Biosecurity and Agriculture Management (BAM) Bill 2006

Explanatory Memorandum

The purpose of this Bill is to provide effective biosecurity and agriculture management for Western Australia. This involves:

- controlling the entry, establishment, spread and impact of harmful organisms (pests and diseases);
- controlling the use of agricultural and veterinary chemicals; and
- generally ensuring the safety and integrity of agricultural products.

Western Australia is naturally free from a large number of animal and plant pests and diseases present in other States. However, despite this relative freedom there are many pests and diseases present within Western Australia that must be controlled and prevented from spreading. The Biosecurity provisions of the Bill are aimed both at preventing pests and diseases from entering the State and at controlling those that are found here.

Most pests are not brought into the State deliberately or knowingly, but are carried in unknowingly on plants, animals and other things introduced in the normal course of trade or commerce. The regulation of these 'potential carriers' of organisms is the other main focus of the biosecurity provisions of the Bill.

The proposed new Act will be the State's primary biosecurity legislation but it will operate in conjunction with legislation under other portfolios including the environment (wildlife and biodiversity conservation and natural resource management), fisheries and forestry.

The Bill also provides the authority for regulations to control the use of agricultural and veterinary chemicals and ensure that agricultural products are not contaminated with the residues of these chemicals and for related matters.

Part 1 - Preliminary

Clause 1 Short title
The Act will be the *Biosecurity and Agriculture Management Act 2006*.

Clause 2 Commencement
The Act will come into operation on a day to be fixed by proclamation and different days may be set for different provisions. The Act will be proclaimed when the necessary regulations have been drafted.

Clause 3 Relationship with other Acts
The Act is to be read as one with the Acts listed in subclause (1). These Acts will operate in conjunction with the BAM Act to enable the declared pest rates referred to in Part 6, Division 1 to be imposed and collected.

Subclauses (2) and (3) ensure that the provisions of the Act are understood to be in addition to the provisions of the Acts listed and that in the event of inconsistency the listed Acts prevail. The listed Acts are important Acts that have impacts on health, safety and agriculture and may have implications for biosecurity. These Acts include the Health Act, the Poisons Act and the Police Act. No inconsistencies between the BAM Act and these Acts are expected to arise but if an inconsistency was identified the provisions of the listed Acts would take precedence.

Clause 4 Act binds the Crown

The Act will bind the Crown because there is no reason why Government agencies should not be required to comply with the provisions of the new Act.

Clause 5 Meaning of terms used in the Act

The terms listed below are defined as are a number of others which are not mentioned here because they are clearly self-explanatory or dealt with in the context of the provisions in which they appear.

"agricultural activity"- this term takes its normal meaning (any activity concerned with cultivating the land or rearing animals) but expressly includes apiculture (beekeeping), aquaculture (fish farming), silviculture (tree farming), viticulture (wine grape growing) and activities that are related to agricultural activities including fallowing or resting land.

"agricultural product" is broadly defined and will cover some products (eg: types of plants) that wouldn't commonly be described as an agricultural product. Were it not so defined the Bill would need to refer constantly to "plants, animals and other agricultural products".

"Agvet Code of Western Australia" has the meaning it has in the *Agricultural and Veterinary Chemicals (Western Australia) Act 1995*. Under that Act the "Agvet Code of Western Australia is the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* of the Commonwealth as in force for the time being and applying as a law of Western Australia.

"Analysis" is broadly defined so that it will cover any kind of examination or test needed to establish information about something that is regulated under the Act.

"Animal" means any living thing except a human being, a plant or a micro-organism. It includes any genetic material of an animal and an animal in an embryonic or larval or other immature state. The definition is consistent with the definitions of the term in the legislation that will be replaced by the BAM Act.

"Animal product" is broadly defined so that it can cover anything that can be produced by or obtained from an animal. The term is used in the definition of "agricultural product".

"Authorisation" is the generic term for the various means by which a person may be given authority to do something under the Act, namely, licences, permits registration, approval and accreditation.

"Breed" takes its normal meaning (to produce offspring) but also includes hatch. This is necessary in relation to the provisions requiring an authorisation to breed certain declared pest animals.

"Charge amount" is the amount of money secured by a charge over land to cover the cost of remedial action taken by the Director General when a person has failed to comply with a requirement under the Act.

"Chemical product" means an agricultural chemical product or a veterinary chemical product or another substance prescribed for the purpose of the definition. "Agricultural chemical product" is defined in the Agvet Code of Western Australia. (Veterinary chemical product is defined later in clause 5.) The Agvet Code, which is part of the National system for the registration of agricultural and veterinary chemicals, applies the definition from the Commonwealth Legislation. The Commonwealth legislation defines an **agricultural chemical product** as:

> "a substance or mixture of substances that is represented, imported, manufactured, supplied or used as a means of directly or indirectly:
> (a) destroying, stupefying, repelling, inhibiting the feeding of, or preventing infestation by or attacks of, any pest in relation to a plant, a place or a thing; or
> (b) destroying a plant; or
> (c) modifying the physiology of a plant or pest so as to alter its natural development, productivity, quality or reproductive capacity; or
> (d) modifying an effect of another agricultural chemical product; or
> (e) attracting a pest for the purpose of destroying it.

The definition also includes a substance or mixture of substances declared by the regulations to be an agricultural chemical product but does not include:

(a) a veterinary chemical product; or
(b) a substance or mixture of substances declared by the regulations not to be an agricultural chemical product.

"Control" is defined with the intention of covering all aspects of biosecurity. This avoids referring throughout the Bill, to, for example, the "eradication, control or management" (or prevention of spread) of a declared pest.

"Cultivate" specifically includes "culture" to ensure (and avoid arguments as to) coverage of the culture of things (e.g.: bees, bacteria) that do not involve tillage of the soil.

"Declared pest" means a pest that has been declared under section 21(2) and a prohibited organism.

"Declared Pest Account" is the account established under section 137(1). This is in a subdivision of the Act that enables rates to be imposed in prescribed areas and used for the control of declared pests.

"Disease" means an animal or plant disease and therefore does not cover a disease that only affects humans. The term includes the biological entities and states listed which can adversely affect animals and plants but may not come within a strict scientific definition of disease. This avoids having to be too wordy in the provisions that use the term.

"**Electronic site"** means the site the department is required to establish and maintain under section 160. Paragraph (b) is intended to avoid the definition becoming outdated in the event that information technology advances to a stage where a different public electronic system takes the place of what we now know as websites.

"Environment", logically, has the meaning it has in the *Environmental Protection Act 1986* which is:
"living things, their physical, biological and social surroundings, and interactions between all of these" and for the purposes of this definition "the social surroundings of man are his aesthetic, cultural, economic and social surroundings to the extent that those surroundings directly affect or are affected by his physical or biological surroundings".

"Fertiliser" is defined to the same effect as in the current *Fertilizers Act 1977* (which will be replaced by the BAM Act) but it does not include a substance prescribed not to be a fertiliser. This will allow substances that may otherwise come within the definition but that do not need to be covered by the Act to be excluded.

"Fish" is defined with reference to the *Fish Resources Management Act 1994*" wherein it means: an aquatic organism of any species (whether alive or dead) and includes —

- the eggs, spat, spawn, seeds, spores, fry, larva or other source of reproduction or offspring of an aquatic organism; and
- a part only of an aquatic organism (including the shell or tail),

but does not include aquatic mammals, aquatic reptiles, aquatic birds or amphibians.

The term also includes pearl oysters.

"High impact organism" is defined to mean an organism prescribed as such. Clause 189 deals with regulations prescribing high impact organisms. The effect is that a prohibited organism can be prescribed as a high impact organism if it has the potential to be a severe

biosecurity risk and is either not present in the State, has been eradicated or is under effective control.

The definition of **"inspector"** takes account of the fact that certain officers appointed under other legislation may operate as inspectors for certain purposes of the BAM Act.

The definition of the terms '**infested'** and '**infected'** are not only taken to include something that is actually infested or infected, but also those things that are likely to be infested or infected because they have been in close proximity to an infested or infected thing. The broader definition is required to ensure that action can be taken to prevent the spread of plant and animal diseases that are particularly difficult to detect.

"Land" means all the land and water within the limits of the State, the State's coastal waters and the sea-bed and subsoil beneath and islands and structures within any water included in the definition. In respect of fish managed by the State under an arrangement with the commonwealth it also includes the waters of the Australian fishing zone.

"Maximum residue limit" means the maximum residue limit of a chemical product or other substance that is prescribed (under the regulations). A maximum residue limit of a chemical will be prescribed for animals, agricultural products, animal feeds, fertilisers (or other substances or things) or a prescribed organism or thing from which an agricultural product, animal feed, fertiliser (or other substance or thing) may be derived.

"Occupier", in relation to land is defined simply to mean the person who is in occupation or control of the land or is entitled to be.

"Organism" is defined to include a disease (and a prescribed disease-causing agent) as well as any living thing except a human so that the regulatory scheme to be established by the Act can apply in the same manner to any biosecurity risk whether it be a plant pest (weed) an animal pest or an animal or plant disease.

"Owner" is defined in relation to:

- Land – it has the meaning in clause 7 (generally) or clause 129 (in relation to rating for the declared pest account).
- Vehicles – it has the same meaning as in the Road Traffic Act where it includes -

  (a) every conveyance, not being a train, vessel or aircraft, and every object capable of being propelled or drawn, on wheels or tracks, by any means; and

  (b) where the context permits, an animal being driven or ridden.

- Vessel – it has the same meaning as in the W.A. Marine Act where it means any kind of vessel used or capable of being used in navigation by water, however propelled or moved.
- Anything other than land, a vehicle or a vessel – it includes an agent or manager of the owner and any other person who has possession or control of the thing at the material time.

"Plant" is defined so that it covers all vegetation and fungi and any part or product thereof.

A **"potential carrier"** is anything that is capable of carrying an organism or of carrying something else that is capable of carrying an organism. The regulation of potential carriers of harmful or potentially harmful organisms is an important aspect of the Bill. It is through this that the introduction and spread of these organisms is prevented or contained.

"veterinary chemical product" takes the meaning it has in the Agvet Code where it is defined in section 5 to mean:

> a substance or mixture of substances that is represented as being suitable for, or is manufactured, supplied or used for, administration or application to an animal by any means, or consumption by an animal, as a way of directly or indirectly:
>
> (a) preventing, diagnosing, curing or alleviating a disease or condition in the animal or an infestation of the animal by a pest; or
>
> (b) curing or alleviating an injury suffered by the animal; or
>
> (c) modifying the physiology of the animal:
>
> (i) so as to alter its natural development, productivity, quality or reproductive capacity; or
>
> (ii) so as to make it more manageable; or
>
> (d) modifying the effect of another veterinary chemical product.

The code provides that a veterinary chemical product includes:

> (a) a vitamin, a mineral substance, or an additive, if, and only if, the vitamin, substance or additive is used for a purpose mentioned in paragraph (2)(a), (b), (c) or (d); and
>
> (b) a substance or mixture of substances declared by the regulations to be a veterinary chemical product.

However, the definition in the code does not include the preparations that are included in the BAM definition under paragraph (a). These are not required for the purposes of the code because they are not required to be registered under the National Registration System. They are required to be included for the purposes of the BAM Bill which deals with control of the use of veterinary chemical products because the use of these preparations may well need to be regulated.

Clause 6 Meaning of contaminated

This clause sets out the four somewhat different ways in which something (principally animals, agricultural products, animal feeds or fertilisers) may be "contaminated". All of these depend on something being prescribed under the regulations.

Under paragraph (a), something is contaminated if it contains more than the maximum residue limit (MRL) of a chemical product or other substance than is prescribed in relation to it. As is the case currently, the regulations will prescribe the MRL of various chemicals in relation to numerous agricultural products. An agricultural product that contains more than this amount of the chemical may be referred to as "contaminated".

Under paragraph (b), something is covered by the term "contaminated" if it contains such an amount of a chemical product or other substance that ordinary use of that thing would be likely to result in something else having an excessive MRL.

Paragraph (c) covers something being contaminated by a substance or thing for which an MRL is not prescribed. In this situation it is left open as to what the regulations may specify as amounting to contamination by that substance or thing. This provision would come into play where, for example, animals may have been exposed to antibiotic resistant strains of normal gut flora.

Similarly, paragraph (d) relies on the regulations prescribing circumstances that, where they exist, will cause something to be "contaminated". In this case, however, the contamination does not depend on the contaminated thing containing the substance or thing. So, for example, it may be necessary to provide that something is contaminated if it has been in contact with a substance or thing such as where ruminants have consumed restricted animal material.

Clause 7 Meaning of "owner" in relation to land

The term "owner" covers both the owners of what may be called "private land" and other land. The former covers the freehold owner of alienated land, a person who has the benefit of an agreement to alienate Crown land and a lessee of Crown land. The owner of any other land is the public authority that has the care, control or management of the land or if there is no such public authority, the Crown.

Under subclause (2), in the case of private land the owner is also taken to be the owner of certain roads, or parts of roads, unless these are public roads that are fenced on both sides (subclause (3)). The roads that the private land owner is taken to own are:

- Roads that intersect the land or bound the land but are only fenced on the other side.
- Half the width of roads that bound the land and are fenced on both sides (this would be whether the other side is private land or not).
- Half the width of roads that separate the land from any other private land (this would be whether or not that private land is fenced).

This is a logical provision to ensure awareness of appropriate responsibility for private roads.

Clause 8 Meaning of "animal feed"

This clause sets out the definition of animal feed and its potential constituents. It is necessary to broadly define the term and the different classes of ingredients as varying levels of control are necessary in relation to these depending on their implications for the integrity of the final product. Although long, the definition is not difficult.

Clause 9 When organism is taken to be on land

This clause ensures that birds and aquatic organisms are covered by the provisions relating to organisms "on land".

It will be noted that the term "biosecurity" is not defined. This is to avoid any potential limitation of the operation of the Bill's provisions by arguments over the scope of any definition of this term. Wide use of the term is relatively recent yet generally well understood and the term is used infrequently in the substantive provisions of the Bill as opposed to the headings. Essentially, the term biosecurity describes the protect ion of the State's agricultural industries, environment, economy, lifestyle and amenity from the risks posed by harmful organisms. This is achieved through measures that aim to exclude, eradicate or prevent the spread and minimise the impact of these organisms.

