ANIMAL WELFARE AND TRESPASS LEGISLATION AMENDMENT BILL 2021

Committee

Resumed from 22 February. The Chair of Committees (Hon Martin Aldridge) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

Progress was reported after the clause had been partly considered.

Hon MATTHEW SWINBOURN: Yesterday, I got halfway through an answer to Hon Steve Martin who raised an issue about—I think "confidence" would be the best way of describing it. I have had an opportunity to review *Hansard* and I want to perhaps give him a more fulsome answer than we may have given yesterday.

The bill is aimed at allaying the concerns of the community about the way in which animals are treated in these intensive production places. This is obviously the part of the bill that deals with animal welfare concerns rather than trespass. That is not to say that farmers are not currently complying with animal welfare laws, but when exposés of animal cruelty are uncovered by whistleblowers or activists who have engaged in unauthorised or unlawful monitoring, the outrage from large parts of the community is palpable. They asked government and regulators why these facilities are not being monitored to stop animal cruelty from occurring in the first place. It is the community at large for whom these activists say they are obtaining the information.

During the consultation phase on this bill, many public submissions expressed support for the actions of these activists as without their actions, nobody else would expose animal welfare issues. This bill will allow the Department of Primary Industries and Regional Development to say to the community that it has the power to monitor activities at these places and that it is using those powers to have a better understanding of what is happening in them.

The first part of the member's question was about the current regime of inspection carried out by DPIRD inspectors. I would like to clarify the member's comment when he asserted that we are about to replace the current regime of inspections with a more effective regime. We take a little issue with the way in which the member has used the term "replace", because the bill proposes that the current powers of designated DPIRD inspectors, as they relate to an inspection, will not be replaced, but, rather, will include the added power of entry into intensive production places. The current inspection regime remains and we are adding to that rather than replacing it in its entirety. The monitoring power will allow DPIRD to establish a proactive compliance regime, which, as a mentioned in my second reading reply yesterday, is something that the current provisions of the act do not allow for unless consent is provided by an occupier or person in charge of the place.

I turn to the question about whether the new powers in the bill will raise the confidence of consumers. It is the government's hope that it will have that effect. We cannot guarantee that the issues will be resolved overnight. As I said in my reply yesterday, this is the first step in a long process to modernise the Animal Welfare Act. The new monitoring powers in this bill give the Department of Primary Industries and Regional Development the ability to establish a proactive compliance regime, which should send a signal to the community that the government will be monitoring these facilities so these activists will have no way to justify their unlawful activities and will deter them from taking the law into their own hands in the future.

Hon STEVE MARTIN: I wish to follow up on some of the points made by the parliamentary secretary, and I thank him very much for his detailed explanation. He mentioned "whistleblower" in his response. After the passage of this bill, will a trespasser on a farm engaging in intensive agricultural production who finds an example of cruelty be a whistleblower or liable to the penalties put forward in this legislation?

Hon MATTHEW SWINBOURN: When I referred to whistleblowers earlier, I was not using the word as a technical term. If we take the concept of what a whistleblower is, or is typically understood to be, it might be a person inside an organisation or business who becomes aware of an activity about which they have concerns and raises that issue with an outside organisation. I suppose it could be with an activist organisation, a media organisation or regulators. The provisions related to trespass would not apply to the whistleblower in that circumstance because that person is not engaged in trespassing. They may be in breach of their employment contract if that contract provided for them to remain confidential, depending on whom they were whistleblowing. Typically, if we are talking about a venture of any kind, whether it is a farming or business venture or some other activity in which people are engaged in practices that are against the law, if someone becomes aware of them and then makes an authority aware of them, action can obviously be taken depending on the circumstances, but it will depend on the manner in which they blow the whistle. This bill will not deal with those circumstances because we are interested in people who engage in unlawful trespass—those who do not have lawful permission to be on a farm or property as opposed to a whistleblower. The member made reference to the fact that I talked about that in my earlier response. It was not meant in that regard; it was mentioned more in the general sense of people who may have concerns.

If the member was referring to whistleblowers in the sense of people installing surveillance devices inside premises, like an internal person who installs a surveillance device, it is possible that the person engaging in that act becomes

a trespasser. The member has to appreciate that the person's licence to be on the property may have been revoked by their conduct. The problem with that kind of conduct is that it is covert, not overt. The thing about trespassing is that the occupier or the person in control of an area needs to be actively aware that someone is on the site without their permission, or there has to be some evidence to prove that they were on the site. For example, if the whistleblower the member referred to was recorded by their own monitoring facilities installing these devices and that became public knowledge, it is arguable that they will have become a trespasser and they have then become guilty of the aggravated offence because they had no lawful entitlement to be on the property to engage in that conduct.

The Surveillance Devices Act 1998 deals with people who engage in unlawful conduct using surveillance devices. I do not have any notes on the Surveillance Devices Act, but it includes prohibitions for people covertly recording people without lawful permission or excuse. It has provisions that deal with some of that activity. We mostly do not see covert unlawful surveillance in relation to these things; they usually apply to much more odious behaviours—for example, somebody using their phone to record somebody engaging in a private act that they should not be recording.

Hon STEVE MARTIN: I thank the parliamentary secretary for his response. I was not referring to the whistleblowers as perhaps employees at a facility; I was more interested in a trespasser being seen as a whistleblower. I wanted to clarify that there would be no extenuating circumstances—the parliamentary secretary might not be able to answer that, given what is in the bill—regarding penalties applied to a trespasser who uncovers an act of cruelty or something that is outside the law at one of those facilities.

Hon MATTHEW SWINBOURN: It would not be a defence for their conduct. It might be a mitigating factor in the severity of the penalty that a judge might take into consideration during sentencing. Judges can take a range of matters into account. For example, if they expose a terrible case of that kind of behaviour, it does not excuse unlawful trespass, so it is therefore not an offence but it may be a factor. How much weight is given to that in the particular circumstances will be up to judicial discretion at that time. In those circumstances, nothing in the bill will prohibit a defendant or their legal representatives trying to argue that as a matter of mitigation in terms of penalty. As I said, how much a judge would take that into account would depend on the circumstances of the case.

Hon STEVE MARTIN: The parliamentary secretary mentioned in his second reading reply that a number of attempts were made to enter without a warrant that had been turned down. Can the parliamentary secretary give us an indication of how many? That figure may be hard to get hold of. Is it a frequent event? Has there been one or 20 occasions when inspectors have not been able to gain entry to what I think he may have described as high-risk facilities?

Hon MATTHEW SWINBOURN: I thank the member for giving me time to get an answer; I am trying to get a fulsome answer for him. The first thing is that we do not have figures to provide the member that over X time there have been Y refusals, because the data is not collected in that kind of meaningful way. We can say that refusals are not infrequent and that it hinders the activities of the department in terms of trying to ensure compliance with the part of the Animal Welfare Act that this falls under. Two kinds of things happen. Either they are refused outright or, more commonly, there is a refusal, but they say, "You can come in two weeks' time". Obviously, the delay in the department coming onto the site will enable the person—this is what the department anticipates—to address the concerns. They may be in breach of the Animal Welfare Act in respect of the practices in which they are engaging, and the suspicion is—of course, there is no way of proving this—that the delayed time of entry, after which consent is given, gives them time to clean up the area and change the offending practices, or things of that nature. Again, we cannot provide evidence of that, because these things happen within enclosed environments. That may not be the reason for a two-week delay; it could simply be that it is not convenient for them at that particular point in time and they do not care enough about the time of the departmental inspectors not to say, "Come back in two weeks", or something like that. What we are getting at here is that it is a real issue for the department in respect of its confidence about ongoing compliance with the provisions of part 3 of the Animal Welfare Act.

Hon STEVE MARTIN: I refer to the status of the review of the Animal Welfare Act. I know it is a bit of a stretch around this discussion, but can we be assured that the changes made to the act through the Animal Welfare and Trespass Legislation Amendment Bill 2021 will not need further tinkering with? Can we have an indication of when we can expect to see that legislation before the house? Will it be months or next year?

Hon MATTHEW SWINBOURN: We will not provide a guarantee in that regard, but we will say that we do not anticipate any substantial changes to what we are doing under the Animal Welfare Act now when the broader context of the changes happens. The member used the word "tinkering", which is a bit of a loaded word. The member needs to understand that when the act is amended, there may be some changes to these provisions to accommodate the broader reform, depending on how that might look. In law we always talk about the difference between substance and form; "tinkering" might relate more to form and to the overall inspection requirements, not specifically the designated inspectors. One of the things that has previously been looked at for incorporation into the new legislation is training requirements for inspectors—putting more clearly into the act what they should be. Obviously, that will have a flow-on effect. It will be more like consequential or flow-on changes, not changes to the substance of what we understand a designated inspector to be. The member's concern might be whether the

concept of "designated inspector" could be extended beyond a Department of Primary Industries and Regional Development person to other people who might fall under that definition; that is not what we are looking at in relation to these things. That is where we are at with that.

With regard to the other part about drafting and broader reforms to the Animal Welfare Act, I spoke about that in my reply to the second reading debate. I am limited in what I can say because it is at the drafting stage and therefore cabinet-in-confidence. In more pragmatic terms, with regard to the progress of it, drafting is not something we can put a predictor on. I am not the Minister for Agriculture and Food and she is not in the chamber at the moment, but there is obviously a range of government priorities that come with drafting. Even if the Minister for Agriculture and Food were to insist that it be done now, there is obviously a queue and competing priorities. However, it obviously remains important to the government and we are trying to deliver on what was promised with the drafting. It has not fallen off the back of the table or anything like that.

Hon STEVE MARTIN: Does the parliamentary secretary imagine there will be time for the department to review these practices before the arrival of the review of the act and the bill, if it is 12 months? Is there any provision for that to occur?

