

Hon Ed Dermer; Hon Jon Ford; Hon Robin Chapple; Hon Jock Ferguson; Hon Donna Faragher; Deputy
President; Chairman; Hon Ken Travers; Hon Simon O'Brien; Hon Dr Sally Talbot; The Chairman; Hon Michael
Mischin

WASTE AVOIDANCE AND RESOURCE RECOVERY AMENDMENT BILL 2009

Discharge of Order and Referral to Standing Committee on Legislation

Resumed from an earlier stage of the sitting.

HON ED DERMER (North Metropolitan) [4.02 pm]: I believe it is particularly important that all members of the house and the government take the opportunity to learn from the experience of those who are leading the way with waste avoidance and resource recovery. As I was explaining a little earlier, I think the City of Joondalup provides a very good example. I was referring to the mayor's letter as a small, tip-of-the-iceberg example of the type of evidence that should be considered by the Standing Committee on Legislation and, through that mechanism, brought to the attention of the house. I will resume sharing with the house the mayor's letter. The letter reads —

Previously the State Government provided a recycling rebate scheme which was funded from the Levy and distributed on the tonnage of waste recycled by each Local Government. The State Government withdrew from this commitment leaving Local Government to fund the full cost of recycling programs.

Again, there is evidence of unmet need whereby extra money raised by a levy could be very well spent by the people providing leadership in local government who are showing us how waste should be avoided and resource recovery carried out. Returning to the letter, it reads —

These costs have recently escalated with the global economic downturn which reduced commodity prices and Local Government has had to bear the burden of further subsidising the kerbside recycling program. The Municipal Waste Advisory Council has sent a proposal to the State Government promoting the reintroduction of a rebate scheme. There has not been a response to date.

I do not know whether a response has occurred since 5 November when Mr Pickard wrote this letter to me, but I think that whole area of the effect of a rebate would be a worthwhile matter for our legislation committee to examine and present recommendations on to the usual, highly professional standard that we have come to expect from the legislation committee. Mr Pickard's letter continues —

The design of the levy is essentially to make land filling an unattractive option by raising the cost of disposal to a level whereby other disposal alternatives become financially viable.

The economics of this whole exercise are extremely important, and the Standing Committee on Legislation should examine it in detail. It continues —

Logically, in support of this position, a waste levy should be used for waste management initiatives to enable these pathways to succeed. It is therefore not appropriate to use the waste levy to fund non-waste services, that is, all funding generated from the Levy should be directed to waste initiatives.

I would like to learn more, through the committee, about the City of Joondalup's evidence in support of that proposition, because it makes sense to me. That is one of the main reasons I am opposing this bill, but obviously other members of the chamber need to be convinced. If the Standing Committee on Legislation were to provide a report that harnessed the wisdom of the local government authorities, it may be effective in persuading all members of the chamber to oppose the Waste Avoidance and Resource Recovery Amendment Bill 2009. Mr Pickard's letter continues —

The Minister for the Environment has also been given greater discretionary and statutory powers which could impact on the capacity of the Waste Authority to meet its obligations to the waste industry.

The Mayor of Joondalup, Mr Pickard, is consistently polite and respectable, but I think his letter touches on a very important point about who is making the decisions under this proposal and the importance of allowing local government authorities to continue their very good work. Putting evidence before the Standing Committee on Legislation would be a more effective way of bringing this wisdom forward in a way that even the Minister for Environment and her colleagues on the other side of the chamber could understand. The letter continues —

In conclusion, as previously stated, the City supports the continued hypothecation of the waste levy to address waste management issues throughout the State. It cannot be expected that Local Government will take complete financial responsibility for all waste management.

I believe local governments have in large part taken that responsibility; they have shown tremendous leadership. It would only be common courtesy for the Legislative Council to give local government authorities an opportunity to share with us, through the Standing Committee on Legislation, their wisdom derived from

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experience. In that way, we could give local government authorities—the ones doing all the work—an opportunity to keep the Legislative Council as fully informed as possible before it makes a final decision on this very disappointing bill.

HON JON FORD (Mining and Pastoral) [4.07 pm]: This bill should be referred for consideration by the Standing Committee on Legislation. From a regional perspective, many local governments would like to have the opportunity to push their case for a permanent allocation of levy funds to local governments, so that they can effect positive change in an area that has become a problem for many local government jurisdictions.

The minister's second reading speech was about a page and a half long. The opening statement is —

This government is committed to increasing rates of recycling in Western Australia and reducing waste to landfill.

Further along, it states —

Levies in Western Australia are well below those in other jurisdictions.

