be, to get the best possible people. It must be discretionary rather than mandatory or prescriptive, otherwise the appointment of the officer will become excessively cumbersome and bureaucratic. It is already highly restrictive. It is more reactive to the breach at the time to get the best possible person.

Clause 31 agreed to.

Clause 32 agreed to.

Clause 33 -
Identification of authorised officers

Mr DEAN - I have raised this with the department because I think clause 33(1)(b) is superfluous. It says -

> may issue a form of photographic identification to each authorised officer who is a police officer.

Why is that the case? I know it says 'may' and I would not think that just any form of photographic identification will be provided by police, because they all carry warrant cards. They must produce their warrant cards at all times, particularly if they are in plain-clothes. Even in uniform they are required to produce their warrant. Is there some other reason for that being there? They carry so much information and documents, we really do not need to push something else on them.

Mrs HISCUTT - In certain circumstances, some people might ask whether the police were allowed to do what they are doing if it is a biosecurity thing. So this gives the police that extra comfort. If a police officer is seconded to Biosecurity for a little while, it provides a discretionary power for the Secretary of DPIPWE to issue police with Biosecurity identification if the officer is asked, 'Do you have authority to do this?' However, it is not a requirement because police have their own form of ID, as you stated.

Clause 33 agreed to.

Clauses 34 to 40 agreed to.

Clause 41 -
Authorised purpose

Mr DEAN - Clause 41 deals with authorised purpose. It states -

> (1) Unless otherwise specified in this Act, an authorised officer may only perform the functions of an authorised officer for one or more of the following purposes:

(a) to assess, prevent, eliminate, minimise, control or manage any biosecurity risk or biosecurity impact, or suspected biosecurity risk or biosecurity impact;

Where police officers are authorised, is it required they will all be given special training in all of these areas - to assess, prevent, eliminate, minimise, control or manage a biosecurity risk? We are talking about biosecurity risks. I would not have thought too many police officers would be sufficiently skilled, but they can be authorised officers under this bill. What training will there be? Will it be introduced into the academy as a training course for police? A number of police might perform these functions.

I recall performing a similar function with a foot-and-mouth disease outbreak when I was a police officer at George Town.

Mrs HISCUTT - This is the basic biosecurity incident response function that officers would be expected to perform. Whether it would be to eliminate, control, prevent et cetera would depend on what is appropriate in the circumstances.

It establishes a hierarchy, starting with assessment through to management, such as danger response and that sort of stuff. An authorised officer who is the first respondent to a biosecurity event will first assess the risk or impact, then prevent, then eliminate and so on. When it comes to police, it is possible there may be a particular police person who has the required skills. That person would be asked to be brought into this. More training may be necessary for a particular incident, but conditions can be put on their appointment as to what they can and cannot do, and there are standard operating procedures which a police officer could follow anyway. They are there to be given to them.

Mr DEAN - Is it expected a number of police officers will have special training in this area?

Mrs HISCUTT - No, I do not think that is an expectation at all. These responses will be controlled or an operational leader would be a Biosecurity person so they would be able to direct any police officer if they had a police officer helping them.

There could be the occasion where there would be only one police officer working in the Highlands who may be aware of a particular circumstance, so this would be the obvious person.

Clause 41 agreed to.

Clauses 42 to 46 agreed to.

Clause 47 -
Information to be provided

Mr DEAN - Another issue not answered and I would like this included if possible.

Clause 47(6)(b) says it needs a time limit on this as business information can be locked away from business owners for long periods, which impacts on their day-to-day practice.

The concern there is if you look at clause 47(6)(b), which says that an authorised officer may -

retain information provided under this section for such time as is reasonably necessary.

One can stretch 'reasonably necessary', and it could be 12 months or two or three years depending on the circumstances and what is going on. Karen Brock raised the point that it could impact and impede some industries in some circumstances and they would be more comfortable with some direction being that it must be returned within a three-month period unless otherwise required for scientific reasons, court reasons or whatever. That is what they want there.

An answer has been provided, so perhaps the Leader will read this in.

Mrs HISCUTT - The answer is that information can only be sought and retained for legitimate authorised biosecurity purpose and they are listed at section 41. Once the purpose for holding information ceases, then it should be dealt with in accord with the principles in the Personal Information and Protection Act 2004 and the Privacy Act. It should not be held indefinitely for no reason.

Also, section 4 requires all functions to be appropriate and adapted for its purpose and no more intrusive, restrictive or expensive than circumstances require. However, sometimes information must be held for extended periods for the purposes of performing biosecurity risk functions, which are defined in section 8 - Definitions, as a function under the act relating to the prevention, elimination, minimisation, control or management of a biosecurity risk or impact.

Section 271(4) provides a limited exception to the Personal Information and Protectin Act if compliance would detrimentally affect or prevent performance of a biosecurity risk function. Imposing an arbitrary time limit on retention of biosecurity-related information may detrimentally affect or prevent risk management. Some biosecurity risks are long-term or indeterminate.

Mr DEAN - Thank you for your explanation. Nobody within the industry wants to cause a situation that is likely to impact a biosecurity risk.

They are saying there will be situations where property could be returned within a specified time but, for whatever reason, it is delayed. Sometimes this situation could impact on a business to its detriment. I guess there would be no reason, if an industry is impacted, it could not consult with Biosecurity and say, 'Where are you with that material? May I have it returned now?' I suppose that is available to them now.

Mrs HISCUTT - Of course there would be communication between Biosecurity and the company if there needed to be. I should imagine there would be a lot of communication.

They must comply with the principle that says that all functions are to be appropriate and adapted for its purpose and no more intrusive, restrictive or expensive than circumstances require.

That has to be complied with. Clause 47(6)(a) indicates making copies, but they have to comply with clause 47(6)(b) and 'such time as is reasonably necessary'. I imagine there would be a lot of communication between Biosecurity and any company concerned.

Clause 47 agreed to.

Clause 48 agreed to.

Clause 49 -
Question may be recorded

Mr DEAN - Clause 49(3) reads -

> If a recording is made under this section, the authorised officer who made the recording is to provide a copy of the recording to the person who provided the information as soon as practicable after making the recording.

What is being suggested here is that where a recording is made and there is discussion about that recording, the authorised officer is to disclose to the person being recorded that they are being recorded.

Again, there is no time frame - 'as soon as practicable after making the recording' can be drawn out. If people are required to take advice, they would like it to be done within a reasonable time, say, 48 hours. That has been mentioned as a reasonable time for a recording to be provided to the affected person. Is there a reason there is no time frame to satisfy the industry and the people who might be affected?

I accept that we need very strong biosecurity legislation; I do not argue with that at all. But at the same time we need to be fair to industry. We need to give it a fair go. There ought to be some mechanism to ensure that they are required to provide a recording within 48 hours. It is written into a lot of police legislation. In most cases 'as soon as is practical but within a period of' identifies there is pressure on police in particular to do what is required under that act rather than leave it open-ended. That is the problem with leaving things like this.

Mrs HISCUTT - 'As soon as practicable' means close to, as soon as is reasonably possible, usually less than a week.

Mr Dean - I knew you would say this.

Mrs HISCUTT - Whatever is doable. This may be different in different circumstances like the Highlands or Flinders Island. We also have procedures on this. I was talking about the example of recording it on your mobile phone; depending on how long it is, you may be able to send it there and then. I have tried it myself with interviews and the audio file will not go because it is too big and I have to go back and download it. It is 'as soon as practicable' to do it and it is envisaged it would be within a week, if not instantly. It would also need to be done securely. All those things have to be taken into consideration.

Mr Dean - Thank you.

Clause 49 agreed to.

Clause 50 -
Powers of authorised officers to enter premises

Mr VALENTINE - Clause 50 talks about authorised officers and what they can and cannot do in terms of entering properties. Clause 50(1) reads -

> If an authorised officer reasonably believes that entry into premises is necessary for an authorised purpose, the authorised officer may enter the premises -

(a) in an emergency, at any time; and
(b) in any other case, at any reasonable time.

Clause 50(3) -

> Entry into any premises authorised under this Act may be effected -
>
> (a) only with the use of reasonable force …

Maybe they do not need any force at all, but I presume it is saying you cannot use excessive force.

> (b) subject to subsection (4), with or without the authority of a warrant.

Clause 50(4) goes on to say -

> Despite subsection (3), nothing in this section authorises entry into any part of residential premises, other than -
>
> (a) with the consent of the occupier of the residential premises; or
> (b) under the authority of a warrant; or
> (c) in an emergency, if the Secretary has given notice to the occupier …

It names those three subclauses, but it does not name clause 50(1), which says that in an emergency they can enter at any time. Clause 50(4) is talking about residential premises. This is the particular issue I am trying to highlight. Clause 50(5) says -

> For the purposes of subsection (4)(a), an occupier of residential premises is taken to have consented to an authorised officer entering the residential premises in an emergency if -

Clause 50(5)(a) does not deal with an emergency -

> at least 48 hours before the authorised officer intends to enter the residential premises, the authorised officer has given written notice of that intention ...

If this is an effort to allow entry to premises in an emergency - it might be somebody harbouring some prohibited material and attempting to burn it, and someone has realised this is happening and needs to enter straightaway - I can understand that. This is a very powerful bill. One hopes it never gets used in the wrong way, as I said in my second reading contribution.