Hon MATTHEW SWINBOURN: Formally, no, because the department will need to transition into these reforms. Obviously the designated inspectors will have to be appointed by the CEO and have their work arrangements adjusted. If the bill were to pass today and get assented to next week, its commencement would be pretty quick, but the department would have to adjust to the creation of these new positions, so it will not be feet on the ground on the fifteenth day after the bill is passed; the department would first have to make those adjustments. I will say that, in a general sense, the department will remain open to feedback from the industry once the practices that arise from this are in place. If issues are identified by industry or others about the effectiveness of the legislation and how it operates, the department will obviously be in a position to give consideration to those matters if the bill that deals with the broader Animal Welfare Act comes in. But as I say, there is no formal process in place.

I am hedging my bets here because I cannot give the member any precise undertakings with regard to the finalisation, introduction and passage of the amendments to the Animal Welfare Act. These reforms will still be getting bedded in when the other reform hopefully comes before the Parliament and takes effect. I am certain that if industry or the opposition becomes aware of these issues, they will let us know through the passage of that bill.

Sitting suspended from 1.00 to 2.00 pm

Hon STEVE MARTIN: The parliamentary secretary referred in his second reading reply to some experiences in other jurisdictions. I think he mentioned earlier that the proposed penalty regime in this bill will be more severe than the regime that exists in other states and territories. Is the parliamentary secretary aware of whether there are any moves in those other jurisdictions to do something similar to what we are proposing to do here?

Hon MATTHEW SWINBOURN: We are not aware of any other jurisdictions that are doing anything further than what we are doing. My understanding is that the jurisdictions that have made changes are New South Wales and Victoria, both of which made changes to their biosecurity laws. New South Wales also made changes to the trespass provisions; Victoria did only biosecurity. South Australia and Queensland made changes to the trespass laws, as we have done. The remaining jurisdictions are Tasmania and the territories, and we do not know what they are planning to do, if anything. We do not have any information from them to indicate whether they have any plans to make changes.

Hon COLIN de GRUSSA: When the parliamentary secretary was talking about those other jurisdictions, he mentioned that New South Wales and Victoria, if I have got that right, have amended their biosecurity acts as well.

Hon Matthew Swinbourn: By way of interjection, yes, that is correct.

Hon COLIN de GRUSSA: Was that contemplated in Western Australia; and, if so, why not?

Hon MATTHEW SWINBOURN: We not know at the table whether consideration was given to making those changes, but I will say that a statutory review is underway of our biosecurity act—I think it has a longer title than that—and that act and the provisions that are applicable to biosecurity breaches will obviously be given consideration under that review.

Hon STEVE MARTIN: I am jumping around a bit here, but there was also a discussion—which I think I raised and the parliamentary secretary responded to in his second reading reply—about the places that will be picked up by the trespass provisions. I think I mentioned restaurants and butcher's shops, and the parliamentary secretary gave an explanation about why they would not be picked up. I assume that the transporting of livestock to and from intensive productions facilities will not captured by this. Was consideration given to that? For example, if a truck was parked at a feedlot and the cattle were moved from the feedlot up the ramp and into the truck while the truck was still on the feedlot, would that be captured? To put it more broadly, if the truck driver were to stop at the Williams roadhouse for a cheese sausage and a Masters iced coffee, as truck drivers tend to do —

Hon Matthew Swinbourn: As I have done!

Hon STEVE MARTIN: Indeed, parliamentary secretary—guilty as charged! Would that truck in the parking bay be captured in any sense by this?

Hon MATTHEW SWINBOURN: Other offences would apply to vehicles that fall outside of these provisions. The advisers are going to get me some advice so that I can give it to the member and get it on the record. If the truck was on an animal source food production place, which could be ancillary within that definition, the aggravated trespass provisions could apply if someone was interfering with that truck or a person in relation to that truck. If we think about trespass, it is always in respect of land in the criminal sense, as opposed to trespass on a person. If the truck was at that facility, it would be in. The member talked about the driver being at a roadhouse and getting a cheese sausage and a Masters iced coffee. Masters light iced coffee would be my preference. I must say also that I was a truck driver once and I ate quite a few cheese sausages in doing that! If a truck driver was at a roadhouse, that would not be covered because that would not come within the definition of "animal source food production facility".

As I have said, there are other provisions that might come into effect outside of what we are proposing to do in this bill. Interference with animal transport that does not involve trespass will not be captured by the bill. However, it may fall foul of other laws, such as sections 444 and 445 of the Criminal Code, which create the offence of criminal damage; section 371(1)(c) of the Criminal Code, which provides that a person who unlawfully assumes control of a motor vehicle commits the offence of stealing; and section 74B of the Criminal Code, which provides that a person who causes an object to be placed in the path of a vehicle is liable to seven years' imprisonment. Those sorts of provision might actually be more apt. In fact, in the case of the last one that I mentioned, the penalty is much more significant. It says an "object". I suppose there would be a definition of that. I do not know whether that would include a person. If a person was trying to interfere with the progress of the truck by placing some sort of barrier in the way, and that barrier fell within the definition of "object", the penalty would be up to seven years' imprisonment. Under those provisions, it would not be an aggravated trespass. However, if the vehicle was on roadhouse land and the occupier or person in control of that land became aware of the trespassing on that land in connection with that vehicle and revoked the licence that those people had to access that place—similar to a restaurant if a person refused to leave—that would become a trespass, but it would not become an aggravated trespass as covered by these provisions. The owners or people in control of those places could revoke the implied licence of any person to enter those premises, and that could then become a criminal trespass. However, it would not be elevated to the aggravated trespass that we are introducing in this bill.

Hon NICK GOIRAN: Yesterday, the parliamentary secretary responded to Hon Colin de Grussa's question about consultation. I thought at the time that he mentioned that there had been no consultation since March 2020. After looking at the uncorrected proof from yesterday, that was indeed the response, and I quote —

> In any event, no further formal consultation was taken after March 2020 when the other bill was introduced.

How does that sit when one considers the report on the public consultation process from June 2020?

Hon MATTHEW SWINBOURN: We are at a bit of a disadvantage here because we are not quite sure what the member is referring to when he says "the report on the public consultation process from June 2020". If he could give me some guidance, that might be of assistance.

Hon NICK GOIRAN: There was a review of the Animal Welfare Act in 2020.

Hon Matthew Swinbourn: Yes, by the independent panel.

Hon NICK GOIRAN: Yes, and there was also a government response to that.

Hon Matthew Swinbourn: Yes.

Hon NICK GOIRAN: There was a summary report on the public consultation, which is dated June 2020.

Hon MATTHEW SWINBOURN: I am advised that the member is referring to the public consultation that was done on the independent review. Although we freely admit that there is an overlap of subject matter, we were being more specific about consultation on the bill before Parliament. I have a copy of the *Summary report on the public consultation* in my hand and it is dated June 2020. I am advised that that was in relation to the independent panel's *Animal Welfare Act: Review 2020: Report of the independent review of the Animal Welfare Act 2002 of Western Australia*. That went with that. As I say, we admit that there is a subject matter overlap, but my reference yesterday was to specific consultation that has occurred on the bill currently before Parliament.

Hon NICK GOIRAN: As the parliamentary secretary says, the subject matter overlap is between the independent review, the government response and the public consultation summary. To what extent are the matters that are contained within the review, the response and the public consultation process directly relevant to the bill currently before the chamber?

Hon MATTHEW SWINBOURN: I think the member referred to those parts that were, in his words, "directly relevant", which is quite specific, so I take it in good faith that he means directly relevant. We cannot identify anything that we would say is as precise as "directly relevant", but we can identify some of the recommendations that we say would broadly be relevant to what we are doing today with this bill. Recommendations 9, 10 and 11 relate to inspectors' powers. If the member will bear with me, I will take him through those recommendations more precisely. Recommendation 9 provides —

> The Panel recommends that Inspectors be authorised to enter a place or vehicle, including a residence, if the Inspector reasonably believes that it is not possible, or that there is insufficient time, to obtain an urgent warrant, and the Inspector reasonably suspects:
>
> (a) an animal at the place has sustained a severe injury and the injury is likely to remain untreated, or remain untreated for an unreasonable period; or
>
> (b) there is an imminent risk of death or injury to an animal at the place or in the vehicle,
>
> whether or not an offence has occurred or is suspected.
>
> This power is to be used only if reasonable steps, where practicable, have been made to contact the owner or occupier of the place or vehicle and he/she cannot be contacted.

Again, these recommendations are to do with inspectors broadly and we are obviously creating under this bill a designated inspector that would fall within that category. That is why we say that it does not directly relate to it, but more generally relates to it.

Recommendation 10 provides —

> The Panel recommends that Inspectors be able to enter a place other than a residence to monitor compliance with a direction or court order at any reasonable time.
>
> In order to enter a residence to monitor compliance with a direction or court order, the Panel recommends that an Inspector be empowered to obtain a warrant for that purpose.

Recommendation 11 provides —

> The Panel recommends Inspectors be able to enter any non-residential place or non-residential vehicle for the purpose of monitoring compliance with the *Animal Welfare Act 2002* and Regulations.
>
> Before entering the place or vehicle, an Inspector must provide reasonable notice of entry, unless he/she reasonably suspects that to do so will jeopardise the purpose of the proposed entry or the effectiveness of any search of the place or vehicle.

Again, I do not think that is directly relevant to what we are doing here, because we are obviously talking about designated inspectors having quite specific powers with regard to animal production places, and it is more general in that sense. Again, we are just highlighting where we say that is.

The last recommendation that we say would be relevant is recommendation 12, which relates to training.

Hon Nick Goiran: Recommendation 12 is about monitoring compliance for livestock.