Part 2 – Biosecurity

This Part of the Bill establishes two main points of focus: border biosecurity and biosecurity within the State. This is different from the structure under the existing legislation which separates biosecurity controls by reference to animal pests, plant pests, stock diseases and plant diseases. It is now clearly recognised that the controls should be consistent no matter what type of organism is involved and no matter what agricultural activity or aspect of life or endeavour is being protected in any particular case.

Division 1 Permitted, prohibited and unlisted organisms

This Division and Division 2 are concerned with border biosecurity - keeping harmful organisms out of the State.

Clause 10 Permitted organisms

The Minister may declare that an organism of a kind specified or described is a permitted organism. As the name implies, "permitted organisms" will, as a general rule, be permitted into W.A. They will be organisms that have been assessed as not posing a biosecurity risk – in other words as not likely to have the adverse effects of "prohibited organisms" (see clause 11). An organism may also be permitted if prohibition on its entry to the State cannot be justified because it is already extensively present in some areas.

Section 158 applies to a permitted organism declaration. That section relates to the publication of declarations.

Clause 11 Prohibited organisms

The Minister may declare an organism of a kind specified or described to be a "prohibited organism". The Minister may do this if there are reasonable grounds for believing that it may have an adverse effect on –

- another organism;
- human beings;
- the environment or part of the environment; or
- agricultural, fishing or pearling activities.

A declaration of a prohibited organism will usually be made to prevent the entry to W.A. of a harmful organism that is not currently known to be present in the State. However, under clause 11(1)(b), a declaration may also be made in relation to an organism if the organism would have an adverse effect if it were present in the State or a part of the State in greater numbers or to a greater extent.

Under clause 14 prohibited organisms may not be imported except in accordance with an import permit and the regulations.

Clause 158 relating to publication of declarations applies to a declaration of a prohibited organism also.

Clause 12 Consultation with Ministers and the Biosecurity Council

Before making a declaration (other than a declaration relating to a fish) the Minister is required to consult with the Minister for the Environment, the CALM Act Minister and any other Minister who has a relevant interest. The Minister would do this if it was considered necessary in order to properly inform himself or herself as to whether the declaration should be made. For example it may be appropriate to consult with the Minister for Forestry where an organism affects timber production or with the Minister for Health or Local Government in relation to an organism that might adversely affect human health or amenity.

The Minister may also consult with the Biosecurity Council established under the Act (clause 47).

Before making a declaration relating to a fish the Minister must consult with the Minister for Fisheries and again, may also consult with any other interested Minister and if necessary the Biosecurity Council.

This clause recognises the importance in biosecurity matters of other aspects of life besides agriculture.

Clause 13 Unlisted organisms

An "unlisted organism" is an organism that has not been declared to be either a permitted organism or a prohibited organism. An organism will remain

unlisted until its risk has been assessed at which point it will be declared either permitted or prohibited.

Division 2 – importing organisms into Western Australia

Clause 14 Import restrictions
This clause is the central provision for border biosecurity. It imposes the basic restrictions on the import of prohibited and unlisted organisms and potential carriers.

Under subclause (1) the import of a prohibited organism is prohibited except in accordance with an import permit and the regulations. A penalty of $50,000 applies, or if the organism is a high impact organism the penalty is $100,000 or imprisonment for 12 months. This reflects the seriousness of the threat posed by a prohibited organism and in particular a high impact organism.

Under subclause (2) the import of an unlisted organism is prohibited except in accordance with an import permit and the regulations. An unlisted organism is an organism that has not been declared to be a permitted organism or a prohibited organism - because its potential for adverse affect as referred to in clause 11 has not yet been assessed. Because an unlisted organism may be an organism of quarantine concern, it cannot be imported unless permitted by, and in accordance with a permit and the regulations.

Subclause (3) relates to the import of prescribed potential carriers. "Prescribed" potential carriers will be those things that pose the most risk of carrying declared pests. These include animals, animal products and animal feed, plants and parts of plants, agricultural machinery, used earthmoving and mining machinery, containers used in connection with agricultural products.

The regulations will allow the import of prescribed potential carriers in accordance with import conditions (conditions of entry) that are set by the Director General and published on the Department's website. The penalties for breach of this provision reflect the seriousness of the damage that could be caused by the introduction of prohibited or high impact organisms on or in a prescribed potential carrier.

As the name implies, permitted organisms will, as a general rule, be permitted to enter the State. However, subclause (4) recognises that there may need to be restrictions placed on this in some circumstances.

Clause 15 How to obtain an import permit
An import permit may be obtained by application in accordance with the regulations. An import permit is issued, or refused, by the Director General. As is usual, an import permit may be issued with conditions.

Clause 16 Supply of an unlawful import
It is prohibited for a person to supply an organism or a prescribed potential carrier that the person knows, or should know, was imported in contravention of section 14. The prohibition also extends to the progeny of an organism that

was imported in contravention of section 14. It is not sufficient that supply of an illegally imported organism can be prevented if the supply of its progeny – which will pose the same biosecurity risk – can not be prevented.

Clause 17 Possession of unlawful import
Receipt or possession of an illegal import is also prohibited.

Clause 18 Obligations of commercial passenger carriers
This clause will apply to commercial operators of planes, boats, buses and trains bringing passengers into the State. It will impose a legal requirement to provide the type of information and facilities already provided to incoming international travellers.

Subclause (2) requires the carrier to give passengers the prescribed information about importing organisms and potential carriers. The information must be given before the conveyance enters the State. The prescribed information will be to the following effect:

Western Australia is free of many weeds, pests and diseases found in other states and other countries. If introduced, these pests and diseases could cause serious damage to WA's economy, environment and lifestyle. To protect against this the following things must not be brought into Western Australia unless they comply with import requirements: fruit, vegetables, plants & cut flowers, seeds, nuts, honey, animals, animal skins and wool, used fruit and vegetable boxes and containers and soil. If you are carrying any of these items you must dispose of them on arrival or declare them to a Quarantine Inspector.

Subclause (3) requires the carrier to provide a secure facility for the disposal of organisms or potential carriers that are, or could be, imported in contravention of section 14. The facility must be in accordance with the relevant regulations if there are any.

Under subclause (4), organisms and potential carriers that are deposited must be disposed of in accordance with the regulations.

Clause 19 Obligation of commercial carrier
This clause applies to commercial carriers of freight as well as commercial carriers of passengers.

If the regulations require a commercial carrier transporting a particular type of declared pest or prescribed potential carrier into the State to give notice of that transport then it is an offence to fail to do so. The principal purpose of this provision is to enable prior notice to be required of the arrival of an animal that will require inspection. With notice, an inspector can be made available at the appropriate time and this will avoid animals having to be kept for longer than is appropriate pending inspection. Notice will not be required in relation to domestic companion animals because the identification of these animals is not an issue.

Clause 20 Reporting and presenting import
Under subclause (1), prior notice requirements may be imposed on the importer (as opposed to the commercial carrier) of an organism or prescribed potential carrier. If these requirements are imposed it is an offence to fail to comply with them (subclause (2)).

Subclause (3) relates to situations requiring import permits in which case the organism or prescribed potential carrier must be presented to an inspector in accordance with the regulations. The same applies where the regulations require presentation. The relevant import permit must be handed over and relevant information required must be given.

Subclause (4) allows regulations to require a declaration to be presented as to the contents of a consignment of freight when it is not possible to inspect it for the presence of prohibited organisms or prescribed potential carriers.

Division 3 – Biosecurity within Western Australia

This Division is concerned with the control of harmful organisms – principally plants and animals (including invertebrate animals) and plant and livestock diseases - that are already present within the State. The central tool is the declaration of an organism as a 'declared pest' for an area. (A prohibited organism is a declared pest for the whole of the State.)

Clause 21 Declared pests
This provision (in subclause (2)) enables the Minister to declare an organism that is known to be present in the State to be a declared pest for an area on the same grounds as an organism that is not known to be present in the State may be declared to be a prohibited organism under clause 11.

The area for which an organism is declared to be a declared pest may be the whole or part of the State (subclause (6)) and a prohibited organism is automatically a declared pest for the whole of the State (subclause(1)).

Subclause (2) allows the declaration to assign a declared pest to a category designated by the regulations. It is proposed that 3 categories will be prescribed (by the regulations).

Category 1 - Exclusion: A pest will be assigned to this category for an area if it is not known to exist in that area and its introduction to that area should be prevented

Category 2 - Eradication: A pest will be assigned to this category for an area if the eradication of the pest in that area is considered feasible.

Category 3 - Management: A pest will be assigned to this category for an area if the eradication of that pest from that area is not currently considered feasible but some control is necessary to alleviate harmful impacts of the pest or to reduce the number or distribution or prevent or contain the spread of the pest in that area.

This straightforward arrangement will replace the complex arrangements for plant and animal categories under the *Agriculture and Related Resources Protection Act 1976*.

Subclauses (4) and (5) contain the same requirements for consultation with other Ministers and the Biosecurity Council as are contained in clause 11 in relation to prohibited organisms.

Clause 22 Dealing with declared pest

This is a central provision for control of declared pests within the State or an area of the State. In an area where an organism is a declared pest it is prohibited (except as otherwise provided by the regulations or a management plan) to:

- keep, breed or cultivate the declared pest;
- keep, breed or cultivate an animal, plant or other thing that is infected or infested with the declared pest;
- release the declared pest, or something infected or infested with the declared pest into the environment; or
- intentionally infect or infest something with the declared pest or expose something to infection or infestation.

The penalty for an offence against this provision reflects the seriousness of the damage that can be done by a serious declared pest, particularly a high impact organism.

Subclause (2) authorises regulations prohibiting the movement of a declared pest or something infected or infested with a declared pest from the area in which it is found. Such regulations might be used where a declared pest plant reproduces via the production of spores and the movement of the plant is likely to cause the release and spread of those spores (e.g. if an infestation of branched broomrape (Orabanche ramosa)) was ever found in Western Australia, or to prevent the movement of an infested thing, such as pot plants that carry tropical fire ants (*Solenopsis geminata* (Fabricius)).

Clause 23 Introducing or supplying declared pest

This clause enables the regulations or a management plan to prevent the introduction of a declared pest to an area for which it is a declared pest. To this end, it is not just the introduction of the declared pest itself that may be prohibited but also the introduction of something that is infected or infested with, or a potential carrier of, the declared pest.

The supply of the declared pest in the area may also be prohibited. This will allow, for example, the regulations to prohibit the sale or other supply of a declared pest by some-one other than the person who brought the declared pest into the relevant area.

Clause 24 Authorised dealing with declared pest

As is the case under the existing legislation, the keeping, breeding or cultivating of declared pests will not be prohibited absolutely by the new Act.

The keeping of certain declared pests will be allowed in accordance with authorisations issued under the regulations. This clause imposes the basic requirement to comply with the terms and conditions of any such authorisation. This provision will apply to the authorised keeping and trade of any declared pests including exotic animal species, such as deer, fish and birds, which have been assessed to present high pest risk if released into the environment.

Clause 25 Duty to report declared pest

This clause imposes a duty to report the presence or suspected presence in an area of a declared pest for that area or something infected or infested with a declared pest for that area.

The report may be made orally or in writing and must indicate where the declared pest or thing was found or the reasons for suspecting its presence. A report must also give any other relevant information and be given within the prescribed period or, if no period is prescribed, as soon as practicable.

The duty to report applies not just to the owner of the relevant place or thing but to any person who finds or suspects the presence of the declared pest. Subclauses (3) and (4) ensure that an adviser or service provider such as a vet is not excused from compliance with the duty because they became aware of the presence or suspected presence of the declared pest in the course of giving advice or providing services.

Clause 26 Pest exclusion notice

A pest exclusion notice is a notice that may be used when measures are required to ensure that a place or agricultural product remains free from a declared pest. It is important that measures can be taken on land that is free from a declared pest to ensure that it remains that way. This will be a means of preventing the spread of a declared pest from a place where it is found to a wider area of the State.

Subclause (1) sets out the persons to whom a notice may be given, depending on whether the notice is in respect of land, another place or an agricultural product. These persons are:

- owners, occupiers or persons conducting activities on land;
- owners, occupiers or persons in control of a place;
- owners or persons who have control of the agricultural product.

Subclause (2) sets out the information that a pest exclusion notice is required to contain. It must be in writing and specify the relevant declared pest. It must identify what is to be done to keep the place or agricultural product free from the declared pest. This may be by reference to a code or practice or regulations or the measures may be set out in the notice. A notice must advise the period within which, or the duration for which, it must be complied with. For example a pest exclusion notice could be issued to an apple producer to require the producer to undertake preventative spraying to minimise the risk of his apple crop becoming infected with the serious fungal disease apple scab (*Venturia inaequalis*). The notice might require the

producer to apply fungicide sprays between September and early December each year to prevent infection from airborne spores.

A notice must inform the person receiving it that failure to comply could result in a fine or remedial action under section 37 or both. Under section 37 a person who fails to take some required action is liable for the cost of that action being taken by the Director General.

Clause 27 SAT review: pest exclusion notice

There is a right to review by the State Administrative Tribunal of a direction in a pest exclusion notice but regulations may specify circumstances in which the right of review does not apply. It may be, for example, that regulations would prevent a review where a pest exclusion notice has been issued to require immediate action to prevent land or plants and animals on that land from being infested with a high impact organism.

Clause 28 Compliance with pest exclusion notice

Under subclause (1) it is an offence to fail to comply with a pest exclusion notice.

Subclauses (2) and (3) relate to publication in the department's annual report of a public authority's failure to comply. The Director General may include a summary of such a failure in the department's next annual report. This must be done after consultation with the public authority and is to include any explanation offered by the authority in relation to the failure. The summary may include recommendations as to how the authority's failure should be addressed and prevented from occurring.

Clause 29 Duty to control declared pest

This clause imposes the duty to control declared pests and is therefore another central plank in the biosecurity regime to be established by the Bill.