Surely, if you are going to enter in an emergency, that means immediately, not after 48 hours notice. Has it been caught up in these five subclauses? It could be a loophole for somebody bringing a case against the government for immediate entry without 48 hours notice. Do you understand the point I am trying to make? I think I have made it clear that we are talking about an emergency. Clause 50(4)(c) talks about an emergency but clause 50(5) talks only about for the purposes of clause 50(4)(a) and does not deal with an emergency.

Mrs HISCUTT - Clause 50 is about businesses. We are trying to protect the privacy rights of residences so Biosecurity can quickly get a warrant to enter.

Mr Valentine - They do not need it.

Mrs HISCUTT - This certainly helps. It would only be in a matter of emergency. All existing biosecurity legislation, Tasmanian and interstate, allows entry to a non-residential property without a warrant. This is an important feature of biosecurity legislation where a delay in response or inspection waiting to get a warrant might cause the opportunity to eradicate a pest or a disease to be lost. Clause 50(3)(b) is useful because it confirms that authorised officers can still apply for a warrant even in situations where the act empowers them to enter without a warrant. This may be done as an added legal precaution. This particular clause is designed for businesses while respecting residences, but it still allows us to do what we need to do.

Mr VALENTINE - I understand that, but I am thinking of a circumstance where there may be a need to enter residential premises in an emergency because of material held there or someone trying to destroy it. A neighbour might have rung up and said, 'You need to get down there quick; he is destroying the evidence'. Clause 50 says 'in an emergency, at any time'. In trying to protect the residential premises, it may work against authorities trying to capture certain material or evidence. Can authorities enter residential premises in an emergency without having to give 48 hours notice if there is a need to do so?

Mrs HISCUTT - The powers of entry must be balanced against a person's right to enjoy their property and their privacy. A warrant can be obtained within an hour from a justice of the peace.

Mr Valentine - But you do not need a warrant so you should be able to go in anyway.

Mrs HISCUTT - This is so you can enter if you need to. For example, with the fruit fly on Flinders Island, there were trees in people's backyards, and if nobody was home or it was an unoccupied residence, you just have to do it. This is just to give a balance. As I said, a warrant is available from a justice of the peace within an hour if required.

Mr DEAN - I appreciate the comments made by the member for Hobart. He made some good points -

Mr Valentine - I think I am satisfied.

Mr DEAN - That is right.

Clause 50(1) states -

> If an authorised officer reasonably believes that entry into premises is necessary for an authorised purpose, the authorised officer may enter the premises -
>
> (a) in an emergency, at any time; and
> (b) in any other case, at any reasonable time.

Clause 50(2) states -

> A function conferred by this Act that authorises entry into premises authorises entry -

(a) on foot, by vehicle, vessel or aircraft, or by any other reasonable means; and

(b) by drone or other pilotless vehicle or equipment under remote control.

This is good; we are moving forward with technology. Clause 50(3) states -

Entry into any premises authorised under this Act may be effected -

(a) only with the use of reasonable force; and
(b) subject to subsection (4), with or without the authority of a warrant.

That warrant part has been discussed. I am just wondering why we have left it out of here, but there is probably a logical explanation for it.

The position would include with the assistance of another person or with assistance of other persons. Clause 51 explains this position. It says that if you are executing a warrant, you can do that with the assistance of other people.

Why have you specifically left it out? It probably is covered. If it is covered, point it out to me. In an emergency, if there are two of you, you would want the authority to take the other person with you or grab a bystander. This is what this is all about: to go in and assist in emergency. If the police need a bystander's assistance, they can grab you and you have to assist them. I am just wondering why we do not have that here to assist and support these officers.

Mrs HISCUTT - I draw the member's attention to clause 42, which says 'Use of assistants'. That can be brought into play with regards to your question.

Mr Dean - I looked at clause 42, Use of assistants. Why does it specifically include 'A person assisting an officer … may'?

Mrs HISCUTT - When entering premises, it is the warrant that is the overriding authority, not the act; that is why it is written that way.

Mr Dean - It is the overriding factor, but the warrant is issued in accordance with this bill once it becomes an act. This bill gives the right for a person to get a warrant. This bill identifies that.

Mrs HISCUTT - The warrant might also say 'with assistants'. It is a doubt removal.

Mr Dean - Whatever other assistance is necessary would be in the warrant.

Clause 50 agreed to.

Clauses 51 and 52 agreed to.

Clause 53 -
General functions of authorised officers

Mr DEAN - I rise because of an approach made to me.

Clause 53(2)(e) says -

> isolate, confine or detain any biosecurity matter or other thing ...

Clause 53(2)(f) says -

> erect or repair fencing, gates or any other method of enclosure, or perform any other security or containment measures in relation to any premises, biosecurity matter or other thing ...

I ask so it is on the record: Is all that done at no cost to the individual, to the property owner? Or could costs be incurred against the properties?

Mrs HISCUTT - It can only be for legitimate biosecurity purposes and using reasonable force. The principles in clause 4 will govern these functions. Powers of destruction are also subject to limitations in clauses 64 and 65. Clause 69 states -

> In the performance of a function to enter or search premises under this Part, or to do anything else on premises under this Act, an authorised officer is to do as little damage as is reasonably possible in the circumstances.

It would be fair to assume claim can be made for damages if it is reasonable.

Can you clarify your question as to whether it is damage done to a property caused by biosecurity or the other way around? You can do it from your seat if you like, to save you a call.

Mr DEAN - I will stand because there is more to the question.

Clause 53(2)(f) gives wide powers to an authorised officer and I am not surprised industry has raised concerns because it says, at clause 53(2) -

> Without limiting subsection (1), an authorised officer may do one or more of the following in a place or premises lawfully entered …

They can do anything if the authorised officer believes it is necessary to be done for an authorised purpose. There is not much they cannot do.

If you look at clause 53(2)(f) -

> erect or repair fencing, gates or any other method of enclosure ...

The questions are: Is there any cost in these actions taken by the department or by an authorised officer? Can any of these costs be incurred against the owner of those properties?

That is the first point. Clause 53(2)(v) says -

> destroy, dispose of or eradicate any thing, in accordance with this Act …

People are saying they only have to believe there is a biosecurity risk or issue and they can do all that, and there should be some control or mechanism to test whether what is being done is right.

In other words, there should be the intervention of at least another person or there should be some other basis to support what the authorised officer wants to do and can do. This really gives them wide powers.

Mr Valentine - It is a powerful bill.

Mr DEAN - It is a powerful bill, my word it is. People need to understand that; members too.

Police would love these powers where they can say that police can do whatever they want. They would be great powers to have.

We need to make sure it is reasonable and sensible and there is protection for industry. Those are the questions asked: Can costs be incurred against property owners on whose properties these things are happening? Is there any testing of the action the authorised officer wants to take when they are destroying property and so on? Is it necessary to destroy it? Do they then need support from somewhere to test what they want to do? Or is it just done off their own back?

Mrs HISCUTT - Clause 55 talks about the recovery of costs for action taken. Bear in mind that the authorised officer must be acting reasonably. Clause 4(c) also applies, that it must be 'no more intrusive, restrictive or expensive than is required'. Costs could be sought against an action under clause 55. Destruction is highly controlled. Clause 64(2) says -

> An authorised officer may not destroy a thing, or group of things, under this Part if the aggregate value of the thing, or group of things, is more than $5000, or such other amount as is prescribed ...

There is a limit. If something goes over that limit, there are circumstances where it can, but it is constrained by the bill. That is in clause 65 when we get there.

Mr VALENTINE - My question regards clause 53(2)(t). It echoes the concern the member for Windermere raised about the cost -

> direct the occupier of the premises where a thing is seized to retain it at those premises or at another place under the control of the occupier ...

The occupier might be happy to destroy the article or whatever is the offending thing, and it costs them to retain it. Does the department pay the cost of retaining the thing or does the person who owns the thing?

Mrs HISCUTT - This is a standard power in all seven existing acts, plus other acts - the Food Act and Food Standards. It is applied to large items that are difficult to destroy quickly, or ones that would create a risk if not destroyed in the right way. The principles of reasonableness and the least-cost options apply.

Clause 53 agreed to.

Clause 54 agreed to.

Clause 55 -
Recovery of fee for action taken

Mr DEAN - Clause 55 has been referred to. It says -

> The Secretary may charge a person (the ***liable person***) a fee for any action taken by an authorised officer under a function conferred by this Division if, in the opinion of the Secretary, it is reasonable to do so having regard to the following …

Then it goes into 'any biosecurity duty or obligation', any likely contravention or 'any other matter the Secretary considers relevant in the circumstances'. It goes on to say -

> A fee charged under subsection (1) is to be no more than is reasonable to cover the costs and expenses incurred in connection with the action taken.

I refer to the Schwinds' property for a good example, where at the time it was considered reasonable by the officers to bring in an excavator and so on to rip out plants and whatever else they did. Our inquiry went into this and in hindsight it probably was not the way they should have dealt with that property. There was probably another way of doing it, of cutting it back and all the rest.