Hon MATTHEW SWINBOURN: Yes. Recommendation 12 provides —

> Inspectors monitoring compliance with the *Animal Welfare Act 2002* and Regulations in relation to livestock —

That would fall within the definition of the animals in these intensive production places —

> must have met specified training standards and demonstrated competency relevant to the animal species/industry being monitored.

I do not know whether, as a matter of trying to be complete, recommendation 27 is also relevant, but it provides —

> The Panel recommends, in relation to Inspectors who monitor compliance with the *Animal Welfare Act 2002* and Regulations with respect to livestock (see Recommendations 11 and 12), their practical training must include direct experience with relevant animal species/industry.

All those recommendations were accepted by government and they will take part in the broader reform. As I said, to give good faith to the member's question, we have cast the net wide.

Hon NICK GOIRAN: That is indeed helpful and appreciated. Regarding those four recommendations that the parliamentary secretary identified, I think there were 52 recommendations —

Hon Matthew Swinbourn: I am getting a nod from the advisers.

Hon NICK GOIRAN: Thank you for identifying that four of the 52 recommendations have some relevance to the matters presently before us. If I understand correctly what the parliamentary secretary has said, the four recommendations in particular are relevant to the matters presently before the house. They are broader in their intended scope and reach, and the bill, which is dealing with a more narrow or discrete issue, is seeking to do that. Will the implementation of the provisions in the bill before us be consistent with those four recommendations, or are there any inconsistencies?

Hon MATTHEW SWINBOURN: If I remember rightly, the first issue the member referred to was about consistency. Sorry if the member cannot hear me. This is not a joke; unfortunately, he is a little further away now than before.

Hon Nick Goiran: No, I can hear you.

Hon MATTHEW SWINBOURN: The issue there is that we would concede in relation to recommendation 11, which talked about giving reasonable notice for entry. Obviously, we are creating a regime whereby no notice is required, so there is an inconsistency between that recommendation and what we are trying to do here, but we think that this bill is very specific about these particular places. The other issue is related to training, in recommendations 12 and 27. To be clear, the department's intention is for the designated inspectors under these provisions to be in compliance with those recommendations, which provide for specific training standards and demonstrated competency as well as having direct experience with relevant animal species. We will not require that to be legislated in a new act. The intention is to comply with those two recommendations going forward with these designated inspectors.

As a matter of clarification, the four recommendations that I referred to, which I think the member highlighted, relate to all inspectors under the Animal Welfare Act, not just those who will become designated inspectors. Just to be clear, that refers to RSPCA inspectors; police, who are designated as inspectors under the Animal Welfare Act; local government rangers; and, obviously, Department of Primary Industries and Regional Development inspectors, who we are specifically talking about. Again, it is just to make clear that the recommendations and the review is this big—for the benefit of *Hansard*, I stretched my hands out very wide—but what we are dealing with here is a very narrow, particular group of designated inspectors who can only be DPIRD inspectors and have to be appointed by the CEO of DPIRD.

Hon NICK GOIRAN: The parliamentary secretary is then indicating that, with regard to recommendations 9 and 10—that is, the powers of entry and specifically what is described as urgent entry and compliance with a direction and court order—the provisions in the bill are not inconsistent with those recommendations. In due course, the government will present another bill to the house, and I think the parliamentary secretary already indicated in answer to earlier questions that the drafting of that is underway. It will arrive in the chamber in due course. We know that because of what the parliamentary secretary said earlier, and also because the government has already indicated that it supports recommendations 9 and 10. In due course, we will be presented with something consistent with recommendations 9 and 10. Those powers of entry will not then be in any way inconsistent with what is in the bill presently before the house. That is, as I understand it, how the parliamentary secretary explained those two recommendations, but the distinction that the parliamentary secretary draws is in respect of recommendation 11. If I understand that correctly, the parliamentary secretary is indicating that the provisions in the bill are indeed inconsistent with recommendation 11 and therefore will be inconsistent with what is intended to be presented to the house at a later stage in another bill.

The parliamentary secretary, in a preliminary way, indicated that that is justified in this instance because it will deal with a specific scenario or specific subset of inspections. Why does the government say that it supports recommendation 11, which reads —

> … Inspectors be able to enter any non-residential place or non-residential vehicle for the purpose of monitoring compliance with the … Act … Before entering the place or vehicle, an Inspector must provide reasonable notice of entry, unless he/she reasonably suspects that to do so will jeopardise the purpose of the proposed entry or the effectiveness of any search of the place or vehicle.

Why does that government say it supports the recommendation when it does not apply to the bill presently before the house? In other words, why does the government think it is appropriate in this instance to be inconsistent with recommendation 11?

Hon MATTHEW SWINBOURN: I have a couple of preliminary points to make about the 2020 review and how it interacts with not only this bill, but also the bill that was before the previous Parliament. The bills are identical apart from their titles, because the amendment made to the 2020 bill in the Legislative Assembly and then transmitted to this place is incorporated in the 2021 bill. The amendment made in the Legislative Assembly related to stocking density, so it was a very narrow and specific issue. The consultation draft of the bill had been released. The independent panel was aware of that draft and even mentions in its report that it was aware of the bill and made some commentary about it. It was reasonably narrow commentary, but the panel said that it was aware of the public debate

on these things and gave particular focus to the powers of inspectors and the power of entry and exit. However, no specific reference was made to whether the powers proposed in the 2020 bill were good, bad or indifferent—it made no connection or distinction. The government's view is that the panel had that bill in mind and made no reference to it. I do not think the recommendations that Hon Nick Goiran referred to were made by the panel with reference to the inconsistency he has highlighted. I do not think the panel was saying that the 2020 bill should be withdrawn or was inconsistent with those things.

Having said all that, we maintain, as we did then, that these narrow powers for designated inspectors remain important and necessary in circumstances of animal-source food production and an animal-source food production place—we seem to never stop introducing new definitions! "Intensive production place" is the key term. These powers remain necessary because of the nature of these production facilities. We cannot see into them. We cannot observe them from up close or afar; a person must be inside them to understand what is happening, because they are shut off from the world. This is perhaps different from other situations with livestock. For example, the department could fly a drone over a person's property. That would not be trespass if it was sufficiently high; planes fly over our homes all the time. It could monitor those sorts of things. I have no idea whether the department does that, but I am using that as an example of where it would be possible for the department to observe livestock in an open place without engaging in trespass. That is why we say these powers of entry without notice and without consent are necessary. Others disagree, of course, but that is the position of the government.

I do not know whether Hon Nick Goiran was in the chamber when I made the point that members should not conflate the meaning of "farm" in relation to trespass, which is quite broad, with the very narrow meaning of "intensive production place", because they are not the same thing. "Intensive production place" is defined as a non-residential place where intensive production is carried out. Obviously, when we talk about the provisions that relate to trespass, we have a different definition for "animal source food production facility". I am sure we will get to the definitions later. For the purpose of this exchange, they are different things. For example, it would include the residential part of the farm, whereas in terms of the inspectors, it is the non-residential part.

Hon NICK GOIRAN: I propose to park this issue until we get to clause 8 of the bill. I think it is useful that we have identified that the critical point is recommendation 11. We can have a further discussion of the merits of clause 8's inconsistency with recommendation 11 at that time. I acknowledge the point the parliamentary secretary made that, in effect, the panel was silent on this issue. That is not to say that it was silent on the 2020 bill. As the parliamentary secretary identified, it made some passing remarks about it. However, for reasons known only to the panel—that is not a criticism of the panel—it did not comment on this particular point. We cannot take anything from that and it would be unwise for us to read too much into that either, in fairness to the panel members. However, the responsibility then shifts to us to unpack that a little further when we get to clause 8.

From my perspective, that deals with the consultation process, for lack of a better descriptor. The parliamentary secretary explained the consultation process undertaken on part 2 of the bill, which seeks to amend the Animal Welfare Act 2002, including on the draft bill. We have also touched on the independent review and the extent to which, if at all, it considered the provisions before us. As the parliamentary secretary indicated to Hon Colin de Grussa yesterday, from the government's perspective, no further formal consultation was undertaken after March 2020 when the other bill was introduced. The parliamentary secretary has again explained this afternoon why that was. In essence, that was because the bill before us now is the same as the bill introduced then. That deals with part 2 with respect to the Animal Welfare Act 2002.

Is the parliamentary secretary able to advise what the consultation process was for the part 3 and 4 changes dealing with the Criminal Code and the Restraining Orders Act?

Hon MATTHEW SWINBOURN: I have to get my brain in order because the Parliamentary Counsel's Office drafted the bill, as it always does, and instead of putting the part 3 and part 4 provisions as part 2 then part 3, because that was the bill that was originally proposed way back when the issue of trespass arose, PCO must have done things alphabetically because it put the animal welfare stuff first. This gives the impression that, chronologically, the animal welfare stuff comes first, then the Criminal Code, then the restraining order. But as the member indicated, that is not what happened at all. As a matter of history, before the introduction of the animal welfare part of the bill, the bill dealt with only the animal trespass and restraining order provisions. Therefore, what I can say is that the first two rounds of consultation occurred in August and October in 2019 before the Animal Welfare Act amendments were incorporated into the bill. During this time, the following stakeholders were invited to comment on the proposed trespass amendments: the Department of the Premier and Cabinet; the Department of Communities; the Western Australia Police Force; the Department of Primary Industries and Regional Development; Legal Aid Western Australia; the Solicitor-General; the Chief Magistrate of the Magistrates Court; the President of the Children's Court of Western Australia; the then Director of Public Prosecutions; the Commissioner for Children and Young People; the Aboriginal Legal Service of WA; the Youth Legal Service; the Youth Affairs Council of WA; and UnionsWA. That is the extent of my list of stakeholders.

