

ENVIRONMENTAL PROTECTION AMENDMENT BILL 2010

Second Reading

Resumed from 9 September.

HON SALLY TALBOT (South West) [5.03 pm]: I will start on a very positive note because I know that that cheers up the government.

Hon Donna Faragher: It doesn't happen often!

Hon SALLY TALBOT: That cheerful note is to inform the government that I have not been able to find anybody who is not basically supportive of the measures outlined in the second reading speech.

Hon Donna Faragher: But here comes the negative!

Hon SALLY TALBOT: The minister knows me so well.

Hon Donna Faragher: We know you so well!

Hon Ken Travers: You don't know her, because she doesn't like having to do this but you force her to do it!

Hon SALLY TALBOT: It is against all my better judgement!

Hon Ljiljanna Ravlich: If anyone's feeling bad, just get Ed to speak about you for a bit and then you'll all be happy!

Hon SALLY TALBOT: I should add at this stage that Hon Ljiljanna Ravlich confessed to me that she has watched yesterday's DVD at least once! That was a great service that Hon Ed Dermer did all of us yesterday.

I want to refresh the minds of honourable members about the second reading speech, because it is some weeks now since we heard it. Basically, this bill aims to create an offence that prohibits dumping waste. There cannot be any doubt that such a bill is needed and is very much welcomed. There are, of course, some "however"s to go after that.

I will, first of all, start by pointing out that while change to the provisions affecting littering and illegal dumping have been talked about in this place now for some time, we did get to a kind of crunch point with the budget in 2009, when the government decided to hike up the cost of the landfill levy by 300 per cent. One of the first things that we did as an opposition was to point out to the government that such a steep increase all at once in that levy rate would almost certainly result in an increase in illegal dumping. It was only a matter of days after that, that the minister came into this place and foreshadowed the changes that have now taken effect in this bill. I should also point out that much earlier this year—I think it was February—the minister flagged some changes to the Litter Act. There was an announcement in February and a statement in May, or around midyear; but we have yet to see a bill eventuating from those pronouncements.

Hon Donna Faragher: It is progressing.

Hon SALLY TALBOT: I assume it will be a bill, rather than regulation. There are changes to be made, and they are changes that the opposition broadly supports.

I have made the point that it is our opinion, and that of every local government authority that I have spoken to in Western Australia, that there will be an increase in illegal dumping resulting from this year's increase in the landfill levy. But, of course, illegal dumping is not new. I have done a bit of empirical research. It was actually a rather terrifying experience, which I shared with the advisers the other day, going out to one of our catchment areas and having a look. I had received reports that the area around Bickley was being used for a lot of dumping, and also for the kind of activities that can be very degrading to a sensitive water catchment area. I went to look at Bickley, and I must say it was quite distressing to see areas there that looked like—I was going to say a waste tip, but actually a waste tip looks positively halcyon compared with areas I saw in the Bickley catchment that are being used not only to dump waste but to drive those all-terrain vehicles and off-road motorbikes in a way that is obviously very degrading to the environment. Earlier this afternoon, somebody sent me a raft of photos of some illegal dumping off Toodyay Road. They are very distressing pictures to look at with tyres, household rubbish and construction and demolition waste.

As the minister pointed out in her second reading speech, it is this kind of behaviour that is so destructive of the environment because of the kind of toxins that leach out of this sort of material, the fact that it encourages fires to start, it attracts vermin running through the rubbish, and that the plastic bags and plastics are injuring wildlife, but there is also the massive cost of the cleanup that is associated with all of this. The visual amenity is destroyed and there are very substantial environmental disadvantages. We already have measures for prosecuting illegal

dumping under existing legislation; charges are currently prosecuted under the Litter Act, and it was, indeed, the Litter Act that most members expected to be amended to take account of the need for increased penalties.

At this stage I want to thank people who have provided me with advice and suggestions about this bill. I wrote to a large number of local government authorities in Western Australia, and I should make special comment at the outset about the advice I have received from Albany and Bunbury, from the Western Australian Local Government Association, which has a very effective waste branch, and from two of our regional councils, the Southern Metropolitan Regional Council and the Western Metropolitan Regional Council. They have all taken the time to look at the bill and have provided me with some comments.

It is probably fair to say that most of the stakeholders in this state were expecting changes to be made to the Litter Act and that was, indeed, the path that the Labor government had started to go down before we lost the election in 2008. Reading the Litter Act, it seems to me that the basic problem is that the penalties are not sufficiently harsh. However, I am the first to concede that it is a little more complex than that. It seems to me that the complexity arises largely because of the problem of definition. I turn firstly to the Environmental Protection Act to share with honourable members a couple of definitions in that act. These are existing definitions, not as a consequence of the bill before the house. Section 3(1) includes a definition of waste. It states, in part —

waste includes matter —

- (a) whether liquid, solid, gaseous or radioactive and whether useful or useless, which is discharged into the environment; or
- (b) prescribed to be waste;

That seems to pretty much encompass most of the things that we could think of that need to be classified as waste—the sorts of things that we do not want dumped into the environment. We then move to section 3A(1) where we find a definition of pollution, which states —

pollution means direct or indirect alteration of the environment —

- (a) to its detriment or degradation;
 - (b) to the detriment of an environmental value; or
 - (c) of a prescribed kind,
- that involves an emission.