In that situation, how would a judgment be made? The secretary could say, 'It was reasonable to bring the excavator in and rip out these plants, and it's going to cost you guys whatever it is going to cost you'. But later, with the benefit of three or four years down the line, it is accepted perhaps there was another way to do this.

What are the checks and balances? Is there a right to appeal? That is written in. There is an appeal right here if somebody is aggravated or does not accept. We need to make sure we have it right. Clause 55(3) reads -

> For the purposes of subsection (2), costs and expenses incurred include costs and expenses incurred by or on behalf of the Crown or, in the case of an authorised officer who is not a State Service officer, the employer of the authorised officer.

If the authorised officer is not a State Service officer and the person is working for somebody else - a private contractor, or private individual - does the employer of that person have the right to make a claim against the property owners also? Is this the way it is to be interpreted?

This is a matter raised by Karen Brock in relation to clause 55(3), where she says that no capped rates costs can be exponential. The Crown is not an efficient user of time and does not handle money all that well, although she uses another word.

Mrs HISCUTT - It is a discretionary power. There is a right of merits appeal to the Resource Management and Planning Appeal Tribunal - RMPAT - in relation to costs recovery under clause 262. This is a more accessible and user-friendly avenue to dispute cost recovery orders than the normal civil court processes. It involves extensive mediation and no automatic adverse cost order, if unnecessary.

Yes, there is a right to appeal. With regards to your last question, that could be referred to someone from Hydro or a council person, it is not necessarily a private person.

Clause 55 agreed to.

Clauses 56 to 63 agreed to.

Clause 64 -
Destruction requirements

Mr DEAN - Clause 64(1) reads -

> (1) Subject to subsection (2), an authorised officer may destroy a thing under this Act if -
>
> (a) the thing is, or is reasonably suspected of being, prohibited matter; or
>
> (b) the thing is, or is reasonably suspected of being, an invasive pest; or
>
> (c) the thing is, or is reasonably suspected of being, infected or infested with, or of harbouring, biosecurity matter …

If the decision is found not to be reasonable and is wrong, is full compensation provided for? I have written it could be a value of $4999 so I suspect it must go up to $5000. What is the position if destruction occurs? I was trying to look at all the areas that cover rights of appeal. I suspect there is an appeal right in relation to costs that could be claimed against the Crown. Again, I go back to the Schwinds' Mountain Fruit property to give an example of that.

Mrs HISCUTT - Clause 279(2) says -

> A civil liability that would, but for subsection (1), lie against a person lies against the Crown.

Mr DEAN - Clause 64(2) says -

> An authorised officer may not destroy a thing, or group of things, under this Part if the aggregate value of the thing, or group of things, is more than $5000, …

That is why I had $4999 written down -

> or such other amount as is prescribed, unless ... the destruction of the thing, or group of things, is specifically authorised under the regulations …

Is it fair to assume that the $5000 is simply a selected figure to demonstrate that if it is more than that, it becomes a more serious matter and needs to have more consideration given to it? What is the significance of the amount of $5000?

Mrs HISCUTT - It is in the jurisdiction of the Small Claims Tribunal where a person can do that without a lawyer, so it would be cheaper.

Mr VALENTINE - Looking at clause 64(3), in relation to what the member for Windermere was saying, it says -

> This section does not apply to an authorised officer destroying a thing that has been forfeited to the Crown, regardless of the value of the thing.

That is well over $5000.

If something is seized and forfeited to the Crown because the owner could not be located and the Crown decides to destroy it, it may be on foot in court. The owner might have since been found or made aware that something has been seized by the Crown and they are appealing against it. Where is the safeguard against the Crown destroying something that may be the subject of an appeal? One would hope the left hand talks to the right hand.

Mrs HISCUTT - Where something has been wrongly destroyed, civil action can be taken for damages. But there are a lot of hurdles to jump over before something is forfeited.

Mr Valentine - That is before it is forfeited?

Mrs HISCUTT - Yes.

Mr VALENTINE - That is before it is forfeited; I am talking about where it is forfeited and the owner has not been found. After the forfeit the owner has been made aware that this has been seized - I do not know what the circumstances might be. What happens in that circumstance where the Crown has seized it, the Crown is about to destroy it and the owner is wanting to challenge the forfeiture? There must be a mechanism that when something is submitted to a court, the department gets notified. Is that the case?

Mrs HISCUTT - Clause 61 talks about the hurdles that have to be leapt before there is a forfeit. You have to bear in mind that where there has been wrongful and unreasonable destruction of a thing, civil action can be taken for the damages.

Mr Valentine - You are saying there is an avenue for recompense?

Mrs HISCUTT - Yes, you can certainly take civil action.

Mr Valentine - Thank you.

Clause 64 agreed to.

Clauses 65 to 67 agreed to.

Clause 68 -
Self-incrimination

Mr DEAN - This is a lawyer thing, and there are no lawyers in this Chamber at present.

Mr Valentine - The Deputy Clerk.

Mr DEAN - I mean in the Chamber who can challenge it.

This was raised by Karen Brock. She said that clauses 68(3) and 68(4) impinge on natural rights and that this is cake-and-eat-it-too stuff. A person can be interviewed or interrogated without a witness present and then be incriminated under this section as the evidence is not inadmissible.

Clause 68(3) says -

> Any record furnished by a person in compliance with a requirement under this Part is not inadmissible in evidence against the person in criminal proceedings, or other proceedings for the imposition of a penalty, on the ground that the record had to be furnished or might incriminate the person.

Does that only relate to any criminal matter referred under this bill?

Clause 68(4) says -

> Any information or evidence obtained as a result of a record or information furnished, or an answer given, in compliance with a requirement under this Part is not inadmissible on the ground -
>
> (a) that the record or information had to be furnished or the answer had to be given; or
>
> (b) that the record or information furnished or answer given might incriminate the person.

Is it an incrimination only under this bill or could they be incriminating themselves under other legislation as well and that would be reasonable in all of the circumstances? Had there been lawyers in this Chamber, they might have taken this up in a stronger way.

Mrs HISCUTT - It relates to all criminal proceedings for this bill and/or others. It is not inadmissible just for that particular reason. Laws of evidence, admissibility and natural justice still apply. We are still subject to clause 68(2).

Progress reported; Committee to sit again.

SUSPENSION OF SITTING

[4.20 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I move -

> That the sitting be suspended until the ringing of the division bells.

Sitting suspended from 4.20 p.m. to 4.35 p.m.

BIOSECURITY BILL 2019 (No. 15)

In Committee

Resumed from above.

Clause 68 -
Self-incrimination

Mrs HISCUTT - With biosecurity, especially emergency situations, you need to be able to get information to protect the public and deal with the risk urgently. An example is rapid response to the foot-and-mouth disease or something like that.

These provisions often would not be used for law enforcement investigations. When an individual is compelled to give information, the evidence and information cannot be used in any criminal proceedings concerning them. They are protected against self-incrimination.

Clause 68 agreed to.

Clauses 69 to 72 agreed to.

Clause 73 -
Notification of biosecurity event

Mr DEAN - I am going to refer to Costa.

Looking at clause 73 -

> (1) Each of the following persons must notify an authorised officer of the occurrence of, or likely occurrence of, a biosecurity event as soon as practicable after the person becomes aware of, or reasonably suspects, the occurrence or likely occurrence of the biosecurity event ...

I use the Costa situation because it arose back at the time of the blueberry rust inquiry as an example of where they suspected a breach or a problem with blueberry rust, but then sent it off and had it analysed over a three-week period. Would this put Costa in breach of this legislation if they were to do that? In other words, they suspect that blueberry rust could be evident, it is sent off to their own labs for analysis and it was some time before the analysis report came confirming blueberry rust. I understand at that time the department was notified of the situation. Does this clause adequately cover this? It says 'as soon as practicable after the person becomes aware of, or reasonably suspects'.

The 'reasonably suspects' would cover it adequately rather than 'becomes aware of'. Could I be given some explanation for that position?

Mrs HISCUTT - We do not want to talk about actual cases here. However, this clause would apply to these sorts of circumstances.

Mr DEAN - I will just go to clause 73(5) where it says -

> It is a defence to proceedings for an offence under this section if the defendant establishes that he or she did not notify an authorised officer in respect of a biosecurity event, as required under this section, because the defendant had reasonable grounds to believe that the biosecurity event was widely and publicly known at the time the defendant allegedly committed the offence.

This is a get-out-of-jail-free card. While we are not using particular cases, blueberry rust was being widely discussed in a number of areas. It was rampant at the time. I did not have any reason to report it. It should have been publicly known. So why do we have included 'reasonable grounds to believe that the biosecurity event was widely and publicly known'?

It is a very difficult situation to be able to disprove. What do we mean by 'widely and publicly known'? Widely known could be just around the district. Or do we mean all around the state? These areas need some qualification, in my view, to appreciate and understand exactly what is meant by all of this.

What is publicly known? Is it known by everybody, or is it simply known by two or three neighbours around the property? Would that be publicly known? I suggest it would be publicly known. What is the limitation on these things? There needs to be some clarity around it within the industry. It needs some explanation.

Mrs HISCUTT - This part is to provide a defence where a person honestly thinks the pest is present. The onus is on the defendant to prove this defence, not the prosecution. It is a case-by-case question of fact for the courts to determine whether it was publicly known.