The duty to control declared pests is imposed, in relation to area in which an organism is a declared pest, on:

- the owner or other person in control of an organism or other thing infected or infested with the declared pest (subclause (2)); and
- the owner or occupier of land or a person conducting an activity land on which a declared pest is present or likely to be present or on which a declared pest has infected or infested something (subclause (3));

The duty imposed is the duty to take "prescribed control measures" – defined by subclause (1) as the control measures required in relation to the relevant declared pest under the regulations or a management plan.

This duty exists regardless of whether a person is also required to comply with a pest control notice or pest exclusion notice in relation to the declared pest. In other words the fact that a notice requires particular measures does not relieve a person of obligations to comply with prescribed measures.

A requirement to control a declared pest may be imposed on more than one person. In such a case it is a defence to a charge of an offence by any of the people involved to show that another person had complied with the requirement (subclause (5)).

It is also a defence a charge of an offence by a person for that person to establish that they did not know and could not reasonably be expected to have known that the declared pest was present or likely to be present or that something was infected or infested or likely to be infected or infested (subclause (6)).

Subclauses (7) and (8) relate to publication in the department's annual report of a public authority's failure to comply with the requirements of the clause, as in section 28(2) and (3).

Clause 30 Pest control notice

A pest control notice is the instrument used to facilitate compliance with obligations to control declared pests.

Under subclause (1)(a) a pest control notice may be given, in relation to land in an area for which an organism is a declared pest, to the owner or occupier of the land or a person conducting activities on that land if:

- the declared pest has been found on or in the vicinity of the land;
- the keeping of the declared pest on the land is authorised under the Act; or
- there are reasonable grounds for suspecting that the declared pest is on or in the vicinity of the land.

Under subclause (1)(b) a pest control notice may be given to any other person in an area for which an organism is a declared pest if:

- the declared pest has been found on or in the vicinity of a place or other thing owned or occupied or under the control of that person;
- the keeping of the declared pest on a place owned or occupied or under the control of that person is authorised by the Act; or
- there are reasonable grounds for suspecting that the declared pest is in or on the vicinity of a place or other thing owned or occupied or under the control of that person.

These provisions ensure that a pest control notice can be given to the most appropriate person in any situation.

The formalities that a notice is required to comply with are set out in subclause (2). Importantly, the notice must advise the person what is to be done to comply with the notice. It may require the person to comply with a code of practice specified in the notice or to take the measures set out in the notice or required under the regulations or a management plan specified in the notice.

The notice must specify the timeframe for compliance with the notice and inform the person that failure to comply may result in a fine, the Director General taking remedial action, or both.

Under subclause (3) a copy of a pest control notice may be given to another person for information in circumstances where that person is likely to be affected by the declared pest. A copy may also be given, if relevant, to a management committee for an industry funding scheme (see clause 141(1)(b)).

Clause 31 Compliance with pest control notice
This clause imposes the obligation to comply with a pest control notice and prescribes the penalties for failure to do so. The clause also contains the provisions noted under clause 29 for reporting a public authority's failure to comply with a pest control notice.

Clause 32 Apportionment of costs of controlling declared plants on land
This clause deals with apportioning, between owners and occupiers or successive owners or occupiers, the costs of controlling a declared pest in accordance with a pest control notice. These costs can be apportioned as agreed, as prescribed, or if no proportions are prescribed, as determined by the Director General.

There is also provision for recovering an amount paid in excess of a person's proportion of the costs and for the Director General to declare what proportion should be paid by a person having only a partial interest or particular estate in the land.

Clause 33 SAT review: costs of controlling declared pests
There is provision for SAT review of a determination of the Director General under section 32.

Clause 34 Pest keeping notice
A pest keeping notice will be used to ensure compliance with the terms and conditions of an authorisation under section 24 to keep, breed or cultivate a declared pest. The formal requirements of a notice are similar to those for a pest control notice.

Clause 35 Director General review: pest control notice or pest keeping notice
This provision allows a person to request a review of a pest control or pest keeping notice. The review is to be conducted by the Director General who may amend, suspend, cancel or confirm the notice. A decision must be reviewed under this section before a review by SAT can be sought.

Clause 36 SAT review: pest control notice or pest keeping notice
If a person is aggrieved by the decision of the Director General under section 36 in relation to a prescribed class of pest control notices or in relation to a pest keeping notice that person may apply for a review by the SAT – but the

regulations may specify circumstances in which the right of review is not available.

This provision is necessary to take account of the fact that decisions as to pest control and pest keeping notices may relate to actions that need to be taken as a matter of urgency and cannot be delayed pending an appeal to the SAT. For instance, it may be necessary to limit the opportunity for review in relation to the control of a declared pest that is assigned to the exclusion category in an area of the State. An example might be the control of Mediterranean Fruit Fly (*Ceratitis capitata*) in the Ord River Irrigation Area, the only fruit production area within Western Australia that is free of Mediterranean Fruit Fly.

Clause 37 Remedial action by Director General
This clause authorises the Director General to take remedial action and recover the cost of doing so from a person who did not comply with a requirement of a pest exclusion notice, a pest control notice or a pest keeping notice. The provision refers to clause 94 which allows action to do whatever the person has failed to do.

There is a provision for remedial action to be taken in the legislation that will be replaced by the BAM Act.

Clause 38 Power to control pests
This clause enables a person to do whatever is necessary to comply with a requirement to control a declared pest and prevents another person obstructing them in this.

Clause 39 Agreements to supply pest control materials
This clause authorises the Director General to enter into agreements for the supply to a person of material, appliances and services for the control of declared pests, including the supply of poisons. Agreements under this section could include the supply of herbicides to landholders to control particular high risk environmental weeds such as Parkinsonia *(Parkinsonia aculeate)*.

Clause 40 Public authority may assist owner or occupier to control declared pest
This authorises a local government or other public authority to assist a person, financially or otherwise, to control a declared pest on land - recognising that this is a legitimate function of a public authority in an area.

Such assistance would include the provision of grant funding to local community groups involved in declared pest control and some such arrangements are already in place. For instance the Northampton Declared Species Group receives annual funding for the coordinated control of foxes and pigs.

Clause 41 Department may carry out operational work
This clause authorises the department to carry out operational work on land without cost to the owner or occupier. "Operational work" is anything necessary or conducive to the control in an area of an organism that is a declared pest in that area. For the purpose of carrying out operational work an officer of the department or an inspector may enter any place other than a dwelling. This provision will cover work done by the department in the control of serious invasive species such as starlings and locusts.

These provisions are in addition to any other law conferring power to control declared pests and do not affect a persons obligation to control declared pests that are not controlled by operational work undertaken by the department.

Division 4 – Urgent measures

This division contains 2 clauses relating to urgent declared pest control measures.

Clause 42 Director General may give directions for urgent measures to control declared pest
This clause authorises a direction from the Director General to an inspector specifying urgent control measures or actions that are to be carried out immediately. The Director General must report to the Minister on the measure or action carried out.

This provision might be used, for example, if a localised infestation of a prohibited organism such as a cane toad (*Bufo marinus*) was found within an area of the State and there was a need for landholders in that area to sample freshwater dams and watercourse for eggs and tadpoles to determine the extent of the infestation.

Clause 43 Director General may approve alternative measure or requirement
This clause covers the situation where control requirements for a declared pest are prescribed by the regulations or a management plan but an urgent situation calls for an alternative measure to be approved by the Director General. The approval must specify the alternative measure, action or requirement and the period of not more than 6 months during which the approval remains in force. Here also, the use of this provision must be reported to the Minister.

This provision might be used, for example if a new preventative treatment for seasoned pinewood is developed to protect it against attack from European House Borer (*Hylotrupes bajulus*). Approval could be given for use of the treatment ahead of the regulations being amended.

Division 5 – Management Plans

This Division provides for the issue of management plans, an instrument that will be used rather than regulations, where appropriate. Management plans are a biosecurity tool not found in the existing legislation. It is anticipated that Management Plans will be used for invasive species of declared pests, such as foxes, rabbits and blackberry, which are widely spread throughout areas of the State.

Clause 44 Management plans
Management plans will be issued by the Minister by publication in the Gazette to provide for the control of a declared pest in an area which may be the whole or a part of the State.

The formalities of a management plan are set out in subclause (2). It must identify the area covered, set out the purposes of the plan and the practices to be followed under the plan and specify the obligations imposed under the plan.

Subclause (5) prevents issue of a management plan for a fish or a declared pest in an aquatic environment without the approval of the Fisheries Minister or in relation to a declared pest that is an animal, other than a fish, that is native to Australia without the approval of the CALM Act Minister.

This ensures that those Ministers with a responsibility in relation to these organisms will continue to have this role under the BAM Act.

Regulations will prevail over a management plan if these cannot operate together (subclause (5)).

Clause 45 Consultation with affected persons
Before issuing a management plan the Minister must consult with public authorities and other persons which or who may be required to take part in implementing the plan or put to expense by it or otherwise interested in a significant way in its operation.

This is intended to ensure sufficient support for the implementation of a management plan by those who will be required to comply with it. It also allows consultation with interested parties such as conservation groups.

Clause 46 Management plans are subject to disallowance
A management plan is subsidiary legislation for the purposes of the *Interpretation Act 1984*. This means that the provisions of that Act relating to the making and effect of subsidiary legislation apply to a management plan. As well, a management plan is subject to disallowance by Parliament under section 42 of the Interpretation Act, as if the plan were regulations.

Division 6 – Biosecurity Council

Clause 47 Biosecurity Council
This clause requires the Minister to establish a Biosecurity Council. The lack of discretion as to whether a Council should be established is a recognition of

the importance of a source of qualified, independent advice on biosecurity issues.

The Council will be established by an instrument that sets out the membership of the Council and any matters relating to its operation and procedures that the Minister considers appropriate. Subject to this, the Council may determine its own procedures. Members are to be remunerated on the recommendation of the Minister for Public Sector Management.

Clause 48 Membership of the Biosecurity Council
Membership of the Council will consist of people who have a general or specific interest and expertise in the management of biosecurity in the State and will include members of community and producer organisations. If it proves necessary or desirable the regulations can make provision for nomination of members of prescribed community and producer organisations.

Clause 49 Functions of Biosecurity Council
The functions of the Council are to advise the Minister or the Director General on matters related to biosecurity whether referred to the Council or of its own motion. With the approval of the Minister the Council may also advise other Ministers on matters related to biosecurity.

Clause 50 Annual report
This clause requires the Minister to make an annual report to the Minister which the Minister must table in Parliament.

Part 3 – Residues On Land, Chemical Products And Adulteration

Division 1 – Residues on land

This Division applies in relation to land that is found to contain such an amount of an organochlorine, other chemical product or other prescribed substance that an agricultural product derived from the land would be likely to contain more than the maximum residue limit of that chemical or other substance. "Maximum residue limit" is defined in clause 5.

Past agricultural and pest treatment practices have caused some areas of agricultural land in the South West of the State to become contaminated with organochlorines. Appropriate long-term management of the use of the land for agricultural production is necessary to prevent residue-affected agricultural produce entering the food chain. Other contaminants may also require long term management strategies to safeguard public health and trade.

Clause 51 Residue management notices
Where land is found to contain an amount of a chemical or other substance as referred to above, the Director General may give the owner of the land a residue management notice.

Under subclause (2) the residue management notice (in a form approved by the Director General) must advise the owner that the land has been found to

contain such an amount of a chemical or other substance as referred to above and it must direct that the use of the land for the production of agricultural products in restricted as specified in the notice. The direction may require the owner of the land to obtain the approval of an inspector before using the land in a manner or for a purpose specified in the notice. It is an offence for an owner to use the land in contravention of a residue management notice.

A residue management notice remains in effect until it is cancelled under clause 52(2) and while in force binds each person to whom it was given and if a memorial is lodged on the title to the land, each successive owner.

Clause 52 Duration of residue management notice
The clause provides that the Director General must review a residue management from time to time in accordance with the regulations and that when satisfied that the land no longer contains an amount of chemical product or other substance that would lead to an excessive residue limit in an agricultural product must cancel the notice.

Clause 53 SAT review: residue management notices
A review by the SAT is available for a person aggrieved by a decision to give or not to cancel a residue management notice or by a refusal of an inspector to give an approval under a residue management notice.

Clause 54 Registration of memorial
The clause provides that a memorial may be lodged in respect of a residue management notice and requires a notice of release to be lodged when the residue management notice ceases to be in force.

Clause 55 Dealing with certain land
This clause allows a memorial to provide that after it is registered no dealing with the land is to be registered without the consent of the Director General (unless a notice of release has been registered). This is to ensure that the Director General is given an opportunity to advise a prospective owner in relation to the residue management notice. If dealing is prohibited without consent of the Director General instruments may nevertheless be lodged with and accepted by the Registrar of titles and once a notice of release is registered the dealing will take effect as though the memorial had not been registered.

Division 2 – Chemical products

The manufacture and supply of agricultural and veterinary chemical products is controlled under the national registration system administered by the Australian Pesticides and Veterinary Medicine Authority. Control of the use of agricultural and veterinary chemicals beyond the point of sale is a matter for separate State legislation. The BAM Act and regulations will be Western Australia's legislation for this purpose.

Clause 56 Dealing with chemical products

This clause relates to regulations that will control the use of agricultural and veterinary chemicals. It makes it an offence to deal with chemical products other than in accordance with the regulations. It applies to a person who acquires, supplies, uses, stores, handles or transports a chemical product. It refers to regulations requiring a person to have a prescribed qualification or authorisation or to give notice of or keep records in relation to the dealing with the chemical products as well as to regulations simply requiring the dealing to be in accordance with the regulations. As well, under subclause (4), the regulations can require advice on dealings with a chemical product to be provided in accordance with the regulations.

In relation to agricultural chemicals, the regulations will rationalize the operation of the existing legislation administered by the Department of Agriculture and Food with the Health (Pesticides) Regulations under the Health Act. Currently, these cover the licensing of pest control operators other than aerial spray operators.