Hon NICK GOIRAN: That consultation process regarding changes to the Criminal Code and the Restraining Orders Act was undertaken with a fairly extensive group, I think it can be said, and not only with people merely within government. But that was in 2019, which was four years ago. Concerns would have been raised at that time, potentially, and the government would have factored them into the version of the bill that was presented to the house in 2020, which, as we discussed earlier, is essentially the bill that is presently before the committee. Have any concerns been raised with the government since that time about any of the proposed changes to the Criminal Code or Restraining Orders Act?

Hon MATTHEW SWINBOURN: To be clear, post the introduction of the bill, we are not aware of anybody formally raising any concerns with the Department of Justice of the Department of Primary Industries and Regional Development.

Hon Nick Goiran: Is that this bill or the 2020 bill?

Hon MATTHEW SWINBOURN: No, it is the 2020 bill. I am saying that since the time the 2020 bill was introduced no new issues have been raised about the Criminal Code and the Restraining Orders Act; therefore, I can clear that up. In terms of the consultation and the concerns raised, I can deal with that issue.

Hon Nick Goiran: The 2019 consultations?

Hon MATTHEW SWINBOURN: Yes, I can deal with the two rounds of consultations in 2019. The member said "four years" and I will quibble because that was in August and October —

Hon Nick Goiran: Three and a half.

Hon MATTHEW SWINBOURN: — so it is more like three and a half years. As I say: quibble!

Here are the notes that I have from the advisers. The Director of Public Prosecutions and UnionsWA expressed concern that certain terms used in the definition of "interference with … animal source food production" could capture scenarios that are unrelated to the purpose of the legislation, and this feedback led to the deletions of references to risk to the marketability of meat, eggs or dairy products and causing the permanent or temporary cessation of animal source food production. The definition of "interfere with" was amended, to address those concerns, to remove any reference to the product marketability that was considered too broad to include as an aggravating factor; for example, a person who films the mistreatment of chickens may affect the marketability of eggs, and UnionsWA campaigns drawing attention to brand-specific industrial concerns may also affect the reputation of a product or business. Those concerns were raised by the DPP and UnionsWA and addressed in the bill before it was finalised.

An issue was also raised about the exclusion of young offenders from the minimum sentence. The President of the Children's Court identified a technical issue that could have resulted in certain juvenile offenders being liable to the minimum penalty, and the bill remedied this issue. The bill used to provide for the commencement of its provisions on proclamation, but court administrators advised us that two weeks would be required, and in line with this advice, the bill therefore provides for commencement 14 days after royal assent—so there is an explanation to a later question, I am sure!

Hon Nick Goiran: So are you going to ask us to speedily go past clause 2 on that basis?

Hon MATTHEW SWINBOURN: I would never dare to suggest such a thing, member! In anticipation of a future question that will probably explain why that is the case.

Concerns were raised about the definition of "animal source food production place" in that this definition was drafted in such a way that it would capture hobby farms. Therefore, the definition of the term was amended so that it captures only facilities operating for commercial purposes.

Clause put and passed.

Clause 2: Commencement —

Hon COLIN de GRUSSA: The parliamentary secretary has probably answered this to some extent. Clause 2 of the bill is the commencement clause; there is nothing unusual about that. Why does the rest of the act come into operation on the fourteenth day after the day of royal assent?

Hon MATTHEW SWINBOURN: The member is right. I did cover that. It is because core administrators will have to update their databases and materials to incorporate the new offences and the related provisions. They indicated that they require two weeks, after the bill has been assented to, to give effect to those systems. Therefore, two weeks later, if someone is charged with one of these offences, the court systems will be able to "cope" with it, for want of a better word. That is the only necessity that we have for the 14 days.

Hon STEVE MARTIN: I have a timing question, and I thought this would be a useful time to ask it. What is the department's ability to scale up—if that is the right phrase—around the training of inspectors and so on? When will the department be able to put the provisions of the bill into place?

Hon MATTHEW SWINBOURN: I am told four to six weeks after assent the department will effectively be in a position to put in place a designated inspector. To give the member context, the department currently is funded

for 12 inspector positions but only nine are employed. Some of those inspectors are livestock inspectors so they will easily satisfy the requirements to come under the definition of a "designated inspector" because we talked about their previous training requirements and experience. They will already be fit-for-purpose, for want of a better term. The department will have to work out the workloads and those other sorts of issues. It will then go to the director general as the CEO of the department to make the formal appointments. These are not precise figures but it anticipates at the early stages about four of those nine inspectors will probably have that additional "designated inspector" classification. They will then be able to do that. For context, we have talked about this before: the department has already engaged its inspectors in activities in connection with intensive production places. It has attempted to enter and inspect them with consent. It is not the case that this is a brand new thing. The key differences are, firstly, the legal protection and identification as a "designated inspector" and the requirements that are associated with that and, secondly, the fact that they can enter without consent and without prior notice. As I say, they do not need to reinvent the wheel for what they are doing. That is what they anticipate will happen in due course.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 5 amended —

Hon NICK GOIRAN: Earlier, we touched on recommendation 12 of the independent review, specifically dealing with training. The panel that conducted the review recommended that inspectors must have met specified training standards and demonstrated competency relevant to the animal species industry being monitored. I understand that the government has supported that recommendation.

Hon Matthew Swinbourn: That is correct, yes.

Hon NICK GOIRAN: The link was also drawn, I think, between recommendations 12 and 27. Is the parliamentary secretary in a position to indicate the nature or scope, or anything further specifically on the form of training that is intended to be undertaken?

Hon MATTHEW SWINBOURN: I have quite a comprehensive answer about training so I will go through it because it might cover off some of the member's other questions. It might also open up some new lines of inquiry to my own detriment but we will see how we go.

In the other place, from my notes to give this context, the member for Roe commented about the possibility of a 21-year-old with no experience and only a certificate IV being appointed as a designated inspector under these new provisions who starts traipsing across farms conducting random inspections. We do not support that commentary and we think it is a little bit disrespectful of the professional and dedicated inspectors who work for the Department of Primary Industries and Regional Development. The department has a tiered system of inspectors in place. When inspectors are initially hired they are required to undertake comprehensive training, which is a combination of online learning, face-to-face classroom teaching and on-the-job experience. The components of the current training include: understanding the Animal Welfare Act; inspectors' powers; body condition scoring; common welfare issues; stock ageing; humane destruction; emergency animal disease early response and detection; post-mortem necropsy training; executing search warrants; body-worn cameras; and direction notices in writing.

Once inspectors receive this initial training, they undergo ongoing mentoring and tracking of their professional development needs and progress. Ongoing advice is provided by supervisors and veterinarians, and periodic inspector workshops are held to facilitate new or refresher training. Competency and refresher training is also required for staff authorised to use firearms and captive bolts. That is the training that applies —

Hon Nick Goiran: Is that the existing training?

Hon MATTHEW SWINBOURN: No, this is the training that applies to all inspectors.

Hon Nick Goiran: It is the existing training for all inspectors.

Hon MATTHEW SWINBOURN: I will now get onto the livestock inspectors. They are the ones the department already employs, which will form the basis of the "designated inspectors" and the training that deals with them. We are not producing new training for this particular provision in a broad sense because the people who are anticipated to fill these roles are already trained to meet the requirements of the compliance and monitoring that happens under part 3 of the Animal Welfare Act. I will go through this although, as I say, it might open up some more questions.

The inspectors who are later appointed as livestock compliance inspectors are then required to undertake a three-day livestock awareness course, which trains staff how to work safely around livestock. It addresses the fundamentals of stock behaviour as well as how mustering, yarding and transportation can modify such behaviour. Inspectors learn how to safely work livestock and identify occupational hazards in workplaces where livestock are present. It is only after an inspector has completed this training and satisfied the competency standards required that they are able to start working as a livestock compliance inspector. It is important to note that it is not just training but also

competency standards that they have to meet. I am not quite sure how this goes with what I previously said, but we might get some clarification of this. According to this, there are 14 livestock compliance inspectors. These are the staff whom the CEO may appoint as designated inspectors. I said previously that there were only 12 inspector positions but I will get some clarification from the advisers. I am not sure whether this information is 100 per cent up-to-date but, at the time of printing, these positions were based in the following areas: five in the metro area, five in the south, two in the north and two on mobile patrol. The department also has a dedicated vet position that is tasked to support livestock compliance inspectors. The department is currently working on a new tiered training system, which will involve regular assessment of compliance competency. It will be formally rolled out in 2023 although elements of it are already being trialled. I also note that the department released its regulatory compliance approach document earlier this year, which outlines the culture of strong, fair and accountable compliance regulation that the department commits to as a regulator. I tabled that document in my reply.

Hon Nick Goiran: When the parliamentary secretary said earlier this year, did he mean this year—earlier in 2023, noting we are in February now?

Hon MATTHEW SWINBOURN: That is a good point. I think that these notes were prepared last year, in 2022. I thank the member for that point of clarification. The department released its regulatory compliance approach document last year, which outlines the culture of strong, fair and accountable compliance regulation that the department commits to as a regulator. It outlines how the department engages with the primary industry sector, as well as key industry and community stakeholders. I note that the document states at page 8 —

> DPIRD recognises that regulatory compliance services are a professional craft and is committed to implementing professional best-practice regulation through its regulatory governance policies, procedures and standards.

At page 9, it also explains the department's regulatory compliance principles—namely, that its regulatory actions are fair and accountable, proportionate and risk-based, evidence-based, outcome focused, consistent, collaborative, responsive and effective, and confidential.

I think that the context of that document is important. Some regulatory authorities do not have a framework that they can point to. It is obviously very beneficial to the people who are subject to that compliance regime and regulation, particularly professional people such as farming people, to be able to understand the background and guiding policies of the department and the people it employs. As I say, I think that most regulators should have such documents and they should always be publicly available to help people understand what has motivated these things.