Those honourable members who follow matters environmental and have memories that go back just a few years will recall that the Environmental Protection Act was amended in, I think, 2003, by Hon Judy Edwards. It was at that stage that we inserted additional clauses into the Environmental Protection Act. It was not specifically to take account of the effects of illegal dumping; it was in response to a Supreme Court case in which a recommendation was made to talk about things like illegal clearing of native vegetation. Hon Judy Edwards amended the act to insert the elements of environmental harm, which was split into material environmental harm and serious environmental harm. They come immediately after the definition of pollution. Section 3A(2) provides a definition of environmental harm and states —

environmental harm means direct or indirect —

- (a) harm to the environment involving removal or destruction of, or damage to —
 - (i) native vegetation; or
 - (ii) the habitat of native vegetation or indigenous aquatic or terrestrial animals;
- (b) alteration of the environment to its detriment or degradation or potential detriment or degradation;
- (c) alteration of the environment to the detriment or potential detriment of an environmental value; or
- (d) alteration of the environment of a prescribed kind;

As I said, further clarification is offered by way of the definitions in the act. It also provides the following definitions —

material environmental harm means environmental harm that —

- (a) is neither trivial nor negligible; or
- (b) results in actual or potential loss, property damage or damage costs of an amount, or amounts in aggregate, exceeding the threshold amount;

serious environmental harm means environmental harm that —

- (a) is irreversible, of a high impact or on a wide scale;
- (b) is significant or in an area of high conservation value or special significance; or
- (c) results in actual or potential loss, property damage or damage costs of an amount, or amounts in aggregate, exceeding times the threshold amount.

I think honourable members will get the feeling that those definitions encompass most of the kind of environmental damage that we could think of that is caused by illegal dumping. That is the EPA act. I turn now to the Litter Act, under which offences involving illegal dumping are prosecuted at the moment. The definition in section 5 of the litter act is as follows —

litter includes —

- (a) all kinds of rubbish, refuse, junk, garbage or scrap; and
- (b) any articles or material abandoned or unwanted by the owner or the person in possession thereof, but does not include dust, smoke or other like products emitted or produced during the normal operations of any mining, extractive, primary or manufacturing industry;

That seems to be a fairly all-encompassing definition of what we would want to include in the offence of illegal dumping. Other readily available definitions make it quite clear what we are talking about in the Litter Act. I draw the attention of honourable members to the website of Keep Australia Beautiful, which is an organisation established under the Litter Act. An article headed “Littering and the Law” states —

Litter is anything that is left where it is not meant to be.

I like that; I think that is rather a good definition. It continues —

Litter is unsightly and can be dangerous.

It goes on to refer to illegal dumping as follows —

Illegal dumping is a form of littering where waste is disposed of in an area that is not a dedicated waste facility. This might be on roadsides, on local council land, in the State forest or any out of the way place where people think they will not be seen.

Also on the website is the following —

Illegal dumping is a particular type of littering where people go out of their way to dump their rubbish.

It can be of a lower order such as small bags of rubbish in urban streets, in parks or in building site bins or tossing used furniture or other items on vacant land or into the bush.

More serious illegal dumping occurs where people fill up trailers and trucks with all sorts of items and materials and dump them in an area where they think they will not be seen such as National Parks, bushland reserves, parks, industrial and building sites or interestingly, outside charity bins and stores and median strips.

I note that that part of the website goes on to say —

The reasons for this behaviour usually include the distance required to get to a landfill site ... not wanting to pay to get rid of rubbish and laziness.

That brings me back to the original point I made about the danger of hiking up the landfill levy by such a large amount all at once. I draw attention to those definitions because my first question to the minister that she might be able to address in her response to the second reading debate is: why choose to amend the EPA act rather than beef up the penalties under the Litter Act? I guess the answer is likely to be framed in terms of whether illegal dumping is always a polluting offence. I know that many stakeholders, mostly from the conservation side rather than the local government side of the waste and recycling industry, are quite happy that we are making changes to the EPA act. I am not foregoing the possibility that this is the right way to go; I am however interested in hearing the minister’s explanation.

I understand that it is not easy to prove offences under the existing EPA act involving pollution or damage caused to the environment, and I believe that is why the government has decided to go down this route.

Debate adjourned, pursuant to temporary orders.