Clause 57 Dealing with things that are treated, or not treated, with chemical product or are contaminated

This clause refers to regulations that will impose duties and obligations in relation to dealing with, or providing information in relation to animals, agricultural products, animal feeds or fertilisers that have been treated, or not treated with chemical products or are contaminated (as defined in clause 6).

Regulations contemplated by this clause could include, for example, regulations requiring the permanent identification of ruminant animals that had consumed restricted animal material and regulations relating to declarations that stock has not been treated with hormonal growth promotants.

Clause 58 Certain agreements void

Subclause (1) prevents a party to an agreement from “contracting out” of the application of the Act in relation to the treatment of an agricultural product with a chemical product. For example, if regulations require stock to not be sold within a certain period of treatment with a veterinary chemical, then an agreement to supply the stock within that time is void.

Under subclause (2) it is an offence to agree to supply an agricultural product under an agreement that is void under this section.

Subclause (3) concerns an agreement for the supply of an agricultural product which contains provisions about the product having been treated with a chemical product or declared not to be treated with a chemical product. If any requirements imposed under the Act in relation to such treatment or any system of declarations or returns that apply have not been observed or met, then the agreement is voidable (able to be set aside) by the purchaser. This means, for example, that if the regulations require stock to be covered by a declaration by the supplier that the stock has not been treated with a particular chemical then if that declaration is not provided the purchaser is entitled to choose not to proceed with the contract.

Subclause (4) makes it clear that a purchaser under a void or voidable agreement is not prevented from claiming damages suffered and may recover any amounts paid under the agreement.

Division 3 – Adulteration of agricultural products or animal feed

This Division is concerned with preventing tampering with agricultural products or stock feed as a tactic for political protest against industry methods or trading partners. Attempts by animal rights activists to prevent the export of live sheep to the Middle East by contaminating stock feed with pig meat in Portland, Victoria in 2003, have highlighted the need to establish offence provisions to deter this kind of damaging activity.

Clause 59 Meaning of terms used in this Division

As well as to 'contaminate' or 'interfere with' the term "adulterate" includes making it appear that the product or feed has been adulterated because a pretended adulteration can be just as effective in causing alarm or loss as an actual adulteration.

For obvious reasons the term "animal feed" in this Division includes water intended for stock to drink.

Clause 60 Adulterating goods to cause public alarm or economic loss

An offence against this section is committed if the adulteration is intended to cause public alarm or anxiety or economic loss or if the person is reckless as to whether public alarm or anxiety or economic loss is caused. This means the provision would cover a person who, for example, adulterates animal feed with the intention of saving animals from live export but who, while not intending to cause economic loss, does not consider or care whether economic loss would be caused.

Clause 61 Threatening to adulterate goods to cause public alarm or economic loss

It is also an offence to threaten to adulterate agricultural products or stock feed with the intention of causing or being reckless as to public alarm or anxiety or economic loss because threatening something can be just as effective as actually carrying out the threat, particularly if it is not possible to establish whether or not the threat has been carried out.

Clause 62 Making false statements concerning adulteration of goods to cause public alarm or economic loss

Similarly, a false statement that agricultural products or animal feed has been adulterated is capable of causing as much public alarm or anxiety or economic loss as an actual adulteration.

Part 4 – Inspection and compliance

Division 1 – Preliminary

Clause 63 Meaning of terms used in this Part
"Dwelling" is defined to include a mobile home.

A "Mobile home" is a conveyance that is used for human habitation, and is mostly stationary at a single location but it does not include a vessel. This means that a boat is not subject to the entry warrant provisions of this part whether or not it is used as a dwelling.

Division 2 – Inspection and other functions

Clause 64 Purpose for which an inspection may be carried out
This clause sets out the purposes for which an inspection may be carried out. The clause is designed to cover any purpose for which an inspection could legitimately be needed, namely:

- To search for and inspect anything regulated by the Act;
- To search for and inspect relevant records;
- To ascertain whether the Act or an instrument issued under the Act is being complied with;
- To search for and obtain evidence of a contravention of the Act;
- For another prescribed purpose.

Clause 65 Entry and access to place or conveyance and inspection powers
This clause details specific powers that may be exercised for the inspection purposes listed in the previous clause, and of certain limits on those powers. The powers include those generally required to facilitate an inspection (for example paragraphs (1)(e), (f) (g) (k) (l)) as well as those of particular relevance to agricultural situations (paragraphs (1)(h), (i), (j)).

Importantly, entry to a dwelling requires the consent of the person apparently in control of the dwelling or an entry warrant (paragraphs (c) and (d)).

Under subclause (2), when consent is required to enter a dwelling the inspector must first inform the person that the inspector seeks to exercise the power of entry, of the reasons why and of the person's right to refuse consent. This is to ensure that the person in charge of the dwelling is properly informed of their rights in the situation and is not led to believe that consent cannot be refused.

Under subclause (3) before an inspector enters a conveyance or a place that is not a dwelling or patrols or inspects boundaries, reasonable steps must be taken to inform the owner, occupier or person in charge of the intention to exercise the power. This will ensure that a person has adequate information as to what is going on and will not be caught by surprise at some-one mooching around their property. This may be important, for example, in the case of large pastoral properties where there may be a risk that the unknown presence of an inspector could endanger that inspector.

On the other hand, if providing the information might itself endanger a person, or jeopardise the purpose of the entry or the effectiveness of the search (if, for

example there is a risk of evidence being destroyed) then the intention to exercise the power need not be disclosed. And notice of intention to exercise the powers doesn't have to be given in a public place, as defined in subclause (4).

Clause 66 Obtaining records

This clause is concerned with obtaining access to relevant records for inspection purposes. A "relevant record" is a record:

- that contains information about the storage, handling, transport, possession, supply, use or distribution of organisms, agricultural products, potential carriers, chemical products, animal fee or fertilizers – in other words the things regulated by the Act; or
- is required to be kept under the Act; or
- contains information that is relevant to a contravention of the Act.

Subclause (2) lists the directions that may be given and the things that may be done by an inspector to ensure adequate access to relevant records.

Where an inspector has a relevant record the inspector must nevertheless, if practicable, allow reasonable access to it to a person who otherwise would have that access.

Clause 67 Other directions

This clause is concerned with other directions that may be given to a person to facilitate the work of an inspector. Broadly, the various directions listed in subclause (1) are aimed at obtaining information or obtaining assistance in carrying out an inspection by, for example, requiring things to be moved (or not moved), identified or labelled. Where a direction does involve moving something and the direction is not complied with the inspector may do what is necessary to achieve the purpose of the direction, including (subclause (3)) moving a conveyance.

Division 3 – Entry warrants

Clause 68 Applying for entry warrant

This clause enables an inspector to apply to a justice for an entry warrant which will authorise the entry of a place for inspection purposes. An application may be made even if the place may be entered without a warrant. An application must be made in accordance with section 69 and must contain prescribed information.

Clause 69 Applications, how they are to be made

An application must be made in person before a justice unless the warrant is needed urgently and the applicant reasonably suspects that a justice is not available within a reasonable distance. In that case it may be made by remote communication (telephone, fax, email, radio) but the justice is not to grant it unless satisfied that these circumstances do apply.

An application must be made in writing unless it was made by remote communication and it is not practicable to send the justice written material. In

such a case it may be made orally and the justice must make written record of the application and any information given in support of it.

An application must be made on oath unless it was made by remote communication and is not practicable for the justice to administer an oath. In that case it may be made unsworn and if a warrant is issued the applicant must send the justice an affidavit verifying the application and the information given in support.

Under subclause (6), if a warrant is issued after an application by remote communication the justice must, if practicable, send a copy of the original warrant to the applicant by remote communication.

Otherwise, the justice must send the applicant the information to be set out in the warrant, the applicant must complete a form of warrant and send a copy to the justice as soon as practicable and the justice must attach the copy of the form to the original warrant and any affidavit received from the applicant and make them available for collection by the application.

The copy of the original warrant sent out by remote communication, or the form of warrant completed in accordance with subsection (6) has the same effect and force as the original warrant.

It is very important that the formalities of this section are complied with. If an applicant fails to provide the justice with an affidavit verifying an unsworn application or a copy of the completed form of warrant then any evidence obtained under the warrant is inadmissible in court proceedings.

Clause 70 Issuing an entry warrant
A justice may issue an entry warrant if satisfied that it is necessary for an inspector to enter a place for inspection purposes. A warrant must contain a description of the place to be entered, the inspection purpose, the period in which it must be executed, the time and date of issue and any other prescribed matter.

Clause 71 Effect of entry warrant
This clause provides that a warrant has effect according to its content and this section and may be executed by any inspector.

Subclause (3) sets out the purposes for which an inspector may seize a declared pest, unlisted organism (or other prescribed thing) or evidence of contravention that he or she comes across by chance that is not specified in the warrant. These are: to prevent the thing from being sold, lost or otherwise disposed of, to preserve its evidentiary value, to submit it for analysis or to prevent the commission of an offence.

Clause 72 Report on entry and search
An inspector must give a written report of the result of an entry and search under warrant to the Director General.

Division 4 – Seizure, treatment, destruction and recall powers

Clause 73 Power to seize, treat or destroy

Subclause (1) sets out an inspector's power to seize and detain things that are regulated by the Act.

Under paragraph (a) an organism or potential carrier may be seized and detained:

- until it can be determined whether it was imported in contravention of the import restrictions, it is a declared pest or it is infested or infected with a declared pest or contaminated; or
- until it is treated, destroyed, disposed of or otherwise dealt with under subclause (2).

Under paragraph (b) an agricultural product, animal feed, fertiliser, chemical product or other substance or thing may be seized and detained until it can be determined whether it is infected or infested with a declared pest or contaminated.

Under paragraph (c) any of these things may be seized and detained where there are reasonable grounds to believe that an offence has been committed in relation to them, that an organism is a declared pest or that the thing is infected or infested with a declared pest or contaminated.

Subclause (2) prescribes what can be done when something is seized:

- The person from whom it is seized may be directed to keep it as directed by the inspector (paragraph (a)).
- The inspector may remove and keep it (paragraph (b)).
- It may be treated to control, or lessen the risk of spread of declared pests or unlisted organisms (paragraph (c)).
- Subject to subsection (4):
    - it may be destroyed, disposed of or otherwise dealt with (paragraph (d)(i));
    - The person may be directed to destroy, dispose of or otherwise deal with it (paragraph (d)(ii)); or
    - It may be forfeited to the Crown (paragraph (d)(iii)).
- Under paragraph (e) the thing may be restored to the person, subject to any directions the inspector thinks fit to make under section 77 or 79. These sections deal with directions to treat or dispose of something whether or not it has been seized.

Subclause (3) provides that a thing can be treated under subclause (2)(c) whether or not it is infected or infested with a declared pest or unlisted organism. This allows for the situation where it is not possible in the circumstances to determine whether something is infected or infested but it is necessary or prudent to treat it to avoid the risk that it is.

By subclause (4) an action must not be taken under subclause (2)(d) (destruction etc or forfeiture) until the time has passed for an application for a review by SAT or until any such application has been dealt with.

Clause 74 SAT review: seizure
This clause enables a person aggrieved by the seizure of anything under section 73 to apply to the State Administrative Tribunal for a review of the decision to seize the thing. In dealing with the application the SAT may determine whether the thing seized must be destroyed, disposed of, forfeited to the Crown, restored to the person or otherwise dealt with.

Subclause (3) makes it clear that these provisions do not limit the powers the SAT has under its own Act in relation to orders that it may make.

Subclause (4) provides that the regulations may prescribe circumstances in which a person will not be able to apply to the SAT for a review under this section. These might include, for example, circumstances involving a highly perishable product or a serious declared pest at a crucial stage of its life cycle.

Clause 75 SAT review: forfeiture
This clause enables a person aggrieved by a declaration that something seized is to be forfeited to the Crown, to apply to the SAT for the review of the declaration.

Again, subclause (2) provides that the regulations may prescribe circumstances in which person will not be able to apply to the SAT for a review under this clause.

Clause 76 Power to direct that organism or potential carrier be moved for treatment
This clause provides for an inspector to direct a person to take an organism or potential carrier to a specified place to be treated. Such a direction may be given whether or not the organism or potential carrier is infected or infected with a declared pest or unlisted organism. This allows for the situation where it is not possible to know whether something is infected or infested but the treatment is necessary to avoid the risk that it may be.

Subclause (3) requires the direction to be in writing, and inform person of the consequences of non–compliance with the direction.

Clause 77 Power to direct person to treat, refrain from treating, destroy or dispose of thing
This clause allows an inspector to direct a person to treat, refrain from treating, destroy or dispose of something if the inspector believes that an offence under the Act has been committed or the thing is infected or infested with a declared pest or unlisted organism or is contaminated. This direction can be given whether or not the organism or potential carrier has been seized or detained. It will be used when it is more appropriate or convenient to have the treatment carried out by owner or person in charge of the relevant thing than by an inspector.

A direction to refrain from treating would be used where it was necessary to allow a disease to appear in order to confirm infection. It would prevent the use of a treatment that could mask the appearance of a disease by alleviating symptoms without curing it.

Under subclause (3) an inspector can direct a person to deliver-up or destroy a specified declared pest of which they have possession and, if necessary, to produce evidence that it has been destroyed.

A direction must be in writing, and inform the person of the consequences of non–compliance with the direction.

Clause 78 - SAT review: section 77 direction
This clause enables a person aggrieved by a direction to treat, refrain from treating, destroy or dispose of thing to apply to the SAT for a review of the direction. The commencement of proceedings has the effect of staying the operation of a direction to destroy (subclause (2)).

The effect of the references to the SAT Act section 25(6) and (7) in subclause (3) is that in relation to a direction that is stayed, the Tribunal may require undertakings as to costs or damages and make an assessment of these and may make provision for the lifting of the stay if specified conditions are met.

Subclause (4) provides that the regulations may prescribe circumstances in which person will not be able to apply to the SAT for a review under this clause.

Clause 79 - Treatment or destruction to prevent risk
This clause will apply where it cannot be established that an organism or potential carrier was imported or brought from one area of the State to another in accordance with the Act. If the Director General is not satisfied that it was brought into the State or the area in accordance with the Act then the owner may be required to treat or destroy the organism or potential carrier.