Hon COLIN de GRUSSA: If I heard the parliamentary secretary correctly as he was going through the training regime, he talked about inspectors being hired. I want to clarify a point. The Animal Welfare Act 2002 refers to inspectors in part 4, specifically in section 33, and designates the kind of people who can be—the word that is used in the act—appointed as inspectors. I want to clarify that that training applies to all appointed inspectors. I note that there are differences between livestock compliance inspectors and some of the other inspectors, but, in general, does that training apply to all appointed inspectors, not just inspectors who are members of staff of the department and appointed?

Hon MATTHEW SWINBOURN: Just to make a correction to something I said earlier, when I highlighted the numbers, I read out that the department has 14 livestock compliance inspectors. That is the correct figure for those positions, and the information about where they are based was also correct. I think that I previously said that there were 12 inspector positions, but there are actually 14. I am just correcting myself for the sake of the parliamentary record. That is the up-to-date and correct figure.

Hon Colin de Grussa: Just to clarify, by way of interjection, that is 14 total positions; not necessarily all of them are filled?

Hon MATTHEW SWINBOURN: That is right, yes. I indicated that five were in the metro area, five in the south, two in the north and two in mobile patrol. I think that is helpful information just as a general point.

The member made the other point about the training requirements. What I identified to the member before applies only to the Department of Primary Industries and Regional Development inspectors. Currently, under the act, DPIRD cannot mandate the training for other organisations such as the RSPCA, Western Australia Police Force and local governments, hence the recommendation in the independent panel's report to have the power under the act to mandate the training requirements so that we can be assured that all those who are engaged in animal welfare inspections have at least a minimum required level of training. As I say, my answer to Hon Nick Goiran's question only applies to DPIRD inspectors.

Hon COLIN de GRUSSA: I thank the parliamentary secretary for that clarification. We will get to this later on. Clause 5 of the bill specifies that a designated inspector has to be a member of staff of the department. Presumably that means DPIRD, so, in terms of the training provided, they will have that training.

Hon Matthew Swinbourn: By way of interjection, yes.

Hon STEVE MARTIN: The parliamentary secretary gave the number of inspectors we have, and I think we landed on 14.

Hon Matthew Swinbourn: That is positions.

Hon STEVE MARTIN: I will get into that. Currently we have nine people employed.

Hon Matthew Swinbourn: By interjection, that is my advice at the moment, yes.

Hon STEVE MARTIN: Can I have an explanation of the shortfall and how long that shortfall has existed? I assume the department's goal would be to shortly have that up to 14.

Hon MATTHEW SWINBOURN: The explanation is that the department would very much like to have the full quota. I think that it is 14 FTE, so take into account that there might be part-timers. The department's issue is that it is difficult to attract and retain people to these positions. They are difficult jobs. It is also hard to attract the right kind of candidate. I think the member will appreciate that not just anybody can be one of these inspectors, because not only a certain skill set and knowledge, but also certain personal skills are required to be an effective inspector. The starting point for any of these kind of positions is always that the inspector is trying to work with the person who they are dealing with. If the inspector identifies a problem, they would like to have it remediated immediately, and, if there is an ongoing issue, they would like cultures to change. It is not simply a case of come in, kick heads, take names and then go off to the court and get fines; it is quite the contrary. That is reflected in the document I have referred to before. The department's regulatory approach is about monitoring and compliance. Compliance suggests that the inspector has to build relationships with industry and with people who are not meeting the standards, so it is difficult to find the kind of person who is needed. In those circumstances, that is part of the issue. The department does want those positions filled and is actively seeking to fill them. It is undergoing a process that closes on Monday, so it is trying to fill those positions.

Hon STEVE MARTIN: This is not strictly to do with the bill, but it was raised. I think the parliamentary secretary outlined where those positions might normally be filled; there are five in the metro et cetera. Can I ask where the gaps are at the moment?

Hon MATTHEW SWINBOURN: We do not have that information at the table. I would be reluctant to identify where gaps might exist in a public forum in any event, given that it relates to regulatory and compliance issues. It might be something we can discuss behind the chair, but we do not have the advice at the table in any event.

Hon STEVE MARTIN: I refer to the issue of the training. I read the parliamentary secretary's list of the various levels of training. It seemed very strong in livestock husbandry and so on. I did not catch anything about the knowledge of abattoir processes and so on in the training. I would assume that is a very specific skill set. Is that captured somewhere in the training?

Hon MATTHEW SWINBOURN: The discussion at the table did not identify any specific training modules about the particular things that are done. Having said that, the current group of livestock inspectors are already working in that space with export abattoirs, so it is not a new area for them. The member also needs to understand that the primary interest of a livestock inspector who is undertaking work at an abattoir or knackery is up to the point of the kill or the slaughtering. The other aspects of dealing with those animals obviously relate to animal husbandry, such as providing food and shelter—I do not know whether they actually feed them in those areas; I am probably showing my ignorance—and exposure to elements and whether it is sanitary et cetera.

Hon Steve Martin interjected.

Hon MATTHEW SWINBOURN: We are trying to find a kind word to replace "slaughtering" of the animal. What I am trying to say is that the skills that inspectors might use in other intensive farming practices will overlay to the point of the slaughter. It is not in itself a different species of issues. However, obviously the end point is different—for example, if the inspector is dealing with an intensive feedlot where there is no access to pasture and things or that kind. As I have said, this is not a new area for livestock inspectors, because they are already dealing with export abattoirs. They can currently also access those places with the consent of the occupier. The fundamental difference here is the removal of consent and the removal of the need to provide notice.

Clause put and passed.

Clause 5: Section 35A inserted —

Hon COLIN de GRUSSA: This clause seeks to insert a new section 35A to deal with designated inspectors and the terms under which they are appointed. We have talked about the type of people who might be appointed as a general inspector. I noted during discussion on clause 4 that the designated inspector has to be a member of staff of the Department of Primary Industries and Regional Development. That is made clear in proposed section 35A(1).

I also have a few questions about some of the other aspects of their appointment. Section 33 of the Animal Welfare Act specifies that the appointment of a general inspector can remain in force for five years. Is there an intended length

of time for which an inspector would be a designated inspector? Is it proposed that it would be a shorter term or that they would be appointed until they have finished their term as an inspector within the department? Are there any guidelines for how long they can be in that position?

Hon MATTHEW SWINBOURN: I think the member asked about whether there was a specific intention and things like that. If I can explain the structure of it, that might answer the question that is at the heart of what the member is trying to get at. I take the member to proposed section 35A(2), which states —

> A designation under subsection (1) remains in force for the period specified in the notice of designation …

The written notice will contain the period of appointment for that particular inspector. If we take it back to the context that the member was talking about, which was in relation to section 33 of the Animal Welfare Act, which states that the person can be appointed to that position for a period of up to five, the designation in the notice for the designated inspector can be no greater than the maximum period for which that person has been designated as a general inspector. The maximum period for which a person can be a designated inspector will be five years or, more likely, for the duration of the remaining term of their current appointment. That appointment will cease, of course, if the circumstances identified in proposed section 35A(2) apply; namely —

> (a) the designation is cancelled by the CEO …
>
> (b) the inspector ceases to be a general inspector.

Therefore, it could be either because the term of their appointment has expired or, more likely, because their employment has come to an end for whatever reason.

Hon COLIN de GRUSSA: In response to that, is a predefined time of appointment being contemplated?

Hon Matthew Swinbourn: No, not at this time.

Hon COLIN de GRUSSA: So it would be on an as-needs basis. Will the appointment of an inspector be notified in any way via the *Government Gazette* or something like that? While we are on that subject, the bill also refers to identification cards for inspectors. I presume that is related.

Hon MATTHEW SWINBOURN: To answer the first question, no, appointments are not gazetted. However, as the member has quite helpfully pointed out, there is a requirement for the CEO to issue an identification card to each inspector other than police officers. Let me get this right for the sake of our friends at Hansard. That is provided for in section 36(1) of the Animal Welfare Act. Subsection (2) provides —

> An inspector, other than a police officer, must produce his or her identification card if requested to do so by a person in respect of whom the inspector is about to exercise, is exercising or has exercised, any of the inspector's powers.

That would obviously also relate to designated inspectors—it would be inclusive of designated inspectors. They would also still need to produce their identification card.

Hon COLIN de GRUSSA: Will that card identify whether they are a designated or general inspector?

Hon MATTHEW SWINBOURN: Yes, it will. However, it is worth noting that—unusually—the Animal Welfare Act does not prescribe a form for the card. It just provides for the provision of an identification card. We do not have a card available at the table to demonstrate to the member but I am told that these cards contain a photograph of the inspector, the name of the inspector, the act under which they are appointed and the relevant provisions—and things of that kind. I am not sure whether anyone can get a copy of a card if the member needs one. I am told no. As I have said, the card is not like a facsimile of the letter of appointment; it is a separate particular thing.

Hon COLIN de GRUSSA: Thank you, parliamentary secretary; that is very helpful, although it is a little bit concerning that there is no standard form for such a card. Perhaps that will be considered in the review of the act. Proposed section 35A(3) refers to restricting the authority of a designated inspector to exercise a power.

Hon Matthew Swinbourn: By way of interjection, I missed this piece of information: the ID card would also contain any of the restrictions for that particular inspector. I do not know whether that is where the member's question was going.

Hon COLIN de GRUSSA: Partly. Obviously, it is about notifying the kinds of restrictions that have been placed on the inspector, but also about the other kinds of restrictions that are contemplated. Proposed subsection (3) refers to the places where the power may be exercised, the times when the power may be exercised and the circumstances in which the power may be exercised. Has there been any contemplation of the kinds of restrictions that might apply? Perhaps some examples could be given in that respect.