Mr DEAN - Are there any examples where 'publicly known' has been determined by a court? I suppose I will be told that it depends on the circumstances. It is a wide open situation to be used.

Mrs HISCUTT - You must have reasonable grounds. There must be some sort of evidence. For example, there will be media reports, there might be web information that the average person could have seen. If the average person could have seen it on the net, wherever they get their news from, that is reasonable.

Clause 73 agreed to.

Clauses 74 to 79 agreed to.

Clause 80 -
Grant or refusal of biosecurity registration

Mr DEAN - In relation to clause 80(2)(b) Karen has asked: what determines how the secretary is satisfied and where is natural justice involved? She says clause 80(2)(e) is open to abuse of discrimination because there is no process involved. On clause 80(4) she asks why the secretary need not give a reason for refusal, and the client has no recourse for argument. The client does have a reason under clause 80(3)(b).

Clause 80(2) says -

> The Secretary may refuse to grant biosecurity registration to an applicant -
>
> (a) if the application for biosecurity registration does not comply with this Act; or
>
> (b) if the Secretary is satisfied that the applicant is not a suitable person to engage in the regulated dealing concerned; or
>
> (c) if it would not be appropriate to grant biosecurity registration to the applicant due to the occurrence of an emergency; or
>
> (d) on any prescribed grounds; or

(e) for any other reason that the Secretary considers to be sufficient reason for refusing the application.

Clause 80(3)(b) says -

> provide the applicant with written confirmation of the decision and the reasons for the decision ...

Then 80(4) says -

> If the Secretary fails to give an applicant notice of a decision to grant or refuse biosecurity registration within the prescribed period, the Secretary is taken to have refused to grant the biosecurity registration.

In that situation, is the secretary required to give some sort of notice to the person? In the other situations I have referred to there is a requirement to give notice. Does the secretary not have to provide information if they do not want to? If they do not, is it deemed that it has been refused without explanation?

There seems to be a let-out in a lot of these sections for the secretary. We have a cover-all section which frees them from having to do any of these things.

Mrs HISCUTT - The regulations will decide the period of time only if the period has been prescribed in regulations. The decision can be appealed via RMPAT. If the secretary does not alert the person within the period of time it has been regulated in the regulations, that decision can be appealed through RMPAT. If the person getting the decision is in the negative, they can appeal.

Mr DEAN - That appeal can be taken without the applicant being notified of the reasons as to why they have been refused.

Mrs HISCUTT - It is the applicant appealing.

Mr DEAN - Yes, so the applicant is expected to take that appeal on not knowing the reasons for the refusal. That is the point I am making.

Mrs HISCUTT - Yes, they can, and that would be a very strong ground of appeal, that they have not been informed.

Mr DEAN - Why is it written in this way? At the beginning it says the secretary is to give notice under 3(b), 'provide the applicant with written confirmation of the decision and the reasons for the decision'. That is acceptable, but then it goes on and clause (4) says, no, the secretary does not have to do any of that if they do not want to, and if they do not want to and do not do anything about it, the application is refused. The applicants have to assume that maybe the grounds were not reasonable and they appeal that decision. It may well be that the decision of the secretary and the circumstances were a reasonable reason for refusal. The applicant is in a hard position here and with most appeals there is a cost involved.

I would have thought at some stage or another the secretary would have to provide the applicant with some reason as to why they have refused the application. It is amazing it is written this way.

Mrs HISCUTT - If there is a prescribed period, the default is refusal because if it were accepted you might be authorising a high biosecurity risk activity. If you do not get a notification, you can presume it is not accepted. It is a safeguard against any oversights. The person will not be disadvantaged because it gives them appeal rights; this is a biosecurity safeguard.

Mr Dean - What do you mean the applicant will not be impacted?

Mrs HISCUTT - If they do not get an answer within the prescribed time.

Mr Dean - It is deemed they were refused.

Mrs HISCUTT - It is deemed they have been refused, so then they have appeal rights. It is a biosecurity safeguard in case something goes wrong, administrative oversight or something like that. The fallback is it is best not to proceed if it is a big biosecurity safeguard. If there is a definitive answer after the prescribed time, they are not left in limbo, they know exactly whether it is a yes or a no. If they do not hear it is an automatic no, then they can proceed.

Mr DEAN - The more I think about and look at it, the more absurd it is and the more unfair for an applicant. This is where an applicant is seeking to have a biosecurity registration, so it could be an important matter for their business, a very serious matter that impacts on their business and the industry they are running. They make the application and in the former parts, it says at clause 3(b) -

> the Secretary is to ... provide the applicant with written confirmation of the decision and the reasons for the decision ...

But then, in case the secretary makes an error - and if it is a biosecurity application, I would be interested to know why that might occur; I suppose it could - even in that instance, the poor applicant is left in limbo. Because the secretary does not bother to reply, they are to assume it is a refusal, but they have no idea why it has been refused. The only way they have of finding out why it has been refused is by appealing.

I could accept it if, after a period of time, the applicant is to contact the secretary to find out what has gone on. To put it back on the applicant means there would be a cost in an appeal. I would be very surprised if the applicant can go to an appeal without some cost against him or her. I just wonder. To me, it is just an unfair process. Others might not see it that way. But please have a look at it, the way it reads -

> If the Secretary fails to give an applicant notice of a decision to grant or refuse biosecurity registration within the prescribed period, the Secretary is taken to have refused to grant the biosecurity registration.

Mr Valentine - Perhaps there needs to be a time line?

Mr DEAN - There does need to be a time line. At least if they were able to say, after a three-week period or a month -

Mr Valentine - If you have not heard, it is correct.

Mr Dean - Yes, that is right. There needs to be something there. It might be in the bill. If it is in the bill, that is great. I can accept it. But the applicant must not be left in limbo. It would appear that we might have an answer to it. The member for Hobart might want to pursue it.

Mrs HISCUTT - I do not think the secretary would not reply just because they do not 'bother' to reply. I feel sure that every effort would be made. If something went wrong, like an administrative oversight, I mean, that would be the reason.

Mr Dean - Let us accept that.

Mrs HISCUTT - There is nothing to stop that particular person from ringing up Biosecurity to find out how their application is going every day, if not twice a day, if they wished. I know that if it were important to my business, I would be looking at it every week. Every Monday morning I would be on the phone. But this is the default situation here.

A biosecurity registration could be about developing vaccines or releasing biological materials into the environment. You must have a fallback position of no in case there has been an administrative oversight. Of course, the applicant can appeal at any time after that. Natural justice provisions are applied by the Resource Management and Planning Appeal Tribunal. RMPAT does have time lines. If it is something really serious within your business for which you need an answer, surely you will ring Biosecurity to find out where your application is at.

Mr Dean - While you are on your feet, where is the natural justice in this for the applicant? There is none. The only natural justice is the right of appeal.

Mrs HISCUTT - But what if there are diseases that are released? As a biosecurity risk, you have to err on the side of caution.

Mr Dean - I do not have a problem with erring on the side of caution. But I have a position of being fair with that erring on the side of caution. There is no fairness in that process at all. Because the secretary does not have to provide the applicant at any time - the applicant rings up, the secretary could say, 'Look, I am not responding to you. It is taken that your application is refused'. They do not have to tell them why. They can only find out on appeal.

Mrs HISCUTT - This is for the first step. In a year's time or whenever the renewal of the registration is, is the default position. If you are registered and you have that business registered and when the time comes for renewal, your default position upon renewal is acceptance. Once you have proved in your registration that your virus vaccines are not going to escape, you can keep that registration. When you apply again in a year's time for registration and you do not hear within the month or the prescribed time, if there is an administrative oversight, the default position is yes, you can continue. This is just in the beginning until you are registered. The default position has to be no, if you do not hear - if you are not on the phone every day - because of the risks, but once the risks are assessed and you are registered, when the renewal comes around again, whenever that renewal period is, the default position if you do not hear from the secretary is yes, you are okay to keep going.

Mr VALENTINE - I hear the explanation, but it is not what subclause (4) says -

> If the Secretary fails to give an applicant notice of a decision to grant or refuse…

So it can be either way within the prescribed period. What is the prescribed period? Maybe that is where the answer is. That is in the regulations that come later. There will be a prescribed period. Natural justice comes into it there. The prescribed period is going to be so many weeks after the lodgement of the application or whatever.

The applicant needs to have a fair understanding as to whether they can proceed or not and if after the prescribed period they have not heard, that is a 'no' under subclause (4), but they do to know that it is a 'no' when they need to know it is a 'no'.

Mr Dean - Are they told that when they make the application? If there is no answer, is it deemed they do not have it?

Mr VALENTINE - That is what it says in subclause (4).

Mr Dean - But they do not have to be told that, do they?

Mr VALENTINE - No. It is assumed it has been refused if they have not been notified within the prescribed period.

Mr Dean - But there is no notification given to them about why?

Mr VALENTINE - That is a point and is fair, but they are not totally in the dark in the sense this period has elapsed, so therefore it must be refused. The natural justice of knowing why it has been refused is a different story. I agree with you on that score.