This power is necessary in respect of diseases that may not become apparent for a significant length of time (and for this reason it is also necessary to be able to apply the power to the progenitor or progeny of a relevant organism). A plant that is a potential carrier of such a disease will be prohibited from entry to the State. If a plant is found that is suspected to have come in illegally it will need to be treated or destroyed to prevent the risk it would pose if it was, in fact, infected.

Although in some cases it may be necessary, in order to prevent the spread of a declared pest, to order the destruction of the progeny of an organism as well as the organism itself, subclause (2) prevents this applying if the progeny was not produced from the organism in W.A. but was brought in legally (separately).

A notice must be in writing, and provide information to a person about the consequences of non–compliance with the notice.

Contravention of a notice is an offence unless the person has a lawful excuse for the contravention.

Clause 80 - SAT Review treatment or destruction notice
There is a right of review by SAT of a clause 79 notice and where a review is sought of an order to destroy the order is stayed. As under clause 78, relevant provisions of the SAT Act can apply and as with other reviews, the regulations may specify circumstances in which there is no ability to apply for a review.

Clause 81 - Provisions do not limit making of regulations
The provisions in clauses 73, 77, and 79 about directions for seizure, treatment and destruction do not limit the ability to make regulations about these matters as is contemplated by Schedule 1 (for example, item 7).

Clause 82 - Inspector may direct removal of organism or potential carrier
Under this clause a person can be directed to remove from the State or an area an organism or potential carrier that has been imported in contravention of the import restrictions of clause 14 or that is infected or infested with a declared pest. This provides an alternative to the treatment or destruction options.

Clause 83 - SAT review: direction to remove from State
There is a right to review of a direction to remove something but the organism or potential carrier may be detained until the review takes place. Here again, the regulations may specify circumstances in which a review will not be available.

Clause 84 - Recall of organism or substance
This clause provides a capacity to deal with supply of a "recallable substance" – an agricultural product, animal feed, fertiliser or other thing (or batch or these things) which is infected or infested with a declared pest or contaminated or is a prohibited organism.

A person who has possession or control of a prohibited organism or a recallable substance may be given a written notice:

- not to supply the thing or to stop supplying it;
- to recover stocks of the thing from persons to whom it was supplied.
- To take any specified action to prevent or reduce any harmful effects that may have resulted from the use of the thing;
- To destroy stocks of the thing or deal with them as directed;
- To report on action taken.

This provision would be used, for example, where a batch of a particular stockfeed was found to be contaminated with restricted animal material.

An offence is committed if a notice is not complied with unless the person has a lawful excuse.

Clause 85 - Notice may be published
A notice under clause 84 may be published but is not required to be. A notice would be published where wide awareness of the notice would assist in achievement of its purpose, eg; where a large amount of a contaminated animal feed had been supplied to the public. In other situations publication would not be necessary, or could prove counterproductive.

Clause 86 - SAT review: recall notice
The standard provision for review by the SAT and ability to prescribe circumstances in which review will not be available. Where a requirement to destroy is involved the commencement of the proceedings has the effect of staying the operation of the requirement and relevant provisions of the SAT Act can apply.

Clause 87 - Remedial action
This clause authorises the taking of remedial action by the Director General and the recovery of the cost of that remedial action. The type of action that may be taken is set out in clause 94. Remedial action may be taken for:

- Failure to comply with a direction to take something to a specified place for treatment (s.76(1)(a));
- Failure to comply with a direction to treat, refrain from treating, destroy or otherwise dispose of something;
- Failure to comply with a requirement to treat or destroy a prohibited organism or potential carrier (to prevent risk – s.79)
- Failure to comply with a requirement of a recall notice.

Division 5 – General

This Division contains a few general provisions about compliance with directions.

Clause 88 - Time and place for compliance
Of course, an inspector may specify the date, time and place for compliance with a direction.

Clause 89 - Direction may be given orally or in writing
A direction may be given orally or in writing. An oral direction must be confirmed in writing within 5 working days but failure to comply with this requirement does not invalidate the direction.

Clause 90 - Exercise of power may be recorded
An inspector may record the exercise of a power and that includes an audiovisual recording.

Clause 91 - Use of force and assistance
This clause authorises an inspector to use such assistance and force as is reasonably necessary in the circumstances for carrying out a function under the Act. If this is likely to cause significant damage to property the inspector must first get the authority of the Director General.

An inspector may request a police officer, a (licensed) security officer or other person to assist him/her and while assisting, that person has the same functions, liability and protection as an inspector.

Clause 92 Offences
This clause lists the offences relevant to the inspection and compliance provisions. In each case an offence is committed only if the person does something "without lawful excuse". This allows for the fact that something that would otherwise be illegal may be justified in the particular circumstances. The offences are:

- Wilful obstruction, hindrance or resistance of an inspector or person assisting.
- Failure to comply with a direction or other requirement of an inspector.

It is also an offence to wilfully make a false or misleading statement.

Clause 93 Self- incriminating information
There is no right to refuse to provide information on the ground that it is self-incriminating. However, if a person objects to giving information (on the grounds of self-incrimination) before giving that information then that information cannot be used as evidence against the person in any civil or criminal proceedings except in proceedings for perjury or offence under the Act arising out of giving false or misleading information. (In other proceedings, the information may be used, but not against the person who gave it.)

If the given information was recorded in writing or otherwise and the person has made an objection on the ground of self-incrimination, the facts of the objection are to be included in the record.

Division 6 - Remedial action by Director General

Clause 94 Taking remedial action
This clause authorises the Director General to take remedial action under section 37 (for failure to comply with a pest exclusion notice a pest control notice or a pest keeping notice) or section 87 (for failure to comply with a direction or requirement of an inspector) or the regulations. The Director General may do anything that has not been done as required and anything incidental to that.

Subclause (2) provides that the regulations may make provision for the determination of, and the payment and recovery of, the costs.

Even if remedial action is taken and the cost recovered a person remains liable to be proceeded against and fined for an offence.

Clause 95 Charge on land to secure cost of remedial action
This clause provides that the amount payable in relation to the remedial action is a charge on the land (an interest in the land) to secure the cost of the remedial action. This is the case even if the amount is not yet due and

whether or not a memorial of the charge has been registered on the land title. A memorial of the charge may be lodged with the Registrar of Titles if the charge amount is not paid by the due date or a cheque bounces.

Subclauses (4) and (5) provide that the liability of the owner to pay remains despite any disposition of the land and if a memorial of the charge has been registered the subsequent owner becomes liable for payment.

Subclause (6) provides for the proportional distribution of a charge amount over land comprising a number of separate lots or parcels.

Subclause (7) provides that this section does not apply to land owed by a public authority or the State.

Clause 96 Priority of charge
When a memorial of a charge on land is registered the charge has priority over all other mortgages, charges and encumbrances on the land except other first ranking statutory charges, in which case the priority is determined according to the order of registration.

Clause 97 Dealing with certain charged land
Under this clause, a memorial of a charge may provide that after it is registered no further dealings with the land can be registered without the consent of the Director General until a notice of release (from the charge) is registered. Under subclause (2) an instrument relating to a dealing with the land can be lodged and accepted by the Registrar of Titles and can then be registered when a notice of release from the charge has been registered (subclause (3)).

Clause 98 Recovery of unpaid charge amount
This clause empowers the Director General to exercise powers conferred on mortgagees by the *Transfer of Land Act 1893* (with modifications for alienated land not under the operation of that Act) or the *Land Administration Act 1997* (where the land is the subject of a Crown lease or licence) in order to recover an unpaid charge amount. This means the land may be sold to recover the debt.

Clause 99 Certificate of charge amount
This clause provides that on the application of the owner or purchaser of the land, the Director General must issue a certificate stating whether there is a charge over the land and if so the charge amount - or at least an estimate of it. Once a certificate has been issued the Director General cannot claim the existence of a charge not included in the certificate or a different amount – except where it was only an estimate. The issue of a certificate may attract a fee.

Clause 100 Release of land from charge
When the charge amount of a registered charge is paid the Director General must give a notice of release to the owner to be lodged with the Register of Land Titles.

Division 7 – Registration of memorials and notices affecting land

Clause 101 Approved form of memorial and notices
A memorial or notice that is to be lodged with the Registrar of Titles must be in a form approved by the Registrar, who may request further information from the Director General.

When a memorial is lodged for registration the Registrar must register it – there is no discretion involved.

Clause 102 Exemption from stamp duty and registration fees
This clause provides that the registration of a memorial or notice is exempt from stamp duty and registration fees. The government is not required to pay government charges.

Clause 103 Notice to mortgagees
When a memorial or notice is registered the Director General is required to notify all mortgagees who hold registered mortgages but failure to do so does not invalidate registration of the memorial.

Part 5 - Legal proceedings

Division 1 – legal proceedings

Clause 104 Prosecutions, who may commence
A prosecution for an offence against the Act may only be commenced by the Director General or person authorised by him/her.

Clause 105 Time for bringing prosecution
As a general rule a prosecution must be commenced within 5 years after the date on which the offence is alleged to have been committed, but there is also provision for prosecution within 5 years after evidence of the offence first came to the attention of a person authorised to prosecute (subclause (2)). For this to apply that day needs to be specified in the prosecution notice and the day the offence was committed need not be.

Subclause (3) provides that the day specified in the prosecution notice is the day on which evidence first come to the attention of a person authorised to prosecute.

Clause 106 Court's power to make ancillary orders on conviction
This clause sets out what a court convicting a person can do in addition to imposing a penalty. It may:

- order the offender to notify specified persons of the commission of the offence and the conviction of the offender;
- order notice of the commission of the offence and the conviction to be included in an annual report. Use of this provision might be appropriate in the case of a company where it is in the public interest

that potential investors know that the company has been convicted of an offence;
- order the offender to take specified measures to prevent, control, abate or mitigate damage caused or to prevent any continuation or repetition of the offence.
- order the payment of costs incurred in repairing any damage resulting from the offence;
- make any other appropriate order.

Clause 107 Order as to costs of analysis
In a case where evidence of an analysis is given an order may be made for payment of the costs of and incidental to the obtaining of the analysis and the giving of evidence as to the analysis – regardless of the outcome of the proceedings and any other order as to costs.

Clause 108 Penalties for continuing offences
This clause provides that the penalty for continuing offences is a fine of $1000 for an individual and $5 000 for a body corporate. A continuing offence is an offence described in section 71 of the *Interpretation Act 1984*. Where something is required to be done within a particular period or before a particular time and an offence is committed by failure to do the thing within or at the required time, then for each day after the conviction that the failure continues a separate and further offence is committed. Similarly, when something is required to be done but no time is specified, for as long as the failure continues after conviction for an offence a separate and further offence is committed each day.

Clause 109 Injunctions to ensure compliance with this Act
This clause authorises the Director General to apply to the Supreme or District Court for an injunction to restrain a person from doing something that would constitute an offence, or aiding, abetting, counselling or procuring the commission of an offence, or conspiring or attempting to commit an offence. An order may also be sought enjoining a person to do something they are required to do.

The ability to grant an injunction does not depend on a person having previously committed the offence or on whether they would be likely to commit the offence (Subclause (3)).

An interim injunction may be granted pending final determination of the application (subclause (4)) and this can not be made conditional on an undertaking being given as to damages or costs (subclause (5)).

The taking of proceedings against a person for commission of the offence, is not affected by an application for an injunction or the outcome of the application.

Division 2 – Responsibility of certain persons

Clause 110 Liability of body corporate's officers
This clause governs the liability of an officer of a corporation for an offence under the Act that is committed by the corporation.

"Officer is defined by reference to the Commonwealth Corporations Act where it means, in essence:

- a director or secretary of the corporation; or
- a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation or who has the capacity to affect significantly the corporation's financial standing or in accordance with whose instructions or wishes the directors of the corporation are accustomed to act.

The term expressly excludes an employee of a body corporate unless that employee was concerned in the management of the body corporate.

If a body corporate is charged with an offence an officer may also be charged with the offence and if the body corporate is convicted, the officer is taken to have also committed the offence but this is subject to the availability of the defence provided in subclause (6). As well, if a body corporate commits an offence an officer may be charged even if the body corporate itself is not charged (subclause (4)) and if it is proved that the body corporate committed the offence the officer is to be taken to also have committed the offence, unless the defence applies (subclause (5)).

It is a defence to a charge against an officer to prove that the offence was committed without the consent or connivance of the officer and that the officer took all reasonable measures to prevent the commission of the offence, having regard to the officer's functions and all of the circumstances surrounding the offence.

This clause strikes an appropriate balance between the need to hold individuals accountable for acts and omissions of a body corporate where those individuals are in a position of responsibility in relation to that body corporate and the need to maintain the notion of corporate identity and ensure that no individual is held liable for something that they had no means of controlling.

Clause 111 Liability of principal for acts of agent
Under this clause the same liability as an officer of a body corporate applies to a principal for offences committed by an agent and the same defence is available.

Clause 112 Liability of employer for offence of employee
In the same manner an employee is liable for an offence committed by an employee unless the defence applies.

Division 3 – Evidentiary provisions

Clause 113 Meaning of "specified"
Defines "specified" in relation to a claim, prosecution notice or other document – it means specified in that document.

Clause 114 Proof of exemptions
This clause provides that in any proceedings under the Act a person who asserts certain things has the onus of proving the assertion.

This applies if a person claims to be exempted from a provision of the Act, claims that they have lawful or reasonable excuse for doing or not doing something or claims that a person, organism or thing was not in the State.

This is a logical and necessary provision to facilitate the effective prosecution of an offence. It is not sufficient that a person simply make the claim that they are exempted or excused from something without being required to prove it.

Clause 115 Evidence of place of offence
This clause provides that an allegation in a prosecution notice regarding a place is, in the absence of evidence to the contrary, proof of what is alleged in that regard. This would apply where, for example, a person was alleged to have been at a place within an area in which a particular animal is a declared pest. It would not have to be proved that the place was within the relevant area or that the person was at that place unless the person offered evidence that they were some-where else – in which case the prosecution would have to prove what was alleged in the prosecution notice. Consequently this does not amount to a reversal of the normal burden of proof.