Hon MATTHEW SWINBOURN: I think these provisions have essentially been lifted from the current provisions in section 35 of the Animal Welfare Act. Section 35(2) provides —

> The CEO may, by written notice, restrict the authority of an inspector, other than a police officer, by limiting all or any of the following —

It then lists the same things. We tried to find any practical examples in which general inspectors have had such restrictions imposed on them. We are not aware of any in relation to Department of Primary Industries and Regional Development inspectors, but in relation to general inspectors, conditions have been imposed on local government inspectors. For example, the CEO would restrict a particular ranger to their local government area as an animal inspector, which makes quite reasonable sense when we think about that particular purpose. I think it is a matter of drafting; what is currently in the act has been picked up and reflected in the amendment for designated inspectors. We could not think of anything outside of what has happened here.

Hon Colin de Grussa: Just to make it explicitly clear, you said that any restrictions would be put on the identification card.

Hon MATTHEW SWINBOURN: Yes, on the ID card.

Hon NICK GOIRAN: Briefly, clause 5 deals with the powers of the designated inspector. Is it the case that the designated inspector will have all the powers that are conferred on inspectors under the primary act, as well as the additional powers that will be conferred under proposed sections 37(1)(aa) and 38(1A)?

Hon MATTHEW SWINBOURN: Yes.

Hon NICK GOIRAN: Further, will the exercise of either of those two additional powers be reviewable?

Hon MATTHEW SWINBOURN: When the member refers to reviewable decisions, I think he is referring to decisions that are reviewable under division 4 of the Animal Welfare Act; is that correct or is he talking about judicial review or anything of that kind?

Hon NICK GOIRAN: I will just clarify. For example, proposed section 38(1A) provides that the designated inspector may at any time enter a category or a class of place, and there are three different classes of place set out in proposed paragraphs (a), (b) and (c). But in the case of the first class, there is a proviso that "the inspector believes, on reasonable grounds, that a place is an intensive production place". In terms of reviewing that decision of the inspector, what is the counterbalance to ensure that the inspector's decision of reasonable belief at that time will be subject to some form of oversight? Will that decision be reviewable in some kind of capacity because some mechanism is available?

Hon MATTHEW SWINBOURN: The direct answer is no; that decision of itself will not be reviewable in a pragmatic sense at the time. The decision about a place that was subjected to the entry would be subject to judicial review if the person were to rush off to the Supreme Court to seek some sort of —

Hon Nick Goiran interjected.

Hon MATTHEW SWINBOURN: Yes—and a prerogative of whichever kind. I will bring the member's attention to division 4, "Review of decisions", and section 71 of the Animal Welfare Act that currently provides that if an inspector gives a direction in relation to animals, that decision is reviewable, as it will be for a designated inspector. The entry will not be reviewable, but any consequent actions may be because they would fall under the provisions in division 4 of the Animal Welfare Act. They will have the benefit of that.

Clause put and passed.

Clause 6: Section 36A inserted —

Hon COLIN de GRUSSA: Clause 6 seeks to insert new section 36A into the Animal Welfare Act 2002. Essentially, the new section is a definition section and contains the definitions of a number of different places that a designated inspector will be able to inspect. I have a couple of points of clarification about some of the definitions. "Intensive production" is defined as an activity that is carried out at an animal source food production facility during which, in the ordinary course of animal source food production, any animals involved in the production do not have an opportunity to graze or forage outside. I want to clarify what "outside" means? Does it encompass the animals simply not having a roof over their head? For example, they could be in a feedlot on a farm, which is defined by the set of yards in which they are held, but they would be outside effectively. Would that be captured under this or not?

Hon MATTHEW SWINBOURN: This is a novel one for us because it has not come up before, believe it or not. In terms of what "outside" means, it will be its ordinary meaning, and the courts will have to define what that is if there is ever a dispute over that. I am sorry that does not provide more clarity, but the courts will go to the ordinary meaning. I will provide context about why "outside" is being used in relation to foraging. During the development of the bill, it was considered that hens can still forage within an enclosed chicken farm, but that was not the kind of foraging that we are contemplating—that is, foraging in and amongst pasture in a more natural environment. The adviser gave chicken foraging hand signals and now I am giving chicken foraging hand signals! Scratching

is a natural part of their behaviour, and they will scratch within a henhouse and then they will scratch outside. The definition of "outside foraging" was drafted in contemplation of making that distinction for those sorts of things.

With the example of chickens, a structure that provides shelter in a field would still be considered to be outside because that structure is not an enclosed space, as in outside versus inside, but if the structure is in a feedlot, where there are no opportunities for foraging and feeding and the structure is there to provide shelter, it would not be enough to satisfy the requirements to not be considered an intensive farming place. For example, two beams that hold up a roof is not an inside structure. I do not know whether the member would agree with me on that, but that structure is only there to protect the animals from the sun, as opposed to a structure that has a roof, walls and potentially a floor, although not necessarily; it could just be the ground. That would be considered an inside place. I think that this is connecting with the ability of those animals to engage in their natural foraging behaviours. Again, it is in the context of when animals are entirely dependent on people for getting their food and engaging in those behaviours; therefore, they do not have access to pasture or outside areas where they can exhibit those natural behaviours and are completely dependent on a person to provide that for them, which increases their vulnerability.

Hon COLIN de GRUSSA: I am not quite sure that I am clear on exactly what that means, but I guess the ordinary definition of "outside" to me would mean that the sky is above you, essentially. A feedlot is intensive because animals are constrained to where they can move, as they are held in a yard of some description. Is that considered to be an intensive production system, even though they are outside, by the ordinary definition of the word?

Hon MATTHEW SWINBOURN: I did not quite capture the member's question, but I think I might have created confusion here. I will just take a step back from the member's question about the word "outside", and reinforce that it is the ordinary meaning of that word. If anybody sought to litigate over that particular point, that is when courts, judges and lawyers would start. The other issue to understand in the context of the clause it is being used in is the broader definition and those sorts of things. "Outside" is related to the terms graze or forage, which pertain to eating. The concept of "outside" is about where food is available. For example, a feedlot has no capacity for an animal to graze. As I understand it, feedlots are typically for cattle and those sorts of things. Feedlots are not for chickens, more so for sheep and those sorts of things. With all things contemplated, I freely admit that I am not a farmer, so I will not pretend that I understand all those things. But a feedlot is generally used to either keep animals for a time in a confined space or to fatten them up for market. The member can agree with that; those are probably the two main points.

Some feedlots are connected to grazing pastures, and the people who operate those feedlots will move those animals around those grazing pastures to allow the animals to find their own food, but some of those feedlots will be intensive farming places because there is no opportunity for those animals to get access to food themselves. It is only the food provided to them by humans. In that particular instance, that is the context we are talking about, when there is the opportunity to graze or forage outside. It comes back more exclusively to why "outside" was used in relation to the concept that chickens in particular are able to forage within an inside facility. That is not what we are contemplating because, in an inside facility, the foraging that they can access is only food that is provided to them by a person or machine, rather than them finding the bugs, grubs and plants and all those sorts of things. It relates to chickens, but when my wife lets our chickens out at home, they go foraging and eat all the herbs. I think it is quite hilarious!

Hon COLIN de GRUSSA: Thanks, parliamentary secretary; I think I am pretty clear on that one now. Essentially, it is about being outside in the context of grazing and foraging. Further into this clause, "intensive production place" is defined as a non-residential place where intensive production is carried out. Obviously, as the parliamentary secretary is well aware, many farms are homes as well or have a home on them. Is there a particular concept of what is considered to be the residential part of the farm or the business? Is a boundary defined, and does that come under an ordinary meaning?

Hon MATTHEW SWINBOURN: We are making amendments to the Animal Welfare Act, but the definition of "non-residential place" in the current act will apply. Section 7 of the Animal Welfare Act defines "non-residential place" —

> (a) means any place except a building, vehicle or other structure in which a person ordinarily lives; and
>
> (b) includes gardens, yards or other land surrounding, and sheds or other outbuildings near, such a building or other structure;

This bill will not interfere with that definition. A pragmatic example would be of someone who owns a 10 000-hectare farm and has intensive animal practices happening on that farm, and has a house on a corner of that farm, miles away. It would not be contemplated that the entire property would therefore be a residential property merely because a residential property occupies some part of it. Only those parts that pertain to residential activities—the house and the things referred to in the definition—would fall within that definition. If a person was inclined to try to avoid the compliance parts of this legislation, they could plonk a house on their property and then argue that the entire regime should be excluded from applying. Plainly, that is not what we are intending to happen. The point, again, is that animal compliance inspectors will have no business going into where a person lives. One of the advisers said that people would not run intensive production facilities in their house. I said I was not necessarily sure

about that, and that it would depend on how some people choose to live! Being pragmatic, they would not do it on a commercial scale in any event.

Hon STEVE MARTIN: We have spent a bit of time going back and forth about the definition of "outside". I think it is an issue. A small sheep feedlot might be outside on a 20-acre or 10-hectare property. Linking it to the provision of food for humans, which I think the parliamentary secretary did, is a very interesting method of gauging whether something is intensive production. In the wheatbelt in April, after seven or eight dry months, sheep are fed every second day, and that is their only source of nutrition. The parliamentary secretary needs to be careful about the link.

Hon Matthew Swinbourn: Would you agree that in that circumstance, notwithstanding the absence of food, they are still able to forage?

Hon STEVE MARTIN: I will drive the parliamentary secretary to Westonia in April.

Hon Matthew Swinbourn: I understand what you're saying.

Hon STEVE MARTIN: If foraging means eating to sustain themselves, then they are only just able to. Given that most large feedlots are outside, I think that might be an interesting definition.