Even though after the prescribed period and an answer has not been given to the applicant as to whether it has been refused or granted, is the department bound to communicate with that individual to say why they have had it refused? If they had it granted, you would think they would hear.

Mr Dean - I have no problem as long as it is a requirement they do that.

Mrs HISCUTT - The simple answer is yes.

Mr Dean - Can you tell me what the simple answer is?

Mrs HISCUTT - Are they bound to be told the reasons why? The simple answer is yes.

Mr Dean - They are? When does that occur? It is not written in here it is going to happen. Is that just taken? It is not written the secretary has to do that.

Mrs HISCUTT - If there is an appeal and a letter goes to Biosecurity saying there is an appeal, what are your reasons, Biosecurity will act immediately. I would like to draw the member for Windemere's attention to clause 83, Renewals. Renewals and registrations of an application are treated differently. Clause 80 talks about registration. You asked what happens after that prescribed time for an application for re-registration; that is dealt with in clause 83. It is different and it is an automatic yes if you do not hear from the secretary within the prescribed time.

Ms RATTRAY - I have been listening to the contributions from the member for Windemere and the member for Hobart. There should be a reason given before an applicant needs to go to an

appeal. They might be quite satisfied with the reason given before they have to spend time, money and angst to get to an appeal process. Appeal processes are not usually swift. People do get overwhelmed by those processes. It should not make any difference whether it is the first time or the fifteenth time, a reason should be given for a refusal of application and you do not have to go straight to an appeal process.

Mr Valentine - In a prescribed period.

Ms RATTRAY - In a prescribed period. We do not know what that is yet. I am happy to move that we amend this clause to make sure that an applicant is provided with a reason for why they have been refused a biosecurity registration.

Mr Valentine - Or accepted. There may well be strictures that they have on that approval. They need to know what those are.

Ms RATTRAY - That is right. They might decide that an appeal process is not something that they want to progress. I think that is fair and reasonable. Sometimes things fall under the radar and do not get addressed. We know those things can happen, particularly if there is a change of minister. At the moment heads of department, or people in departments, have moved. We are all waiting for responses but we cannot get them because somebody new has taken over. This happens regularly. I will need to be convinced that this is not going to be detrimental or I will be moving an amendment.

Mrs HISCUTT - If we go back to clause 80(3) -

> If the Secretary refuses to grant biosecurity registration under this section, the secretary is to -

That goes through a process of what should happen. This is the legal requirement in all refusals. We go through clause 80(3)(a), (b) and (c) first and then the fallback if something goes wrong, if there is an administrative error or whatever, comes to clause (4), which is what should be happening if all else fails. If it is a refusal, you still have to go back through to clause 80(3)(a) - you can write and ask why, what plans to happen is (a), (b) and (c), and then, if all else fails because of the risk of the nature of biosecurity, (4) has to kick in. You have to have a fallback in case something goes wrong with the system and you are not notified.

The plan is and the law says that subclauses (3)(a), (b) and (c) must happen, but sometimes there is an administrative error and things go wrong, so if that happens, clause (4) kicks in. You have to presume you cannot go ahead with your virus experiments. The biosecurity risk is too great but the intention is, and the law says, that subclauses (3)(a), (b) and (c) must happen. Do you want me to go through them?

If all else fails, you have to have a fallback; it is so important.

Mr Dean - That is perfectly clear and I understand.

Mr DEPUTY CHAIR - Member for Windermere, you have had three calls, we will see what the other members who can still get to their feet can ask. You have had your three calls and you cannot question from the seat.

Ms RATTRAY - Let me understand: if the secretary fails to give an applicant notice of a decision to grant or refuse biosecurity registration within the prescribed period, the secretary is taken to have refused that grant, but to find out why that has been refused the applicant does not have to go directly to an appeal process? That is not what we heard earlier, nor what I understood to be the case.

Mrs Hiscutt - That is the appeal process, but you can ring Biosecurity and find out.

Ms RATTRAY - And they will provide the response in writing. I want to make absolutely certain if there is a refusal the applicant knows why there is a refusal, because they may decide not to proceed with an appeal process. That is why we want to know, so it probably should have gone before and not after.

Mrs HISCUTT - Subclause (3)(b) says the secretary is to provide the applicant with written confirmation of the decision and the reasons for the decision. If we read through the process that is what should happen, but you have to make account if something goes wrong, including subclause (3) applies. The time to give reasons is as soon as is practical after the refusal, including a deemed refusal under subclause (4).

Mr Dean - All we want is fairness after that.

Mrs HISCUTT - There is fairness.

Ms RATTRAY - That certainly is a different process than what I understood from sitting in the Chair at an earlier time when the members for Windermere and Hobart were making their contributions. I can accept that. There must be some draft regulations somewhere, because nobody sits on their hands around here, so can I have some idea of what the time frame would be from the time an application is submitted until it is acknowledged as being in the system? People need some idea of what they are dealing with, whether it is 30 days, 60 days, whatever it may be. When you are going through a process like this, you are effectively living, eating and breathing it, and it is usually costing you money. It is certainly worth clarifying this. It is a really important feature for anyone trying to achieve that biosecurity registration.

Mrs HISCUTT - The default time for renewals is 28 days. Not that I can say it will be 28 days for applications, because consultation needs to occur with the industry to see what length of time it deems appropriate. The regulations for initial applications have to be consulted with the industry. It may be more than 28 days. It depends on what it is.

Ms Rattray - I hope the regulations are not as thick as the Biosecurity Bill itself.

Clause 80 agreed to.

Clauses 81 to 88 agreed to.

Clause 89 -
Conditions for insurance cover

Mr DEAN - The question raised with me about clause 89 is that it could be mandatory that all registered businesses take out insurance in the future. Insurance is costing Karen's business $12 000 plus per annum. This is an excessive fee for small business owners and pet owners. There is no

reference to any special arrangements; that is, animals that are not currently in Tasmania, which may pose a risk - a zoo importing a tiger, for instance. This clause needs to protect the broader community from potential fees.

The clause reads -

> A condition imposed on a registered entity's biosecurity registration may require the registered entity to take out and maintain a policy of insurance that indemnifies the registered entity against any liability to which the registered entity may become subject in connection with the regulated dealing under the biosecurity registration.

It says 'may require'. Can I have an idea of the costs incurred for a person to take out these types of insurance? When would it be required? Some further explanation of the section is needed.

Mrs HISCUTT - This is simply an enabling provision which is in line with corresponding provisions in other states' biosecurity legislation. Individual registration conditions such as these are subject to merits review and must be consistent with the bill's objectives in clause 3 and principles in clause 4. That includes the principles in clause 3, that a decision to impose a registration condition should be appropriate for its purpose and not lead to an outcome that, in the reasonable opinion of the decision-maker, is more expensive or restrictive than is required in the circumstances.

Clause 89 agreed to.

Clauses 90 to 95 agreed to.

Clause 96 -
Cancellation of biosecurity registration

Mr DEAN - This again comes down to 'may' and 'must' and so on. It was raised with me here where we are referring to the cancellation of biosecurity registration -

> (1) The Secretary may, by written notice to a registered entity, cancel the biosecurity registration of the registered entity if the Secretary is satisfied that there are grounds for the cancellation of the biosecurity registration.

The secretary ought not have any reason not to write in that situation and the word 'may' should have been 'must' in all the circumstances. I know about 'may' and 'must' and so on - I am not going to go down that path. It gives the secretary a way out there by not providing any written notice to a registered entity and that was raised as a concern.

Mrs HISCUTT - It is covered by subclause (3). It says -

> Before cancelling the biosecurity registration of a registered entity, the Secretary must ... give written notice ...

Mr Dean - That is right. We have 'must' now here. That was the issue raised.

Mrs HISCUTT - Yes.

Clause 96 agreed to.

Clauses 97 to 103 agreed to.

Clause 104 -
Grant or refusal of permit

Mr DEAN - Clause 104(6) reads -

> A failure of a relevant decision-maker to make a decision within the prescribed period in respect of the application is taken for the purpose of this section to be a refusal of the application.

So here we go again with exactly the same terminology. Again, I take it that there is an appeal right here? What is there again? I can understand a biosecurity act being very firm and strong and we need to have it that way to protect us, but there also needs to be some concern given to the industry and the people involved who make this state work.

In this instance, at what stage is there some written communication given to the person? What else happens? This is a grant or a refusal of a permit in this instance. I take it there is a right of appeal in relation to a permit?

Mrs HISCUTT - The member for Windermere is correct, this is the same as the last example we had, clause 104(5)(a), (b) and (c) must happen first. This is the default. It is the same as with the registration. The permits are to do something that is otherwise a breach or offence under the bill, such as dealing with foot-and-mouth disease.

Clause 104 agreed to.

Clauses 105 to 107 agreed to.

Clause 108 -
Grant or refusal of renewal of individual permit

Mr DEAN - The question was asked of the department and an answer has been provided. I ask it be included in *Hansard*. There are concerns that the Chinese social licence examples can be used with the renewal of permits. The constitution of suitable persons as per the earlier clause becomes relevant. Please review this clause to me. An answer has been given by the department. Could the Leader read that in?