Clause 116 Evidence of seller or packer of container
A similar provision applies where it is alleged that a person is the seller or packer of a container on which their name appears.

Clause 117 Evidence of purpose or intent
A similar evidentiary provision in relation to acts alleged to have been done for a specified purpose or with specified knowledge or intent. Knowledge and intent are of course difficult to prove and in the absence of evidence to the contrary, will not have to be proved – as long as the act itself is proved. Only if evidence is raised that a person did not have the requisite purpose, knowledge or intent will the prosecution be required to prove that they did.

Under subclause (2) the same presumption of proof applies in relation to the supply of something or the supply of something to a specified market.

Clause 118 Evidence of authorisation and enforcement matters
This clause lists various things relating to authorisations and exemptions under, and compliance with, the Act that are, if alleged in the prosecution notice, taken to be proven unless there is evidence to the contrary.

Under subclause (2), where a notice, authorisation or exemption is required to be proved it may be proved by tendering a copy certified by the Director General to be a true copy of the original.

Clause 119 Evidence of scientific matters
In the same manner this clause facilitates proof of the report of an approved analyst (subclause (2)) and of correct sampling of material (subclause (3)).

Under subclause (4), where proof is given of the contents of a sample analysed under the Act and of the sample being taken in accordance with the regulations, then the sample is taken to be representative of the material sampled.

Clause 120 Evidence of type or class of organism or thing
The list here is of allegations relating to the status of something as one of the various entities that are, or may be, regulated under the Act. These include permitted, prohibited and unlisted organisms and declared pests, chemical products animal feed and fertilisers. Each of the relevant allegations will be taken to be proved in the absence of evidence to the contrary.

Clause 121 Documentary and signed evidence
Under subclause (1) proof of the contents of a code or other document adopted by the regulations, a code of practice or a declaration (of a permitted or prohibited organism or declared pest) at a particular time or period may be given by production of a copy of the document certified by the Director General as a true copy as at that date or period.

Under subclause (2) signatures of the Minister, the Director General, an inspector and an approved analyst are presumed to be the signatures of people who held those positions at the time. Under subclause (3) where a delegate signs a document it is presumed that the person signing was a delegate and was authorised to sign it.

Clause 122 Evidence of documents and service
Subclause (1) applies in proceedings where a document issued to a party has to be proved.

- The party is taken to have received notice to produce the document;
- The document may be proved by production of a certified copy of the original; and
- Due service of the document may be proved by the certificate of the person authorised to issue it.

Subclause (2) provides that the validity of any document or its service is not affected by any error, misdescription or irregularity which is not misleading.

Clause 123 Evidence of ownership or occupancy
Subclause (1) lists means of proving the ownership or occupancy of land. Many of these relate to a certificate issued by an official under other Acts. Subclause (2) requires courts to take judicial notice of a signature on one of

these notices. (When judicial notice is taken of something it is not required to be proved.)

Subclause (1) will only be needed if evidence is raised that a person was not the owner or occupier of land. Otherwise an averment to that effect in a claim, prosecution notice or other document will be taken to be proved.

Clause 124 Provisions are in addition to Evidence Act 1906
The evidentiary provisions of this Division are in addition to and do not affect the operation of the *Evidence Act 1906.*

Division 4 – Modified penalties for certain offences

Clause 125 Meaning of terms used in this Division
The terms "alleged offender" (which is self-explanatory) and "prescribed offence" are defined. A "prescribed offence" is an offence prescribed (by regulations) as one for which an infringement notice may be issued.

Clause 126 Infringement notices
This clause authorises the issue of an infringement notice within 21 days after a prescribed offence is believed to have been committed.

Subclause (2) sets out the formalities of an infringement notice. Importantly, it must advise the alleged offender that if he or she does not wish to be prosecuted for the alleged offence the modified penalty must be paid within 28 days of the date of the notice.

The amount of a modified penalty is to be the amount applying as a modified penalty at the time the alleged offence is believed to have been committed (subclause (3)). Under subclause (4), the Director General may extend the period of 28 days within which the modified penalty may be paid.

Clause 127 Withdrawal of infringement notice
This clause empowers the Director General to withdraw an infringement notice using a prescribed form of withdrawal notice. An infringement notice may be withdrawn whether or not the modified penalty has been paid and in a case where it has been paid the amount paid must be refunded.

Clause 128 Effect of payment of modified penalty
Payment of a modified penalty within the time allowed, and unless the notice is withdrawn, prevents court action being taken in relation to the alleged offence and payment is not to be regarded as an admission for the purposes of any proceedings whether civil or criminal.

Part 6 - Financial provisions

This part deals with 3 different financial matters:

- A land rates system to raise funds for the control of declared pests;
- Industry funding schemes that may be set up by regulation; and
- A Modified Penalties Revenue Account.

Division 1 – Declared Pest Account

This Division covers the raising of rates for the Declared Pest Account. This will allow the continuation of the successful funding arrangements in pastoral areas that are established under the *Agriculture and Related Resources Protection Act 1976*, for the management and control of declared pests in that region.

Subdivision 1 - General

Clause 129 Meaning of terms used in this Division

This clause contains definitions for the purpose of the rating Division. Three are completely self explanatory and three are defined by reference to other Acts as follows:

- **"Commissioner"** means (by reference to the *Taxation Administration Act 2003* (TAA)) the Commissioner of State Revenue.
- **"operating account"** means an operating account of the department under the *Financial Administration and Audit Act 1985* (FAAA). Under the FAAA a department has one or more operating accounts established in relation to services of the department. The Declared Pest Account will be an operating account or part of an operating account.
- **"owner"** has the meaning it has in the *Land Tax Assessment Act 2002* (LTAA) and includes a person taken to be the owner under section 8 of that Act. In the LTAA "owner" means:

  (a) in relation to land (except an interest in a home unit), means a person who is entitled to the land for any estate of freehold in possession;

  (b) in relation to an interest in a strata title home unit, means the proprietor of the lot as defined in the Strata Titles Act 1985;

  (c) in relation to a non-strata home unit, means a person who is entitled to an exclusive right to occupy the home unit because the person —

  (i) is a shareholder in the body corporate which owns the land on which the building containing the home unit is erected; or

  (ii) is the registered proprietor of an undivided share in the land on which the building containing the home unit is erected; or

  (d) in relation to any liability to pay land tax for land (including an interest in a home unit), if a person or body is taken to be the owner of the land under section 8, means the person or body.

  Section 8 of the LTAA says, amongst other things, that a person is taken to be the owner of land if the person —

  (a) is entitled to the land under any lease or licence from the Crown with or without the right of acquiring the fee simple; or

  (b) is entitled to use the land for business, commercial, professional or trade purposes under an agreement or

arrangement with the Crown, with an agency or instrumentality of the Crown or with a local government or public statutory authority.

Subdivision 2 – Rates imposed on land

Clause 130 Determination of rate

Subclause (1) empowers the Minister to determine a rate that is chargeable for a financial year on land in a prescribed area. This is done by notice published in the Gazette. Under subclause (7), section 42 of the *Interpretation Act 1984* applies so that the rate determination must be tabled in Parliament and is disallowable as if it were a regulation. The rate is for the purposes of the Declared Pest Account.

An area of land must be prescribed for the purposes of this section before a rate may be determined in that area. Subclause (3) requires the class of land on which the rate is chargeable to be specified. When the Act commences rates will continue to be applied on pastoral leases, as currently under the *Agriculture and Related Resources Protection Act 1976*. There are no immediate plans to prescribe any other areas of the State for the purpose of declared pest rating.

Subclause (4) allows different rates to be determined in respect of different land and different classes of land. Subclause (5) allows land to be exempted from a rate determination. Exemptions may be appropriate for land suffering drought or flood, for example.

If a rate is a tax it must be imposed by a separate taxing Act – the Biosecurity and Agriculture Management Rates and Charges Act. To the extent that it is not a tax it can't be imposed by that Act and so will be imposed by the BAM Act (subclause (6)).

Clause 131 Procedure for making rate determination

This clause requires the Minister to consult with owners of the relevant land and other prescribed persons. The consultation process will be prescribed by regulation.

Clause 132 Minimum and maximum rates

A rate may be a flat rate, whereby each landowner is charged the same amount, or an ad valorem rate which is based on the value of the property rated. If a flat rate is imposed it must not exceed the prescribed maximum.

The maximum ad valorem rate must not exceed 10% of the unimproved value of land held under pastoral lease (as currently under the *Agriculture and Related Resources Protection Act 1976*) or 2% of any other land. These maximums are set in the Act because it was thought Parliament may be reluctant to enact ad valorem rating provisions without a specified maximum. Pastoral rates are currently well below 2% and unlikely to come close to the maximum in the foreseeable future.

Subclause 4 means that a minimum or a maximum rates amount may be set and that it does not have to be related to the ad valorem rate that would be payable if no minimum or maximum was set.

Clause 133 Rates amounts
The clause prescribes how the amount payable by way of rates is determined, and to whom it is payable – the Commissioner of State Revenue. Obviously if a flat rate is imposed the rates amount is the amount determined as the (flat) rate. If an ad valorem rate is determined then the rates amount is calculated by applying the rate to the unimproved value of the land at midnight on 30 June in the previous financial year.

Clause 134 Multiple rating
This provision allows rates to be imposed where a mining tenement or petroleum production licence or exploration permit is held in respect of land even though the land may have been the subject of a rate determination in the hands of the holder of another interest in the land.

This will allow land to be rated and rates to be paid by, for example, both the holder of a pastoral lease and the holder of a mining tenement in respect of that land. This could be equitable in a situation where the holders of each interest contribute to the spread of declared pests and/or benefit from the control of declared pests on the land.

Clause 135 Application of *Taxation Administration Act 2003* and *Land Tax Assessment Act 2002*
Since rates imposed under the BAM Act will be payable to the Commissioner of State Revenue, it is logical that the system for assessment and collection of these rates is consistent with the system for the collection of land tax. This is enabled by this clause which refers to the relevant provisions of the Taxation Administration Act and the Land Tax Assessment Act in relation to:

- Recovery of the rates amount.
- Service on agent or representative of the rate payer.
- Time for payment.
- Who is liable to pay.
- Certain persons to be taken to be owners of land.
- Liability of agents or trustees.
- Assessing rates amount payable by joint owners.
- Calculating the unimproved value of part of a lot.
- Information to be given by an occupier or person in possession of land.

Clause 136 Postponement of rates payable by pensioners
This clause allows the holder of a pensioner concession card to claim exemption from liability to pay a rates amount and the payment of those rates is then postponed until the person ceases to hold the land or dies or ceases to be entitled to be exempt – i.e. no longer holds a pensioner concession card.

Subdivision 3 – Establishment and operation of Declared Pest Account

Clause 137 Declared Pest Account
This clause requires the establishment of the Declared Pest Account into which must be paid:

- rates collected
- unpaid rates recovered
- 'matching' amounts from the consolidated fund
- the proceeds of sale of any capital assets purchased using money from the account
- any other amounts lawfully received by the Director General for the purposes of the account

Clause 138 Use of money in Declared Pest Account
The money in the Declared Pest Account will be used for:

- Measures for declared pest control on prescribed land in prescribed situations. The prescription of the land and situations will enable the rates to be used in the areas in which they were collected.
- Public awareness of pest control measures. This will allow, for example, the funding of programs to inform people of declared pest control requirements.
- To purchase capital assets in connection with declared pest control or public awareness. This could allow, for example the purchase of chemical spraying units to control declared pests plants in pastoral areas.
- Payment of the Commissioner's costs of assessing and collecting the rates.
- Crediting any amounts refunded by the Commissioner under section 139.

Clause 139 Appropriations against the Consolidated Fund
Subclause (1) requires the government to match the rates collected with an appropriation from the Consolidated Fund.

Subclause (2) makes it clear that the amount to be matched is the amount payable in a particular year, rather than the amount actually paid.

Where a rates amount is overpaid and subsequently refunded to the ratepayer, this amount must be credited to the Consolidated Fund.

Division 2 – Industry Funding Schemes

This Division provides for the establishment of schemes to allow industry funding of biosecurity programs and compensation for producers who suffer loss as a result of a declared pest in relation to which a scheme operates.

There is a strong rationale for greater industry involvement in funding and decision making for the management and control of pests and diseases that directly threaten a particular sector of agriculture. Where the industry benefits as a whole, it is reasonable to expect the industry sector to contribute funding to a co-operative effort. Schemes set up under this Division can facilitate this.

As in the existing legislation, the Bill places an obligation on landholders and other persons to report and control serious animal and plant pests and diseases. In certain situations, this action may require that orchards, crops, livestock or other affected produce be destroyed in order to control or eradicate declared pests. Schemes set up under this Division can provide compensation for this.

It is intended that regulations under this Division will replace existing industry funding schemes under the *Cattle Industry Compensation Act 1975* and the *Plant Pest and Diseases (Eradication Funds) Act 1974.*

Clause 140 Terms used in this Division
The two terms defined are self explanatory.

Clause 141 Establishment of accounts, management committees and schemes
This clause provides for regulations to establish:

- An account for a specified sector of agricultural activity. (This will be a "prescribed account"). Contributions from producers in the relevant sector will be paid into this account, which will be used for the purposes referred to in section 145.
- A management committee for the account made up of producers, or people with a financial interest in the relevant sector.
- A scheme requiring or facilitating the payment of contributions to the account.

Clause 142 Constitution and administration of prescribed accounts
This clause sets out what a prescribed account will consist of, namely:

- Contributions paid or collected in accordance with the regulations for the purposes of the account. (These will be the regulations establishing the scheme to operate for a particular industry sector.)
- The proceeds of sale of any capital assets purchased using money from the prescribed account. This is to ensure that any money taken from the account to purchase machinery, for example, is returned to the account in the event of the sale of an asset.
- Income from investment. Again to ensure that funds in the account are only used to benefit the account.
- Any other moneys lawfully paid into the account. This could include payments from the Consolidated Fund for the purposes of a prescribed account prior to the collection of contributions from producers as contemplated by section 145(1)(d) and (5).