I go back to proposed section 36A, "Terms used", which states —

> In this Division —
>
> ***abattoir*** —
>
> …
>
> (b) includes a holding yard or other place used for or in connection with …

What does "holding yard" mean? For example, is this intended to capture an abattoir that has a 150-hectare holding yard that is a large paddock?

Hon MATTHEW SWINBOURN: Just as a matter of reference, the explanatory memorandum states —

> The specific reference to holding yards was included in this definition to make it clear for the purposes of the Criminal Code that the proposed aggravated trespass offence can be committed at holding yards.

I know the member is coming at it from an animal welfare perspective, but the definition applies to both that point and intensive food production. That is why that term was used. However, it will still be circumstantial in terms of what is happening at the particular place. The member gave an example of an abattoir or a knackery that has a 150-acre property next to it. It would very much depend on why the animals are on those paddocks. Are they being held for the purposes of engaging in the activities of the abattoir or knackery? The point is really the connection element. If there is a nexus there, it will be circumstantial and factual in a particular circumstance. If we want to paint a what-if example—it is difficult if the member keeps going through a series of iterative what-ifs—it will always depend on the facts of the case. If there are some paddocks next to an abattoir that belong to the abattoir and the guy who owns it runs a few sheep on the paddocks because he is a hobby farmer but the abattoir is for beef cattle, there is no connection between the activities happening in that paddock and the activities of the abattoir. I am trying to demonstrate to the member that the nexus will be circumstantial to what is happening at the time. If, however, the organisation or individual who runs the abattoir is using those very large holding yards to funnel the animals to slaughter them, that would fall within that definition. Perhaps the member is contemplating a situation in which the person who runs the abattoir or the knackery is raising cattle —

Hon Steve Martin: No, it was the previous example.

Hon MATTHEW SWINBOURN: Again, the best answer that I can give to all these kinds of examples that the member is giving is that it will always turn on the facts and circumstances that exist at that place and time. The member is a farmer, or has been a farmer—I do not know whether he still farms; I do not know whether he is growing daisies in his backyard. How a person uses a facility at a particular point in time can change later on. If a person is a cattle farmer with a processing facility and the price of cattle tanks, they might not use that facility anymore and shift to using their land to raise and rear some other animal or to grow a crop and so on. Things are not necessarily set in stone. We need to come back to the intent of what we are trying to do with these animal welfare provisions, which is to protect the welfare of the animals involved in that intensive production, so there needs to be a nexus between those two things.

Hon STEVE MARTIN: I will not labour the point, but, say, a person has an abattoir and next to it they have a very large paddock with 500 animals in it, and at some stage in the near future, those animals will be heading to the abattoir. But the next paddock along, which might be the exact same size, with 500 sheep in it will be treated differently. That is the distinction that I was making.

Hon Matthew Swinbourn: And I think that's correct. You are correct in that regard because those sheep are not connected with the intensive production facility. If, on a later date, there is a change of decision and they decide to process those sheep through that facility, then there is a change in those circumstances, which would then rope that

in at a later date into that particular definition. So things can change, as I say, but it's really about what's happening at a particular point in time.

Hon STEVE MARTIN: Okay. I can see an issue here for the inspector, obviously, if the owner of the abattoir says that those sheep are fine and they are going to be parked there for the next three months, but I am probably delving into the weeds a little bit.

Hon Matthew Swinbourn: Sorry; again by way of interjection, it is likely that the inspector can see the sheep from wherever the inspector is standing as opposed to what might be happening within the enclosure of the abattoir itself—if we can think about it in that context. In the circumstances that the member is talking about, the general inspector might stand on the side of a country road, on public land, and they can see what is going on. But that is not really the mischief that we are trying to deal with here.

Clause put and passed.

Clause 7 put and passed.

Clause 8: Section 38 amended —

Hon COLIN de GRUSSA: I do not have much to ask on clause 8 other than to clarify the checks and balances around when an inspector makes a decision, on reasonable grounds, that a place is an intensive production place. What are the checks and balances, and will they occur before the inspector enters the property? Will the inspector have to get authorisation with a manager or anything like that, or is that something that will be contemplated later on, after the inspection?

Hon MATTHEW SWINBOURN: The first thing to note is that the concept of "on reasonable grounds" is not unique to this act. There are other provisions wherein identical words are used. If I remember rightly, under the Industrial Relations Act, for health and safety reasons, a person must have the belief that the Work Health and Safety Act is being breached; therefore, it is a state of mind. The provisions in this bill will give the inspector the power to exercise that belief. They will not need permission from anyone else if they have formed the requisite state of mind that there are reasonable grounds on which to enter. That might be tested at a later date when an inspector says that they had reasonable grounds. They will not be required to disclose those grounds as a precondition for entry; they just need to hold those particular views. They do not have to substantiate that to the person on whom they are expressing that view and no person even needs to be there for the inspector to form that opinion. In most circumstances, a reasonable inspector would share that information because the whole point is to fix the problem that exists in the first place, but there may be circumstances in which it is considered not appropriate.

Post facto on that stuff is that it may be the case that the occupier says that there were no reasonable grounds for the inspector to form that opinion and the inspector has committed a civil trespass, and the occupier is going to sue the inspector for entering the property. It would then become a matter of evidence before the court and there would be a positive duty on the inspector to establish that there were reasonable grounds on which to enter. I am not sure whether it is a reverse onus situation, which I was talking about previously on a different bill, but, in that regard, if the assertion is that there were no reasonable grounds to enter, and the department and the inspector wanted to put on a defence, they would have to establish what the reasonable grounds were for entering the property. Reasonable grounds can cover a multitude of things. It may be that the smell of the place was so bad that it indicated there were either dying or rotting animals inside. It might be that a whistleblower has made a complaint. There may be other reasons, such as someone made a wild admission that the occupier was getting away with murder inside the facility. Again, it will depend on each circumstance, and, as I say, the concept of "on reasonable grounds" is not a novel or unique test.

Hon STEVE MARTIN: I understand the concept of "reasonable grounds" is commonly used in various pieces of legislation. Can the parliamentary secretary explain what that might look like, for example, on farm feedlots? Will there be a register of feedlots in Western Australia? If an inspector were parked in a driveway and the feedlot is not visible, or is kilometres away in the middle of the farm, under what circumstances would the inspector have reasonable grounds to believe—if they have not previously been there—that there might be an intensive production place there?

Hon MATTHEW SWINBOURN: There is no current register of feedlots. Farmers are not required to register them with the department or anything like that and there is no proposal to establish a requirement to do such a thing. The department will collect and collate information over time about where these intensive production places are because obviously the dynamic has changed, but there is nothing unusual about that. The member described a big farm with a feedlot in the middle that cannot be seen. The member is a farmer. How hard would it be for people to have an understanding about where a feedlot on a commercial scale is being set up and established? There will be trucks going in, obviously, to populate the feedlot. There will be food going in to feed the particular animals. There will be drivers of those trucks. There will be farmhands. A range of things might allow an inspector to gain "reasonable grounds", which I mentioned previously in an answer to Hon Colin de Grussa. A mere suspicion is

not reasonable grounds. It is not that someone thinks there could be a feedlot out there so therefore they trot out there. On reasonable grounds is a standard that must be met. There is probably a mountain of case law that goes towards what forms reasonable grounds. It will almost always be circumstantial and dependent on the facts in a particular circumstance. It cannot be just because: "Old Billy the farmer always does this or that, so I'd better go and check it out." I am being a little bit glib. I do not mean to be disrespectful to the member, but I think that that is the kind of concern he has in which people are doing it on a whim—for malicious reasons or reasons of that kind. As I say, the standard would have to be that it is on reasonable grounds. It would also be the case if, for example, an inspector was behaving in a way that was unacceptable to others, a person can complain about that inspector's conduct and how they were engaging either to their manager or to the CEO of the Department of Primary Industries and Regional Development. They could say that the person did not meet the requisite standards. That is to allay concerns the member might have about how these things might be exercised.

Hon STEVE MARTIN: I did not mean to infer any nefarious motives on the inspectors. I think the parliamentary secretary's definition of a commercial scale feedlot or intensive production place might need some refining. Dozens and dozens—hundreds, possibly thousands—of farmers might run a feedlot for three months during summer. I am not talking about a WAMMCO-scale operation or a significant beef feedlot. There will be feedlots all over the wheatbelt and the great southern with 150 lambs in them during the summer. They will be captured; that is a commercial scale. It will be somewhere in the middle of the farm. I am interested in what reasonable grounds might look like for operations of that scale.

While I am on my feet, I will talk about proposed section 38(1A), which refers to a designated inspector being able to "enter any time". I will go back to the previous excursion for an inspector to get to a feedlot. Let us assume that nobody is home and the inspector either can or cannot find the feedlot. Does the inspector have to notify the owner of the property that they have either been there and found it or not found it, and whether it has a clean bill of health, or not?