Mrs HISCUTT - There is a right of merits appeal to RMPAT for a person aggrieved by decisions about an individual permit. All decisions must be in furtherance of objective in clause 3 and principles in clause 4. If the refusal to grant or renew a permit is based on any criteria not relevant to biosecurity or suitability as defined in clause 18, it would likely be overturned as being based on irrelevant considerations.

Clause 108 agreed to.

Clauses 109 to 127 agreed to.

Clause 128 -
Biosecurity zones

Mr VALENTINE - How do these biosecurity zones apply to aquaculture? Other bills might deal with aquaculture but are the pens out in the ocean in an area? How are aquaculture sites dealt with because they are not premises?

Mrs HISCUTT - Yes, the jurisdiction of the bill is over all land, water and dealings and activities in Tasmania.

Mr VALENTINE - My question is about the zone. Clause 128(1)(a) says 'any specified premises or specified part of premises', while clause 128(1)(b) says 'any specified place, area or region or specified part of such place, area or region'. Would an aquaculture site be considered an area or region perhaps?

Mrs HISCUTT - Yes, it would.

Mr Valentine - Area?

Mrs HISCUTT - Or region, or part of Tasmania.

Clause 128 agreed to.

Clause 129 agreed to.

Clause 130 -
Failure to comply with biosecurity zone measure

Mr VALENTINE - Clause 130(2) says -

> In addition to any penalty imposed under this Act, if a person contravenes a biosecurity zone measure, the Secretary may authorise a person to enter premises ...

Yet if we look at clause 169(1)(a), it says -

> In addition to section 168, emergency measures may do one or more of the following:
>
> (a) prohibit, regulate or control entry into, or exit from, any specified premises or area ...

I wonder whether clause 130(2) should have 'enter premises or area', if it involves aquaculture.

Mrs HISCUTT - We are fairly sure that 'premises' covers what we need. In the definitions, 'premises' includes -

> (a) any land, whether built on or not; and
> (b) any building, structure, vehicle or public or private place;

And when you look at the definition of 'land', it says 'inland waters', 'land that is covered by water', and 'water in, on or below land'.

They are covered in the definitions.

Mr VALENTINE - I guess it is a consistency thing. It may be a belts-and-braces thing where it says 'premises or area' in clause 169(1)(a). It just seemed to be a little inconsistent and that was my reason for raising it. If it means it is covered, it is an anomaly that will not matter.

Clause 130 agreed to.

Clauses 131 to 135 agreed to.

Clause 136 -
Government biosecurity program

Mr DEAN - Clause 136 is one of the issues I raised with the department, and it has provided an answer. I will address the concern raised with me relating to clause 136(2). This was a major concern because we have a situation where a lobby group can impress the minister, like the blueberry rust, to manipulate a situation. The statement of reason must be published. It was agreed with DPIPWE to have this in the wording, but the new version is unchanged. We need some transparency. The word 'may' is ambiguous and there needs to be a statement of reason published in the *Gazette*.

I think that covers it. An answer has been provided by the department. The Leader might read that into *Hansard*.

Mrs HISCUTT - It reads -

> Legal requirements to give reasons for these sorts of decisions are not in other legislation. For example, in section 30 in the Judicial Review Act 2000 adding unnecessary requirements could limit and/or exclude the application of the JRA, which will ultimately reduce transparency. This is not the same as, for example, the requirement to give reasons in a control order for a decision to manage.

So you can see clause 178(f) is to ensure the content, effect and basis of a control order is clear and primarily aimed at prevention or eradication of pests or diseases, if practicable.

Clause 136 agreed to.

Clauses 137 to 142 agreed to.

Clause 143 -
Reporting requirements for biosecurity audit

Mr VALENTINE - A clarification about biosecurity auditing. Clauses 143(1) and (2) read -

> (1) A biosecurity auditor must prepare a written report about each biosecurity audit performed by the biosecurity auditor.

(2) A copy of the report must be submitted ...

If we go to subclause (5), it says -

> A biosecurity auditor must provide a copy of a report prepared under this section to the Secretary if directed to do so by the Secretary.

It should be a matter of course if you are going to produce a report; it would be ipso facto to the secretary. Who else are you doing it for? The secretary does not have total oversight of what is going on. It might be easily explained, but is it likely the secretary is not going to request a copy? If the secretary does not, is it in the standing orders of the department somewhere that these things have to go to the secretary? You would think it would be mandatory.

Mrs HISCUTT - This coincides with clause 144 where it talks about the biosecurity auditor having to provide a report to the secretary if any of clauses 144 (a),(b),(c),(d) or (e) happen.

Mr Valentine - I have here, 'Or is clause 144 sufficient?'; I did not say.

Clause 143 agreed to.

Clauses 144 to 165 agreed to.

Clause 166 -
Notice of emergency order relating to specific property

Mr DEAN - Again on words used throughout the bill, there is no strong consistency with the use of wording. In clause 166 does a notice of emergency order relate to specific property? It is an emergency order, which is an important matter. Despite clause 165, if the minister makes an emergency order that is property-specific, the minister may give notice of the order by causing a notice of order to be served on the owner. This is a case where my view is it ought to have been 'must' - 'may' means might; if you look in any dictionary, it tells you that. If you go through the rest of this bill and look at some other areas that are not as important as this area, it says 'the minister is to', 'the minister will'. It uses much stronger terminology. Clause 179 is a good example, but there are others. Clause 179(2) says -

> Notice of control orders generally
>
> (1) The Minister is to give notice …
> (2) The Minister is to take reasonable steps…

There are no 'mays' there.

I wonder why we have that inconsistency in relation to the powers of ministers and secretaries. Some of those areas are not as important as the notice of an emergency order relating to a specific property. I see that as an important matter. I would not have thought that the minister should not have the obligation. There should be the obligation here to do it as is set under other areas of this act where the minister is to give notice. If you look at clause 179, Notice of control orders generally, the wording is strong there and I agree with it. I do not have any problem with that.

I raise why we are going light in relation to an emergency order.

Mrs HISCUTT - Normally a public notice of emergency has to be on the website or in the *Gazette*. A lot of that is covered in clause 165. Clause 166 is fairly important. It allows the minister to give a notice which protects privacy and commercial confidentiality. It would be wrapped around, say, one property instead of a group of properties so it is more to give the minister the flexibility to protect that one particular company even though you have to go in with the highest security measure.

Mr DEAN - You are saying that 'may' is strong enough in the area where I raised it?

Mrs HISCUTT - Normally, this is a final call if the minister needs to make a decision but it is an enabling process for that last emergency or if there is just one family business involved.

Clause 166 agreed to.

Clauses 167 to 170 agreed to.

Clause 171 -
Inspection of persons

Mr DEAN - This is an interesting one. Clause 171 reads -

> A requirement in an emergency order that an individual is to allow himself or herself to be inspected by an authorised officer only authorises the officer to require the person to do any of the following:
>
> (a) to submit to a visual inspection (including of the exterior of the person's clothing, accessories and shoes);
>
> (b) to shake, or otherwise move, the person's hair.

Why this is the case? You look at a person and then you can ask them to shake their hair. What is to be gained from that? It just seems to me to be a fluffy way of writing something. I take it when you submit to a visual inspection including of the exterior of the person's clothing, it does not mean they can have them undress as well? The way it is written to me is quite a strange way of putting it. I guess somebody who is bald and does not have much hair, like I do, would not have to do too much shaking.

Mrs HISCUTT - This is just to limit the powers so that it is not invasive when you come to inspections. This is a biosecurity bill not a criminal code bill. Perhaps you have been in among the blueberries and you have some leaf in your hair, or a weed, where you have been in a biosecurity area and you are moving out. It is not a criminal bill.

Clause 171 agreed to.

Clauses 172 to 187 agreed to.

Clause 188 -
Secretary may authorise required actions and recover costs

Mr DEAN - Does clause 188(1) mean a person cannot enter unless with warrant or consent? Can the secretary authorise any person to enter any premises and take any actions in relation to

those premises, or any thing on those premises without a warrant? In clause 188(2), the secretary may charge the liable person a fee. In subclause (3), costs and expenses incurred include costs and expenses incurred by or on behalf of the Crown. In subclause (4), a fee charged under this clause is a recoverable amount recoverable from the liable person. In subclause (5), if, as part of action taken under this clause, a person intends to enter residential premises for the purposes of taking the action, the secretary must give an occupier of the premises written notice of the intention.

Is that personal delivery of that notice? Can the entry be made at that time as well, or is it required that the written notice be given a day before, a week before?

Mrs HISCUTT - If it is a business, you need to do it before you enter.

Mr Dean - It has to be given a prior notice?

Mrs HISCUTT - If it is residential, you still need their consent or a warrant unless other emergency exceptions apply.

Mr Dean - I was talking about clause 188(5).

Mrs HISCUTT - This is only when a control requirement has been breached; it is to eliminate major biosecurity risks quickly and they need to be able to act urgently.

Mr Dean - My point is that the service of the notice given under subclause (5) is that 'the Secretary must give an occupier of the premises written notice'.

What I am saying is, the notice -

Mrs HISCUTT - You are saying: can you hand the notice to the person at the door as you are entering?

Mr Dean - At the same time as entering.

Mr Valentine - Read subclause (6).

Mr Dean - You are right. That does not necessarily mean or support what the Leader just said.