Under subclause (2), the purpose of a prescribed account must be identified and it is established as an operating account or part of a nominated operating account of the Department.

Clause 143 Management Committee
A management committee established for the purposes of a prescribed account (see section 141(1)(b) is required to advise the Director General on the administration of the account and exercise any other functions conferred

on the committee under the regulations. This ensures the involvement of members of the affected producers in the operation of a scheme. Under subclauses (2) and (3) the regulations may make provision for the constitution and procedures of the management committee but otherwise a committee may determine its own procedures.

Clause 144 Contributions to account – prescribed scheme

This clause sets out certain provisions that apply in relation to a scheme. Importantly, under subclause (1) the regulations may provide for contributions to the account in the manner and on the basis prescribed and for the manner of collection of contributions to the account.

A scheme may provide for circumstances in which contributions may be refunded. This will enable a scheme to allow a producer to opt out of participation in the scheme.

Subclause (3) enables the costs of collecting contributions to be met from those contributions.

Under subclause (4) regulations of a savings or transitional nature may be made where the regulations establishing a scheme provide for the expiry of the regulations on a fixed day. Regulations would fix an expiry date where it was accepted that a scheme needed only to operate for a certain length of time. An example might be where a scheme was needed to deal with an incursion of a particular declared pest and an accurate prediction could be made of how long this would take. An expiry date would assure producers that contributions were not going to be required indefinitely. In other situations an ongoing scheme would be required, such as the existing skeleton weed eradication program.

Clause 145 Application of prescribed account

Subclause (1) sets out the purposes for which a prescribed account may be applied. Whichever of the purposes listed in paragraph (a) that are to apply in any particular scheme must be set out in the regulations establishing the account. These purposes are:

- Payment of compensation for something destroyed under the Act because it is infected or infested with a declared pest specified in the regulations.
- Payment of compensation for an animal or plant that has died because of infection or infestation by a declared pest specified by the regulations.
- The costs and expenses of destroying things as referred to above.
- The costs of programs and other measures approved by the management committee for the control of the relevant declared pest.
- The purchase of capital assets required in connection with these purposes.

Other purposes for which a prescribed account may be applied are:

- Refunds of contributions in prescribed circumstances – e.g. where a producer elects to opt out of a scheme.

- Payment of amounts required to be paid under section 146(3), that is, repayment of moneys advanced by the Treasurer to make up a deficiency in an account (also interest on this).
- The repayment of an amount charged to the Consolidated Fund and used for a purpose specified by the relevant regulations.
- The costs and expenses of administering an account.

Subclause (2) prevents compensation and costs and expenses being paid to a person who has not paid contributions under the scheme in accordance with the regulations. This is to ensure that a producer who decides to opt out of a scheme does not receive the benefits funded by the scheme.

Determination of the amounts of the relevant compensation and costs and expenses will be determined in accordance with the regulations (subclause (3)).

Subclause (4) requires administration costs to be approved by the management committee.

Subclause (5) allows an amount to be charged to the Consolidated Fund for control of a declared pest before the regulations establishing a scheme are made. This provision is to allow urgent government funding of declared pest control prior to the establishment of a scheme on the basis that the amount charged will be repaid when the scheme is established and contributions have been collected.

Subclause (6) allows the regulations to exclude a person from receiving compensation or costs from an account if:

- The person is in default, that is, has failed to pay any required contributions.
- The person has been convicted of an offence of failing to report on a required pest (thereby contributing to the spread of that pest and the damage that may be done by it).
- If a benefit is payable under another written law – this will prevent double-dipping if, for example some costs or compensation was payable under a Commonwealth law.
- In other prescribed circumstances. Where a scheme contains a provision for a person to opt-out of participation in the scheme the regulations will exclude persons who opt-out from receiving benefits.

Clause 146 Treasurer may make advances to a prescribed account in the event of a deficiency

This clause allows the Treasurer to make an advance to an account in the event that the account is not sufficient to make the payments required by the scheme. This would be used where, for example a scheme was established in relation to a declared pest but there was a serious outbreak of that pest prior to the account having amassed sufficient funds to make all the required payments.

Money may be advanced on conditions, including the payment of interest on the amount advanced, and must be repaid when funds permit. Until repaid, moneys advanced by the Treasurer remain a charge on the account.

Clause 147 Review of regulations
This clause requires a review of regulations establishing a prescribed account every 5 years or shorter period if prescribed. This will ensure that a scheme can not continue in operation longer than is necessary.

Division 3 – Modified Penalties Revenue Account

This Division provides for modified penalties collected via the issue of infringement notices to be paid into an account and used for the purposes of the Act. Without this the penalties would be paid into the Consolidated Fund with all other penalties.

Clause 148 Modified Penalties Revenue Account
This clause requires the establishment of the account as an operating account, or part of an operating account, of the department.

Clause 149 Use of funds in the Modified Penalties Revenue Account
The funds in the account may be used for:

- the enforcement of the Act
- the training of inspectors
- the cost of measures to control declared pests
- the costs of programs to promote public awareness of the requirements of the Act.

The amount to be used for these purposes must be determined annually by the Director General and no further amounts from the account may be used for those purposes.

Funds in the account may also be used for other purposes approved by the Minister, in which case the amount to be debited to the account must be determined by the Minister.

Part 7 - Administration

Division 1 – The Minister and the Ministerial Body

Clause 150 Western Australian Agriculture Ministerial Body
The clause establishes the Western Australian Agriculture Ministerial Body as a body corporate with perpetual succession that is to be governed by the Minister. The Ministerial Body is an agent of the State.

The Ministerial Body will replace the Director General as body corporate established under the *Agriculture Act 1988* with the corporate name of “the Chief Executive Officer of the Department of Agriculture”.

Clause 151 Purpose and nature of Ministerial Body
The purpose of the Ministerial body is to enable performance of those Ministerial functions that can more conveniently or appropriately be performed by a body corporate than an individual.

The Ministerial Body and any Ministerial officers employed to assist it are not an “organisation” for the purposes of the *Public Sector Management Act 1995* (PSMA).

If the Minister or ministerial officers were an "organisation" (a non-SES organisation) they would be subject to the provisions of the PSMA Act. The Minister should not be subject to that Act and ministerial officers are already subject to specific provisions of it. An outcome that resulted in ministerial officers being both employees of an organisation and ministerial officers would create problems under the PSMA.

Clause 152 Powers of Minister
Under subclause (2) the Minister is given wide powers that are to be exercised “for the purpose of furthering the best interests of biosecurity or agriculture management”. The powers are to:

- Acquire property – meaning any kind of property whatsoever.
- Participate in any business concern – meaning any kind of business concern - and deal in shares or other interests in or relating to a business concern but this power is subject to the limitations in clause 153.
- Enter into a contract or arrangement.
- Develop and turn to account any technology, software, resources or intellectual property that relates to that purpose.
- Use the resources of the department to provide services for profit.

This clause, together with clause 150 (and others) is designed to remedy shortcomings in the Agriculture Act that prevented the body corporate under that Act participating adequately in research ventures and the commercialisation of intellectual property.

Clause 153 Treasurer to consider proposals under section 152(2)(b)
Before the Minister exercises any power in relation to business concerns the Minister must notify and seek the approval of the Treasurer, unless the proposal is of a kind that the Treasurer has determined need not be notified or is of a kind referred to in section 155 – a body formed for research activities.

If the Treasurer approves a proposal he or she may impose requirements to be complied with in connection with it and under subclause (4) may give directions generally to be complied with in relation to the Minister’s powers to participate in business concerns.

Clause 154 Intellectual property
Specific provision is made for the Minister’s power to protect intellectual property.

Under subclause (2) intellectual property referred to in subclause (1) may be vested in the Minister by the State and held, exploited or disposed of by the Minister.

Clause 155 Minister may join any body formed for research activities
The Minister may become a member of or shareholder in and contribute funds to an Australian research body with a principal objective of research into biosecurity or agriculture management in Australia. The Minister may be represented on the body by any authorised officer of the department and subclause (3) ensures that the Minister is able to fully participate in the activities and functions of the research body.

This clause will enable full participation in research ventures such as the various Co-operative Research Centres concerned with agriculture related research.

Clause 156 Execution of documents by Ministerial Body
The Ministerial Body will have a common seal.

Under subclause (2) a document may be executed by the Ministerial Body:

- By affixing the common seal in accordance with subclauses (3) and (4) – with the authority of, in the presence of and witnessed by the Minister; or
- By being signed on behalf of the Ministerial Body by the Minister; or
- By being signed on behalf of the Ministerial Body by the Director General or another person as authorised under subclause (5).

Subclauses (3) and (4) provide that the common seal of the Ministerial Body can only be affixed to a document if this is authorised by the Ministerial Body and where the seal is to be affixed this must be done in the presence of, and be attested to by, the Minister.

Subclause (5) allows the Ministerial Body to authorise the Director General or another person to sign documents on its behalf. If this authorisation is to include the ability to execute a document as a deed (an instrument that passes an interest, right or property or creates a binding obligation) the authorisation would need to say so, otherwise, by subclause (7), the signed document cannot be regarded as a deed.

It will be presumed that a document has been executed in accordance with this section until the contrary is shown (subclause (6)). Similarly it will be presumed that a seal on a document purporting to be the common seal of the Ministerial Body is in fact that seal until the contrary is shown (subclause (8)).

Subclause (9) allows the use of a facsimile of the common seal or a signature of the Minister or a person authorised to execute documents.

Clause 157 Accountability under this Division
Paragraph (a) means that the accountable officer of the Department (the Director General as chief Executive Officer) is responsible for the financial management of things done by the Minister (or through the Ministerial Body).

Paragraph (b) means that the Department's annual report is required to include a report on the operations of the Minister and Ministerial Body under this Division.

Division 2 – Compiling and publishing essential information

Clause 158 Publication of certain declarations
This clause contains provisions relating to the publication of declarations that an organism is a permitted organism, a prohibited organism or a declared pest.

These declarations are not subsidiary legislation for the purposes of the *Interpretation Act 1984* so, as a general rule that Act's provisions about subsidiary legislation do not apply to declarations. It is not necessary or appropriate that all these provisions apply to declarations and in particular it is not necessary for the publication provisions to apply because publication requirements for declarations are specifically dealt with in subclause (4).

However, under subclause (3) certain specified provisions of the Interpretation Act will apply to a declaration, as if it was subsidiary legislation. One of these is section 43 which contains some general provisions about subsidiary legislation including that it must not be inconsistent with the Act under which it is made, that a power to make it includes a power to amend or repeal it and that it may apply either generally or in specified situations. Only subsection (6) does not apply – which is the power to impose a penalty.

Section 44 of the Interpretation Act also applies to declarations. This will ensure that words or expressions used in declarations are given the same meaning as in the Act. The other provisions applied are found in Part VIII which contains provisions regarding expressions relating to time and distance.

Subclause (4) provides that publication of a declaration may be effected by publishing the declaration in the Gazette or by publishing a notice of it in the Gazette and a notice that particulars of it may be obtained from the department's head office and its website. Publication of a notice rather than full particulars of a declaration would be used where a declaration contained a very extensive list of organisms and it recognises that in fact, the department or its website, not the Government Gazette, will be the place people look in order to be informed about declarations under the Act.

Clause 159 Records of status of various organisms
This clause refers to three lists that must be established and maintained by the Director General. These are:

- A list of all organisms for which a declaration under section 10 is in force – these are permitted organisms;

- A list of all organisms for which a declaration under section 11 is in force – these are prohibited organisms; and
- A list of all organisms declared under section 21(2) (declared pests) including the areas for which the organisms are declared pests and the categories, if any, to which the organisms are assigned.

Clause 160 The department's electronic site
There is a specific obligation on the Director General to maintain an electronic site for the purposes of the Act.

Clause 161 Information available on the department's electronic site
This clause prescribes the information that must be published on or accessible through the electronic site. The information is:

- The lists referred to in clause 159 (the permitted organisms list, the prohibited organisms list and the declared pests list.
- Information about how to apply for an import permit.
- Any code or subsidiary legislation adopted by the regulations.
- Each code of practice issued or approved under section 191.
- Any other prescribed information.

Of course, any other information beyond these mandatory requirements may also be published on the site.

Clause 162 Availability of published information
The information required to be published on the website must be available for perusal at no cost at all reasonable times both from the site and at the head office of the department.

Division 3 - Inspectors

Clause 163 Appointment of inspectors
Inspectors will be appointed by the Director General for up to 5 years with eligibility for a further appointment.

Under subclause (4) an appointment as inspector may be subject to conditions relating to which particular functions may be exercised by that inspector or when, where or in what circumstances. This provision is likely be utilized to appoint inspectors with the relevant qualifications and experience for particular matters such as stock identification and movement or disease control or plant disease control.

A criminal record check may be obtained on an inspector or prospective inspector. This will show whether they have a history that may affect their ability to do their job honestly and impartially.

Clause 164 Director General has functions of inspector
The Director General may perform the functions of an inspector and when performing those functions has all the immunities of an inspector. This means, for example, that a person could not take action in tort against the Director General and claim he or she does not have the immunity of an

inspector under clause 187 because they were not an inspector and does not have the immunity of the Director General under that clause because at the time they were performing a function not of the Director General but of an inspector.

Clause 165 Identification cards
Inspectors must be issued with and carry identification cards and if practicable produce this before exercising an inspector's power. Cards must be returned when a person stops being an inspector and failure to return a card is an offence because a card could be used for fraudulent purposes.

Division 4 – Quarantine facilities, inspection points and other places

Clause166 Arrangements for provision of quarantine facilities
The Director General may make arrangements with a public authority or other person for use of a place as a quarantine facility. For obvious reasons any such place must be a "secure place" that may be used for the inspection, treatment, holding or testing of potential carriers. Potential carriers entering the State will be required to go direct to an inspection point. An inspector may then direct the potential carrier to a registered private premise for the purposes of the Act.

Clause 167 Inspection points
The points where inspections will be carried out will be designated or described by a notice published in the Gazette.