Hon MATTHEW SWINBOURN: I am going to take the member back a step because he referenced a feedlot that was set up for 150 lambs being of a commercial size. I think we might be at cross-purposes here. For these provisions to apply, the activity has to be related to intensive production. Activities have to be taken into consideration. Under proposed section 36A, the definition states —

> ***intensive production*** means an activity that is carried out at an animal source food production facility during which, in the ordinary course of animal source food production, any animals involved in the production do not have an opportunity to graze or forage outside;

If we take a step back, that definition refers to "animal source food production", which is also defined in the bill. It reads —

> ***animal source food production*** has the meaning given in *The Criminal Code* section 70A(1);

If we go ahead to page 7 in the bill, we find the following definition —

> ***animal source food production*** means an activity carried out —
>
> (a) at an animal source food production place; and—

This is a compounding issue, so I can understand the confusion —

> (b) for the purpose of, or in connection with, commercial food production;

There is then another important definition that reads —

> ***animal source food production facility*** means any of the following places, operated for the purpose of commercial food production —
>
> (a) a farm or other place where an animal is reared or fattened;
>
> (b) a dairy farm;
>
> (c) an egg farm or other place where poultry are kept to produce eggs;

And the last definition reads —

> ***animal source food production place*** means any of the following places —
>
> (a) an animal source food production facility;
>
> (b) an abattoir;
>
> (c) a knackery;

The example that the member gave in which a feedlot is created for 150 head of lambs for three months of the year might be done because there is not enough food on the farm, which becomes a matter of farm management. It is not being done in connection with an intensive food production facility. It is a consequence of the seasons and the

availability of food on that property, but in and off itself, is not necessarily an intensive production activity. We need to be clear that when a farmer engages in that practice for the purposes of looking after their animals, not because of the kind of thing that we are contemplating here, that these kinds of inspection powers are going to get—we could be at cross-purposes here when we use the word "feedlot". It might also be the case that when a farmer has done that, the animals are still able to forage and get food, or the farmer is rotating them through other areas as well. I just wanted to be clear on that.

I have now completely lost the context of the member's last question because I was caught up on that particular theme. Perhaps Hon Nick Goiran may be able to help us or take us in a completely different direction.

Hon Steve Martin: When the inspector has been on a property and nobody is home, do they have to notify the —

Hon MATTHEW SWINBOURN: I do not think that technically they do. As a matter of good practice they probably should, but the act does not require them to do that. If we look at the context of the power, the power is to enter the property without consent and without notice. In those circumstances, it is not a requirement that they do that. However, they will have to comply with work health and safety laws and other things like that, and also the practices of the department. If the member is asking strictly whether or not they will be legally required to give notice under the provisions, all other things being equal, they will not be required to do that. But it would be hard to contemplate a circumstance in which the inspector conducts their work but not in conjunction with the person actually involved. The member's other issue might relate to forced entry and things of that nature, and we can get into that.

Hon STEVE MARTIN: The parliamentary secretary has opened up all sorts areas of questioning there unfortunately. I will leave some of that to my colleagues. I just want to clarify one thing. I am quite amazed that a 150-head feedlot on a farm will not be captured by this, based upon the parliamentary secretary's recent remarks.

Hon Matthew Swinbourn: No, I am trying to give the member the impression that if it is not an intensive food production facility, it will not be captured within that. It will depend on the circumstances of why the farmer has created the feedlot and what they are trying to achieve with it.

Hon STEVE MARTIN: It might help if I explain what the farmer is trying to do. They are trying to fatten a sheep, a cow or a steer to sell it to an abattoir.

Hon Matthew Swinbourn: Eventually, but it may not be at that particular time.

Hon STEVE MARTIN: To explain the process, farmers are not going to waste feedlotting an animal and letting it back into the paddock, because that would defeat the purpose. The animal is fed, then a truck backs up to that feedlot, they go onto the truck and straight to the abattoir. That is what happens. The farmer is wasting their time if they then let the animals loose back into the paddock to lose condition. I think we need some clarification on whether the hundreds and hundreds of farm feedlot scale operations are captured by this inspection regime. For example, what is the difference between that one and, say, a 1 000-head operation in York that is fattening sheep or a 2 000-head operation on a farm in Hyden? I think that, at this late stage, the parliamentary secretary has raised something that I had not considered. I seek a bit of clarification on that.

The parliamentary secretary made the point about inspectors not having to notify people. Again, I refer to these farm-based operations. If someone has driven up my driveway, I will notice that somebody has been up there, because nobody else would have been there except for me. I will notice the tyre tracks on my property. Perhaps they have driven past my house to get to the feedlot. The parliamentary secretary says that the inspector does not have to notify someone that they have been on their property, opened gates, closed gates et cetera. Who knows what is on their tyres—it could be all sorts of weeds. It is extraordinary that someone can be on a farmer's property, drive around, have a good look and leave and not have to notify the farmer. That is really a comment rather than a question.

Can we please have clarification on what scale of operation would attract this inspection regime?

Hon MATTHEW SWINBOURN: We keep coming back to the concept of an intensive production place. If somebody is bringing in animals to feed them because of a fire on their property and they have to create a feedlot for that purpose, that is not an intensive production place.

The member gave the example of a person putting animals in a feedlot for the purposes of fattening them up. If they do not have access to forage and feed outside, they are completely reliant on the feedlot and it is in the ordinary course of animal food source production for that to occur, it could apply in those particular circumstances. The essential element is that the feedlot is of a commercial scale. If it can hold 150 or 1 000 animals and is of a commercial scale, amongst all the overlapping qualifiers, it could be included but if it is not used for a commercial purpose, it will not apply. The definition of an "animal source food production facility" was intentionally drafted to exclude places where animals are held or kept on a very temporary basis—for example, holding areas of livestock at Fremantle port. However, if a saleyard has a feedlot where animals are kept for a sufficient amount of time to be reared or fattened for the purposes of commercial food production rather than kept temporarily for sale, the saleyard, for example, may fall within the definition.

The motivation for including this stuff when drafting the bill had more to do with extending the aggravated offences to make sure that animals are included in those particular areas. That is what this is about.

The member keeps painting this picture about what these inspection powers are about under the Animal Welfare Act. It is quite narrow. He gave examples about an inspector. He said that he was not bringing into question the professionalism of the inspectors. He just gave the example of DPIRD inspectors coming onto his property, driving past his house, doing all these other sorts of things without telling him about it, bringing weeds and goodness knows what else onto the property and that sort of stuff. Notwithstanding what he said earlier in the debate, it strikes me that he has no regard for the professionalism of DPIRD inspectors. He is casting a slur against them and their potential professionalism. Tell me I am wrong, member, but that is what I heard you say.

Hon Steve Martin: When you sit down.

Hon MATTHEW SWINBOURN: I beg your pardon! Please do not tell me to sit down.

Hon Steve Martin: As soon as you sit down.

Hon MATTHEW SWINBOURN: Thank you. I withdraw that.

Hon NICK GOIRAN: Clause 8 will allow a designated inspector to enter any of three places set out in the bill at any minute of the day in the ordinary 24-hour clock. Three classes of places are set out in clause 8, specifically in proposed subsection (1A)(a), (b) and (c).

As we touched on a little earlier during consideration of a previous clause, there is an issue with the inconsistency that arises in recommendation 11 of the review. We will touch on that in a moment.

At present, I want to deal with what occurs when a dispute arises between the designated inspector, who has reasonable grounds to believe that a place is an intensive production place, and the owner of the place. We can easily foresee a scenario in which a dispute would arise. In the parliamentary secretary's helpful answers to Hon Steve Martin, he mentioned a range of scenarios or qualifiers in which reasonable minds might disagree. What is intended to be the circuit breaker? I acknowledge that on the face of the legislation before us, the designated inspector needs no such circuit breaker. The inspector has been granted the power to enter, and, if they want to exercise that power, off they go. I also acknowledge the comment that the parliamentary secretary made earlier that we are talking about professionals, and we can expect that these people will act in a professional fashion. I will get on the record that it is certainly my understanding that Hon Steve Martin holds these people in high regard. I think the parliamentary secretary would agree with me that we would expect that to mean that agents of government will be model citizens in the way in which they carry out these powers. If the model citizen, the designated inspector, has a reasonable belief, but because of their professionalism, expertise and experience in the industry they also know that a fair mind might disagree, or they might have some knowledge of the particular owner in question and might want to give that person the opportunity to make some sort of representation or advocacy or submission, what will be the circuit breaker? Surely at the end of the day the model citizen, the designated inspector, would far rather enter on a voluntary, agreed and facilitated basis rather than boldly using their powers just because they have them.

Is it intended that there will be some kind of policy, guideline or procedure that will guide their use of what is really a discretionary power? I say that because an inspector does not have to say, "I'm going to enter based on this." Inspectors will always have the option to do what they have been doing for years; that is, knock on the door and ask if they can enter voluntarily. As the parliamentary secretary said earlier, I think in the debate on clause 1, it is not uncommon for that to be the case. Sometimes they are asked to come back in two weeks. I accept that there have been issues as a result of the two-week delay, and I do not want us to go down that particular path. Will there be some procedure to guide how the designated inspectors will use the new power that they will be given under clause 8?

Hon MATTHEW SWINBOURN: I am not sure whether I will be able to answer in the time we have available because we have to report in a few minutes. I will just deal with a few points. I think the member was talking about whether there is a circuit breaker. The provisions of the bill will create powers; however, there is also the reality. We are talking about the inspectors, and we have already indicated that the future inspectors will come from a cohort of people who are already experienced in conducting inspections.

Hon Nick Goiran: They have already had training.

Hon MATTHEW SWINBOURN: Yes, they have had training in those other circumstances, including training in de-escalating situations. We also have to understand the circumstances in which inspectors might act. They operate in pairs. They go out to a remote or regional property that is far away, and if there is hostility and aggression or they are completely unwelcome, they need to deal with that circumstance. The best circumstance might be for them to make a tactical retreat, for example, or let things cool down before anything happens. Those sorts of things are important to keep in consideration.

We have tabled the document *Regulatory compliance approach*. I am not sure whether the member has had the opportunity to review it, but it sets out the department's guidelines for how it will exercise its powers in those sorts of things. It is a guiding document for its people. It is also worth considering that the department itself has other roles, like with Fisheries, that have similar sorts of powers of entry, and the department exercises those accordingly.

I will leave it there. We may add more when we return. We are not returning to this bill today, but when we return to the member's questions in a couple of weeks, we will have had a chance to consider the *Hansard*.

Progress reported and leave granted to sit again, pursuant to standing orders.