Mr Valentine - Read subclause (6)(ii).

Mr Dean - It is, too. Well done.

Mrs HISCUTT - It is the principle to act -

Mr Dean - What I said was right. That does not entitle them to give the notice to serve; they have to give at least a day's notice of what their intention is.

Mrs HISCUTT - As per subclause (6).

Clause 188 agreed to.

Clauses 189 to 191 agreed to.

Clause 192 -
How general biosecurity direction is given

Mr DEAN - Another issue raised by Karen. I will read the concern -

> If there are registered entities a note to each entity should be given as farmers do not read the *Gazette* or the website on a daily/weekly or even monthly basis. If we are paying fees for registration we need service of notices ...

It reads there how a general biosecurity direction is given -

> (1) A general biosecurity direction may be given by causing a notice of the direction to be published on, or in, either or both of the following:
>
> (a) the Department website;
> (b) the *Gazette*.

Karen is raising that a notice should be given to the farmers. A note to each entity should be given because farmers do not read the *Gazette* and websites. She has made that clear. Here it only requires the website and *Gazette*. Is there some other way that is done as well to give the appropriate notice?

Mrs HISCUTT - This is the minimum. Individual directions have to be given to the affected entities. What we have here in clause 92(1)(a) and (b) is the minimum. I am sure if something serious were happening, there would be a lot more people on the ground.

Clause 192 agreed to.

Clauses 193 and 194 agreed to.

Clause 195 -
Special emergency powers - inspection and treatment

Mr DEAN - This relates to special emergency powers - inspection and treatment and I will read the beginning of it in:

> (1) A relevant officer who gives an individual biosecurity direction in an emergency may direct a person to do any of the following:
>
> (a) to permit the officer to inspect the person for biosecurity matter, a carrier or potential carrier;
>
> (b) to permit the officer to inspect any thing in the person's possession, care, custody or control for biosecurity matter, a carrier or a potential carrier;
>
> (c) to carry out or permit an external treatment measure to be carried out in relation to that person; …

I read through to understand this.

If a person does not allow this, what can happen? Would they need to get a warrant or would they need to take some other action? Some other clause obviously covers this and I did not pick it up. Please point this out if so, because dealing with special emergency powers is a serious matter. To permit the officers to inspect the person for a biosecurity matter would be an important matter. If the person said, 'No, you are not going to' and walks off, what is the process? What can happen in the circumstances and also in the checking of other property in the possession of the person? Do they have the right to immediately carry out those search requirements and do the things they want to do without permission?

Mrs HISCUTT - Clause 200 talks about the offence not to comply with biosecurity direction. This bill does not provide invasive search. You cannot do that. If a person does not do that or refuses to comply, you can take their name and address and it can be dealt with later.

Mr Dean - I understand that and under clause 197(7), if they are required to do something about it and do not do it, they are committing an offence. This is an emergency situation; what immediate action can be taken by the authorised officer to fix the problem and do what they need to do?

Mrs HISCUTT - It depends on the volatility of the situation. If it is highly volatile, it is more than likely you will have police there and they can deal with it. If it is as I described before - seeds in your hair - and you refuse, that can be dealt with later as an offence.

Mr DEAN - I have raised this on many previous occasions. It does not matter whether you have police around or not, unless the police have a power under this legislation to carry out and ensure these things happen. They cannot do anything either. They have to be properly authorised. Just because you are wearing a uniform and a police badge does not give you the right to perform acts under all legislation. It has to be ascertained that they have that authority and that power. Your answer said that there could be police present but it does not help the situation unless the police have the power to use force and cause things to happen under this legislation. A uniform does not give them that right.

Mrs HISCUTT - The authorised person here does have fairly sizeable powers. They can seize things from a person and they can stop and search a vehicle. This is just the invasive searching of a person. That is described here. What they can do is the shaking of the hair, the visual look and so on.

Clause 195 agreed to.

Clauses 196 and 197 agreed to.

Clause 198 -
Measures not to be included in biosecurity direction

Mr VALENTINE - I heard the question from the member for Windermere about what happens if a person refuses. This clause says what an officer may not do, measures not to be included in biosecurity direction -

> (1) A relevant officer may not include any of the following measures in a biosecurity direction, except as expressly authorised by this Act in an emergency:

(a) prohibit, regulate or control the movement of a person;

(b) require an individual to undergo any treatment or require treatment to be carried out in relation to a person.

(2) A relevant officer may not, as part of a biosecurity direction, require an individual to provide samples of the person's blood, hair, saliva or any other body part or body fluid.

(3) Subclause (1)(a) does not prevent a biosecurity direction being imposed, in relation to any biosecurity matter, premises, activity or other thing, that has an impact on the movement of a person but is not imposed for the purpose of restricting the movement of a person.

(4) A function conferred by this Division to require an individual to submit to an inspection is a function to require the person to do any of the following:

It seems to be slightly confusing in the sense that it is under measures not to be included in biosecurity direction, yet under subclause (4) -

> A function conferred by this Division to require an individual to submit to an inspection is a function to require the person to do …

Why is it worded that way? It seems to me to be back to front, given the heading of the clause.

Mrs HISCUTT - This clause talks about what you cannot do. The bit that you pointed out in clause 4(a), (b) and (c) is the limit of what you can do. So anything over and above that, you cannot do.

Mr Valentine - That is interesting. That is a bit Irish, but I understand. That is fair enough.

Clause 198 agreed to.

Clauses 199 to 217 agreed to.

Clause 218 -
Eligibility for reimbursements

Mr DEAN - There was a lot of discussion on this during the briefings. Referring again to the Schwinds' property during the blueberry rust infection, at that time there was nothing in any act that would require a department, the government or the Crown to provide reimbursement to another party. The plants were uprooted because of rust. This almost destroyed the Schwinds. It was said to have caused the heart attack of an elderly family member, who passed away.

On that occasion the government made an ex gratia payment of about $30 000, which did not go anywhere near compensating them for what had happened. I guess they were thankful for getting some reimbursement, which was able to tide them over for a short period of time.

I will read what Karen Brock has said, then I will read my position. Karen Brock raises the issue, referring to 218(2)(a) and (b) -

> If there is damage or destruction of plants from roundup or sprays on other plants we are not compensated. This occurred with Mr May when they sprayed all his fruit trees with copper at high doses and killed them. Loss of profit does need to be accounted for. Please argue this case as business may not recover.

I raised this, and the department has provided a lengthy answer. I ask the Leader to read that into *Hansard*. While direct compensation can be provided in these circumstances, it is the indirect costs at the time that create the concern. In other words, when you take out all the trees and destroy a business, it takes them two to three years to recover. A young tree does not usually produce fruit the next year.

This damage caused to a business in such a situation is not covered here. I am told by the department that it does not preclude that. It needs to be included in *Hansard* that it does not preclude an impacted party, particularly when a party has done nothing wrong. The Schwinds were innocent. They bought their plants from a registered nursery. What happened to them was truly a terrible situation. I need to be assured it will be included in *Hansard* that it will not include those types of action or those types of positions being covered or compensated for.

The department would probably want it written the way it is because it could incur enormous costs on a department, government or the Crown. If businesses as large as Costa's were put out of action, it could be billions of dollars. I ask the Leader to read into *Hansard* the answer provided to the questions asked of the department by me.

Mrs HISCUTT - It is correct that statutory reimbursement for biosecurity-related losses under Division 2 of Part 12 of the bill can only apply to direct property losses. There is no entitlement for statutory compensation for consequential losses such as loss of expected profits or losses for breach of contract and the like. This is consistent with other states and it is a sensible and necessary limitation on statutory reimbursement schemes to ensure that they are economically sustainable and do not create perverse financial incentives for biosecurity risks.

However, there are other ways for private parties to seek compensation for loss of future income expectations and other consequential losses. These might include private income protection insurance, industry contingency funds and claims for civil damages where biosecurity-related loss has been caused deliberately or negligently by another person. The bill does not preclude the state government providing additional relief such as owner assistance packages, waiver of statutory fees and charges, and ex gratia payments. These options have already been used for biosecurity and other emergencies occurring in the state. For example, oyster growers were provided fee relief and some financial assistance to help them with the impact of Pacific oyster mortality syndrome.

There is also provision in the bill for the Government to enter into enforceable biosecurity control arrangements with property owners, which could, by agreement, involve a financial component in some circumstances. I can confirm for *Hansard* it is not the Government's intent for this bill to prevent the government offering extra assistance in appropriate cases to persons affected by biosecurity impacts in addition to the statutory reimbursements that may be available under Division 2 of Part 12.

Clause 218 agreed to.

Clause 219 agreed to.

Clause 220 -
Amount of reimbursement

Mr DEAN - Again I refer to the questions asked of me by Karen. Clause 220, the cost determined by the program - this could mean a minor percentage of the market value. Costs need to be market value. This may be covered in clause 221, but needs to be scrutinised. We have seen land valued by government well under the market values and this clause could be abused.

I think it is in clause 221. I need some confirmation, if the Leader could confirm or give some explanation.

Mrs HISCUTT - It is possible there may be a program or agreement set up within a particular industry that might cover the value. If not, clause 221 -

Mr Dean - Does cover it.

Mrs HISCUTT - will determine a valuation.