Current inspection points are at:

- the Port of Fremantle;
- the Perth Airport terminal buildings;
- Perth mail exchange;
- the Department of Agriculture checkpoint on the Eyre Highway at the Western Australian/South Australian border;
- the Department of Agriculture checkpoint and the Department's premises at Kalgoorlie;
- the Department of Agriculture checkpoint at Kununurra;
- the East Perth Rail Terminal;
- the Kalgoorlie Rail Terminal;
- the Kewdale rail freight yards;
- the Kalgoorlie rail freight yards;
- several regional airports that receive interstate flights.

Clause 168 Use of other facilities
This allows for the use of facilities (other than as quarantine facilities) by arrangement between the Director General and a public authority or other person.

Division 5 – Advisory Groups and recognised biosecurity groups

Clause 169 Advisory groups
This allows the Minister to appoint advisory groups of people with a general or specific interest in a matter regulated by the Act with such functions as are specified in the instrument of appointment. The very non-prescriptive nature of this provision will allow advisory groups to be established, for example, in relation to pest control issues in a particular area of the State, in relation to a particular declared pest or in relation to a particular matter, such as chemicals or fertilisers that is regulated under the Act.

Clause 170 Recognised biosecurity groups
Under this provision the Minister may recognise an existing group as a recognised biosecurity group. To be eligible for recognition a group's purposes must include controlling declared pests in a particular area.

This provision could be used, for example, to recognise groups that will continue the role currently undertaken by Zone Control Authorities under the Agriculture and Related Resources Protection Act or by the Department's network of non-statutory District Consultative Groups that currently operate or by District Species Groups (DSG) that deliver pest control services in certain areas (eg the Northampton DSG which provides services for the coordinated control of foxes, feral pigs and rabbits)

Clause 171 funds available to recognised biosecurity groups
This clause allows a recognised biosecurity group to be provided with funds from the Declared Pest Account to be used for the purpose for which that account may be used under clause 138(a) – to carry out pest control activities in relation to prescribed land in prescribed situations. This purpose must relate to the area for which the rates included in the money were collected (subclause (2)).

Subclause (3) requires written notice of the purposes for which the money is to be used, directions as to using and reporting on the use of the money and timelines for accomplishing the purpose. A group is obliged to use the money within these limitations (subclause (5)) although the timelines may be extended (subclause (4)). These provisions are designed to ensure that the money is used as intended and if it is not, the money must be repaid (subclause (6) or may be recovered (subclause (7)).

Clause 172 Publication of report by recognised biosecurity group
A report by a recognised biosecurity group must be published on the department's website.

Division 6 – Service of documents

Clause 173 Service on the Director General
This clause specifies the means by which a document required to be given to the Director General may be delivered. Under paragraphs (a) and (b) a document may be lodged at the Director General's office or sent by mail and,

under paragraphs (c) and (d) a document may be given by fax or email if this is authorised by the regulations. This caters for the fact that these days most people expect to be able to provide documents electronically.

Clause 174 Method of service
This clause provides for service on a person of a document required to he given under the Act. It may be given personally or left at the person's place of residence or business or posted. If posted, it may be posted:

- to the last known address of the person (Interpretation Act section 75);
- or to an address notified to the Director General (including on recent correspondence) or published by the person; or
- to an address shown in a local government rate book.

It may also be delivered by fax or email where a fax number or email address has been provided - and if agreed it can be communicated in some other way (clause 174(1)(d) and (e)).

Where no address for service can be discovered the document may be given by advertisement in a newspaper in accordance with subclause (2) and service will be regarded as effective whether or not it actually comes to the notice of the person.

Clause 175 Alternate methods of service of documents relating to land
This provides for service of a document relating to land where a person is not in the State and has not notified the Director General of an agent authorised to accept documents for that person. In such a case the document may be given by:

- affixing it conspicuously on the land; or
- posting it to the owner as ascertained by a search of records of the relevant departments under the Transfer of Land Act, the Land Administration Act or the Mining Act or of the Registrar of deeds at the address disclosed by the search.

Under subclause (2) an agent who is managing or has possession of land or collects rents or profits from the land for an owner is taken to represent an absent owner and service on that agent is to be regarded as effective service on the owner.

Clause 176 Service of notice by publication
The clause allows a pest exclusion notice or pest control notice to be given by publication in a newspaper circulating in the relevant area. It must be published at least one month before compliance with the notice is required to commence. Under subclause (2) a notice to be given by publication may be directed to any number of people and is taken to have been given to the owner or occupier of any land specified in the notice and to the owner, occupier or person in charge of any premises or other thing specified in the notice.

This clause would be relied on where a pest exclusion or control notice was to apply over a large area.

Clause 177 Service where more than one owner or occupier
If there are 2 or more owners or occupiers they can nominate an address for service and service of a document on them may be effected by serving it at that address. Where no nomination is made service of a document on all owners or all occupiers may be effected by serving it on one of them.

If an occupier is given a document under the Act that occupier must inform the owner and there is a penalty for failure to do so. Subclause (4) provides that non-service on the owner does not affect the validity of service on an occupier and vice-versa.

Clause 178 Time of service
A document is taken to have been served the day after it was sent by post, faxed or emailed to the addressee unless it is posted outside of W.A. – in which case it is 5 days or 10 days for overseas – or given personally (or unless the contrary is proved).

Clause 179 Description of person or land
Where a document needs to be given to the owner or occupier of land but the name of the owner or occupier is not known the document may simply describe them as such.

Where a document describes land the description is a sufficient one if it allows of no reasonable doubt as to the land affected. Such a document cannot be called into question because of an assertion that it does not exactly or "particularly" define the land.

Clause 180 Documents binding on subsequent owners and occupiers
A document given to an owner or occupier binds each subsequent owner or occupier. This will avoid the need to ensure subsequent owners or occupiers are given a pest control notice, for example, in order for it to continue to have effect.

Clause 181 Non-exclusivity of this Division
The provisions relating to service of documents (Division 6) are in addition to and do not take away from any other provisions of an enactment for facilitating the giving of documents. If capable of doing so, any such provisions will apply as well as the BAM Act provisions.

Division 7 – General

Clause 182 Delegation by Minister
The Minister may delegate a power or duty under another provision of the Act to the Director General or another officer of the Department. It is specifically provided that the things that may be delegated include things to be done in the course of governing the affairs of the Ministerial Body.

An express power to authorise sub-delegation is provided. Without express provision a delegated power cannot be sub-delegated. Sub-delegation may be appropriate under this Bill to enable powers related to particular aspects to

be exercised by the most appropriate officer, for example The Executive Director for Biosecurity.

A delegate is presumed to have acted in accordance with the terms of the delegation and the Minister's ability to act through an officer or agent is not affected by this section. There is no need for a delegation of the types of things the Minister is not in any event reasonably expected to do personally, rather than having some-one do on his or her behalf.

Clause 183 Delegation by Director General
The same provisions apply in relation to a delegation by the Director General except that the Director General's ability to authorise a sub-delegation is limited to where the initial delegation is to a chief executive officer. In that case it may authorise further delegation to, for example, an appropriate officer in the Department of Fisheries.

Clause 184 Arrangements with corresponding authorities
The Minister or the Director General may make arrangements with Ministers and administrators in other States or Territories in relation to the things listed which will assist the administration of the BAM Act and corresponding laws. The things listed relate to certificates that may be issued, quality assurance schemes, inspection facilities, and payment of costs incurred.

This clause will authorise, amongst other things, some inter-state recognition schemes that have been hindered in the past by lack of any or sufficient statutory authority.

Clause 185 Information sharing
It is sometimes appropriate for government agencies to provide information to other government agencies. Privacy requirements, however, require the ability to share this information to be limited. This clause will achieve these possibly competing objectives. The provisions will work as follows:

- A number of relevant Government departments are defined to be an "information sharing agency" and other public authorities may be prescribed for the purpose of the definition if necessary.

- Under subclause (3), an officer of the department may disclose relevant information to another officer of the department or an officer of another information sharing agency). This must be done in accordance with the guidelines for disclosure that the Director General is required to issue (see subclause (7)).

- Under subclause (4) an authorised officer (an officer of the department designated as such for the purposes of the section - subclause (2)) may request a public authority which or who holds relevant information to disclose that information to the authorised officer. (Again, this must be done in accordance with the guidelines.)

- "Relevant information" is information relevant to the administration or enforcement of the Act (defined in subclause (1)).

- Information may be disclosed under these provisions despite any law of the State relating to secrecy or confidentiality (subclause (5)) and an officer disclosing information is protected as long as the information was disclosed in good faith (subclause (6)).

- Subclause (8) authorises regulations designed to protect the confidentiality of disclosed information.

Clause 186 Results and other matters may be published
This clause authorises the Director General to publish the results of an analysis of something regulated by the Act or a matter prescribed as something that may be published if the Director General thinks this publication is desirable in the public interest.

Subclause (2) refers to particular things that the publication may include – names and addresses; other particulars and explanation or comment relating to the published matter; other prescribed particulars.

Under subclause (3) protection is provided for a person who publishes or republishes information under this section or a fair report or summary of it.

This provision will be important in relation, for example, to providing information to abattoirs about stock that is contaminated or providing audit results to the Commonwealth or other States or auditing bodies when quality assurance non-compliance is detected.

Clause 187 Immunity from tortious liability
An "official", (defined as would be expected), is stated to be not liable in tort (an action for a civil wrong as opposed to a breach of contract or an offence) for anything he or she does or doesn't do in the performance, or purported performance, of their functions under the Act.

This is a standard provision, equivalents of which appear in the Acts to be replaced. It will protect officials from liability for simply trying to do their jobs. Good faith is required so an official will not be protected, for example, where malice is involved.

An official is protected even if doing something they could do even without the Act – for example, something that any public servant could do.

The State is also relieved of any liability for what the official did.

Part 8 – Regulations, codes of practice and local laws

Clause 188 Regulations – general power
Subclause (1) is the usual form of general power to make regulations as required or permitted or as necessary or convenient for the purposes of the

Act. The specific matters in relation to which regulations may be made are set out in Schedule 1.

Subclauses (2) and (3) give the regulation-making power a good deal of breadth by specifying that the regulations may "provide for, authorise, prescribe, require, prohibit, restrict or otherwise regulate" all or any of the matters set out and by allowing the regulations to authorise any matter or thing to be from time to time determined, approved, applied or regulated by the Minister or the Director General.

Clause 189 Regulations prescribing high impact organisms
This clause authorises regulations prescribing a prohibited organism to be a high impact organism. High impact organisms will be the most serious of biosecurity threats and higher penalties may be imposed for offences involving these organisms. An organism can be prescribed as a high impact organism only if the Governor is satisfied that the organism has the potential to cause severe damage and the Minister has advised that the organism is not present in the State or has been eradicated or brought under effective control.

Clause 190 Regulations and management plans may adopt codes or legislation and other references
"Code" means code of practice, standard, rule or any other document published by a public authority or person that does not by itself have legislative effect in this state

"Subsidiary legislation" has its usual meaning.

This clause allows the regulations or a management plan to adopt a code or subsidiary legislation in whole or in part and with or without modification. A code or subsidiary legislation is adopted as in force from time to time unless the regulations say that a particular text is adopted. This means that any changes to the relevant code or subsidiary legislation will automatically carry over into the regulations unless otherwise provided.

In subclause (1) "code" is defined to cover a wide variety of instruments that may be necessary or convenient to use for the purpose of regulations or a management plan.

Clause 191 Codes of practice
This clause enables the Minister to issue a code of practice for any purpose as listed in subclause (1) which reflects the main purposes of the Bill. Alternatively, under subclause (2) the Minister may approve a code of practice issued under another law or by an industry body or other person if that code is appropriate for one of these purposes.

A code or practice issued by the Minister under this section may itself incorporate by reference any other code or subsidiary legislation as defined in clause 190 (subclause (5)).

Subclause (8) requires the Director General to publish in the Gazette a notice giving details of the issue of a code or any approval or cancellation made under this section.

Clause 192 Regulations and codes of practice: consultation
Before making regulations or issuing or approving a code of practice the Minister is required to consult with those likely to be significantly affected or interested in the regulations or code of practice. The extent of consultation required is that which is appropriate and reasonably practical to undertake and it may be undertaken in any way that the Minister thinks appropriate in the circumstances, having regard to the number of people involved.

There are many ways in which consultation might be undertaken including via consultative groups, forums, discussion papers, advertising and electronic means.

Clause 193 Local government may make local laws
This clause is an equivalent of Part IX of the *Agriculture and Related Resources Protection Act 1976* which currently allows a local government to make local laws for what are termed "pest plants". Along with the rest of the *Agriculture and Related Resources Protection Act* 1976, this provision will be repealed when the BAM Act comes into operation.

Under this provision a local government may make local laws for the control of a prescribed pest plant that is likely to adversely affect the value of property or the health or convenience of the inhabitants in the district.

However, a plant that is a declared pest in an area may not be prescribed by a local government to be a pest plant in that district. This is to avoid any conflict or confusion in relation to the BAM Act provisions. If something is a declared pest it will be controlled under the BAM Act. If a plant is not a serious enough problem to be a declared pest under the BAM Act then a local government can, if it wishes, take some action under this provision.

A local government's capacity to require an owner to control pest plants does not extend to a public authority which has the care, control or management of land or to the Crown (Clause (2) (b) reference to section 7(1)(d)).

Part 9 – Miscellaneous

Clause 194 Review of Act
The Minister is required to review the operation and effectiveness of the Act 10 years from its commencement and provide a report of the review to the Parliament. The review is required to consider, in particular, and along with any other relevant matters, the adequacy of penalties under the Act. A 10 year period has been used instead of the usual 5 years because of the extensive nature of the new legislation and the likelihood that 5 years would therefore be insufficient time for an adequate picture of the effectiveness of the Act to emerge. Obviously the required 10 year review does not limit the Minister's ability to review or propose amendments to the Act at any time.

Schedule 1- matters for which regulations may be made

The matters listed in Schedule 1 will allow regulations to be made for all necessary purposes and ensure that all the material in the existing Acts and regulations is provided for in the new legislation – in so far as it is still required.