Clause 220 agreed to.

Clauses 221 to 226 agreed to.

Clause 227 -
Obstructing authorised officer or biosecurity auditor

Mr DEAN - My comments relate to some extent to clause 228 also. Clause 227 relates to obstructing an authorised officer or a biosecurity auditor.

> (1) A person must not resist, obstruct or hinder an authorised officer, or biosecurity auditor, in the performance of a function under this Act.

It has the penalties, so a person must not do any of that. I am not sure if it is covered later in this bill or not, but I would have thought anybody inciting, instigating, aiding or abetting a person to do that would have also been included. I thought it would have been included here. We have it in clause 228 and need to refer to this in explaining this clause 227.

Clause 228 refers to it; it does not use the words I would have liked you to have used, but at least you used the words ' encourage another person' for these acts to occur. I do not think that is a good way to put it in any bill. 'Encouragement' can mean all sorts of things.

If I could be given some explanation of why that is the case. First, to say 'obstruct or hinder an authorised officer, or biosecurity auditor' - can I have an explanation of that?

Mrs Hiscutt - Some of those actions are already covered under the Justice Act.

Mr DEAN - They might be covered under the Justice Act, but we have here a specific clause. Assaults and obstructions are covered under the Criminal Code and under the Police Offences Act as well. There is an abundance of acts. If you have an act that specifically refers to these areas, it should cover those relevant points rather than having to rely on another act. It makes it difficult and cumbersome for people who are operating under one act to have to go back to others. I am

wondering is it deliberately left out because it is covered in the Justice Act or is there some other area in this legislation that covers it?

Mrs HISCUTT - It says 'obstruct or hinder'. That could be, for example, a person in a workplace saying, 'You people here working for me, do not talk to this person'. That is obstructing or hindering. That is covered by the penalties here.

Mr DEAN - Obstructing or hindering is not the same as instigating, inciting, aiding or abetting somebody to take an action. It is a totally different situation altogether.

Mrs HISCUTT - We did not say that. You said that. I think they were the words that the member used. They are not the words that are here.

Mr DEAN - Did I say obstructing? That is in the clause. The person must not resist, obstruct or hinder an authorised officer. In my view it should have been included in this clause that it is an offence for somebody to instigate, incite, aid or abet a person to resist, obstruct or hinder an authorised officer. I can say to the owner of a property, 'Obstruct them; don't let them do that'. I do not commit an offence under this clause but I would do if you refer to clause 228 where a person assaults, abuses or threatens an authorised officer. If I was to instigate or incite somebody to do that I would be committing an offence. That is the point I am trying to make.

Mrs HISCUTT - It appears that it does not need to be in here because it is under the Justices Act and it applies to all offences. So a person who incites, aids, abets et cetera is also guilty, with the principal offender.

Clause 227 agreed to.

Clause 228 -
Assaulting authorised officer or biosecurity auditor

Mr DEAN - If this is covered in the Justices Act, why is it here?

Mrs HISCUTT - We have tried to keep it consistent with other states' provisions, so that if our officers need to travel interstate, it is the same everywhere they go. This is consistent with other states.

Mr DEAN - The Justices Act specifically provides for an offence against an authorised officer or a biosecurity auditor. As in the previous clause, clause 227, the Justices Act specifically covers a biosecurity auditor or authorised officer under the biosecurity legislation.

Mrs HISCUTT - The Magistrates Court deals with the Justices Act and it applies to all summary offences under all legislation in the Magistrates Court.

Clause 228 agreed to.

Clauses 229 to 273 agreed to.

Clause 274 -
Service of notices and other documents

Mr DEAN - Karen Brock raises concerns here and identified again with the Schwinds' property where there was a failure at the time to produce to the Schwinds the scientific analysis reports and so on.

Clause 274, Service of notices and documents. At no stage in this bill is there any mention of reports of a scientific nature given to the users, but a biosecurity risk is a fact. There are no pathology or entomology documents. We are at the mercy of Biosecurity. We also do not have the right of a second or third party test where Biosecurity collects samples and we can send them to a laboratory of our own choice.

Many instances of plant diseases have been misdiagnosed in the past, so there are procedural problems here in this area, service of notice and other documents.

The clause reads -

> (1) A notice or other document that is authorised or required by or under this Act to be served on or given to any person may be served or given by -
>
> (a) in the case of an individual -
>
> (i) delivering it to the person personally; or
>
> (ii) leaving it at, or sending it by post to, the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the documents; or
>
> (iii) sending it by electronic transmission to an email address ... or;
>
> (iv) sending it by any other electronic means nominated by the person ...

I want to be assured we have this right this time - that in all those situations where analysis is done and reports are received, these documents are required to be served on the people entitled to obtain those reports for confirmation of the allegations being made in relation to their properties. It caused terrible heartache to the Schwinds. The Deputy Chair can identify, and the member for Rosevears might recall as well, where they were really concerned because all these things were being done. Tests were being done and they were not able to receive any documentation. They had to accept the word of the people around them and that caused concerns for them. I want to be assured we have this right and that situation cannot happen again.

Mrs HISCUTT - Clause 274 is a general machinery provision that sets out the methods of serving the documents. In any proceedings you would still have to prove that the person was appropriately served with the relevant document. If not, due process and material justice will not have been complied with.

The objectives and principles for decision-making are built into the bill. If you refer to clause 178, it states that a control order is to specify each of the following, then it lists the reasons. Subclause (f) in particular says that you have to set out the reasons the minister determined the decision made. If you move on the same page to clause 179(2) -

> The Minister is to take reasonable steps to ensure that all persons who are likely to be directly affected by a control order are made aware of the order.

The principles and objectives are built in throughout the bill. The clause you are talking about is just a machinery provision for the serving of the order.

Mr DEAN - The Schwinds' situation is the best example we could have to describe this. Testing was done on their property and they were not able to access the analysis reports obtained from that testing. That built up enormous mistrust between the Schwinds and Biosecurity. It caused a lot of the problems that occurred from that time on. I am not sure whether Biosecurity had that report; it must have had it because it was proven to be rust.

If Biosecurity goes to a property and determines it is rust, where is the requirement for Biosecurity to provide to the property owner the analysis report? That is the point that I am trying to make, as was Karen Brock. It comes about as a result of the Schwinds' matter.

Mrs HISCUTT - What is said and what is done is on a case-by-case basis. This bill beefs up the objectives and framework of biosecurity. On page 16, the objectives talk about the effective enforcement measures, and communication and collaboration. That is one of the objectives. To answer your question, it is given on a case-by-case basis. I do not know what the answer is to your specific question, but it could be something about privacy, or it could be something different. It would be something that would have to be looked at on a case-by-case basis.

This bill is trying to beef up those general objectives and to make the framework stronger for everybody.

Under clause 3, one of the objectives of the bill is -

> to ensure that responsibility for biosecurity is shared between government, industry and the community ...

This is trying to make things better. Things like what you are discussing now have to be looked at on a case-by-case basis.

Mr DEAN - Here is an example. Biosecurity officers rock up to premises; they have been given information, and they test and find there is a pest on that property and it has to be tested. Blueberry rust is a good example. They send material off to be analysed and then, after securing the property, they inform the owner they have blueberry rust on their property. The owner of the property has to accept that as fact. They do not have the right to look at the analysis and the reports. It is a matter of trust and acceptance of an organisation. There ought to be some requirement that in those cases a Biosecurity officer produces for the property owner the documentation relevant to the analysis, and the proof that what they are saying is right.

Nobody is saying that Biosecurity is going to make something up. A property owner who is under a lot of stress at the time and can see their livelihood falling away would not think absolutely rationally.

Mrs HISCUTT - That was more of a statement, which we certainly sympathise with. A lot of this has come out of the blueberry rust inquiry. It is the Government's intention that we will be proactive in the active disclosure of statement of reasons for high-level decisions made by the minister and secretary under the bill. It is our intention to get better and we have learnt an awful lot from the inquiry.

Clause 274 agreed to.

Clauses 275 to 283 agreed to.

Schedules 1 and 2 agreed to.

Schedule 3 -
Legislation repealed, rescinded and revoked

Mr VALENTINE - I know when I rise, Madam Deputy Chair, I am supposed to ask a question. I am going to ask a question of the Leader. Does she think the people to her right have done a fantastic job with this bill? Going through this ourselves is one thing, but to put something like this together is an amazing thing. They deserve hardy congratulations. I have to be able to do it through a question so I am asking the Leader whether she believes they have done a great job.

Mrs HISCUTT - To answer that question, I remember the minister for agriculture at the time being very distressed there was no compensation. He obviously has given a direction for this to proceed and this can only happen with the fine efforts of the department and the people here with me. Most certainly, well done.

Madam DEPUTY CHAIR - In addition, I particularly thank everyone for the way they have conducted themselves throughout this discussion. It has been a long day, but certainly this is important legislation and we needed to get it right. Thank you very much; it was all appreciated.

Schedule 3 agreed to and bill taken through the remainder of the Committee stage.

ADJOURNMENT

[6.44 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I move -

That the Council at its rising adjourns until 11 a.m. on Thursday 8 August 2019.

Motion agreed to.

The Council adjourned at 6.44 p.m.