There follows a comparison of the levy cost per tonne of waste between Western Australia and New South Wales—\$8 per tonne versus \$58 per tonne. The government's justification for increasing the levy is that it will in some way assist to reduce the amount of landfill. Further along in the second reading speech it is revealed that at least 25 per cent of the forecast levy revenue for any financial year will be used to fund waste recovery initiatives. Many people are unconvinced. The government claims to have the support of local governments, but if the government would like to test the views of local governments, a committee is the way to do it. It has also been said by others in local government that they are the champions in this state and, it could be argued, across Australia, in recycling and dealing with waste in an innovative way. They should have the opportunity to have a direct input into the way in which this bill is structured.

The minister's second reading speech also states —

The balance of the levy moneys not credited to the WARR account may be applied by the Chief Executive Officer of the Department of Environment and Conservation for broader environment and conservation purposes of the department.

Members on this side of the house would certainly like the opportunity, through the committee, to talk to representatives from the Department of Environment and Conservation to see what the department's views are on the way this levy will be divided. We would also like to talk to representatives from a number of authorities about the way it is proposed in this bill to divvy up the levy.

I am sure a number of companies—the example I used was Sims Metal—would like to put forward their case on why there should be incentivisation in how exemptions to the levy will be applied. I know a number of companies that would be interested in that. In fact, a number of companies in this state are worried that, because of the additional costs that will be imposed on them by this bill, their business may be forced to close down if they are not granted an exemption. I do not know whether that is true, but we had that debate at the second reading stage, and, if this motion is lost, there will be more debate on that when the bill goes into committee. That is one of the reasons that this bill should be referred to the legislation committee.

There has been enough argument by both sides of the house to indicate that this bill is complex. We know it is complex because members can continuously argue different aspects of it. Although there is general agreement to the legislation by members on both sides of the house, everybody is coming at it from a different angle. Therefore, this bill is sufficiently complex that it is reasonable for it to be referred to the legislation committee for a brief time, as Hon Ken Travers said, to give the stakeholders the opportunity to put forward their views. I urge the house to support this motion for those reasons.

HON ROBIN CHAPPLE (Mining and Pastoral) [4.13 pm]: I rise to speak on the motion to refer the Waste Avoidance and Resource Recovery Amendment Bill 2009 to the Standing Committee on Legislation for consideration and report not later than 15 December 2009. I will make my comments brief and to the issue of the referral.

It is interesting to note that although the referral of this bill to the Standing Committee on Legislation is of great validity, it has not been referred to the Standing Committee on Environment and Public Affairs, given that that committee has previously looked at municipal waste management in Western Australia. Although the membership of that committee might be different now from what it was when that issue was considered, the staff of that committee still have a considerable amount of expertise in dealing with waste issues. They probably could assist quite dramatically in bringing an inquiry into this bill to a resolution more quickly. However, in the

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interests of the time of this place, the Greens (WA) will not be moving a subsidiary motion that this bill be referred to the environment and public affairs committee. Quite clearly, an inquiry into the matters that are before this place, and that will be before the committee should this motion be successful, might alleviate the problems being experienced by local government—the third tier of government—which has considerable concerns about the direction this bill is taking. Although the WA Municipal Waste Advisory Council does not support this levy, it has indicated that it has concerns that need to be clarified. A committee could inquire into that, as well as inquire into whether the impact of this legislation will be extended to non-metropolitan regions, because that seems to be unclear. It is clear from representations by local government to that council, and also the government's representation to that council, that issues like that might need to be clarified.

It is also important to note that the Forum of Regional Councils, which comprises all the metropolitan councils, including the councils that currently handle waste for recycling, has indicated that it is prepared to have a negotiated outcome. Those sorts of outcomes and those tests could be arrived at quite amicably within a committee situation, and an outcome from that committee back to this chamber might provide a better outcome for local government. I refer to the briefing paper given to me by the forum, in which it indicates support for a change to the WARR amendment bill 2009 to provide that 50 per cent of all landfill moneys collected will go to local government waste management programs and the increased diversion of that waste from landfill. Although we are all extremely concerned that funding from this levy will not be hypothecated back to the Waste Authority at all—which is the fundamental thrust of local government, the third tier of government in this state—it is also important to note that local government was prepared to look at options. I would have thought a committee could have looked at some of those options and maybe reach a compromise. However, what we will be faced with here is a Committee of the Whole in order to deal with the amendments standing in my name. If the progress to date has been an indication of the way government wishes to deal with the amendments, we will argue the point ferociously, but we will go down in a screaming heap. That is why I think that referring the bill to a committee would provide some value to the determination of those amendments, because they could be dealt with before that committee, and any government amendments that could be forthcoming that might ameliorate the impact on local government could also be addressed through that committee.

HON JOCK FERGUSON (East Metropolitan) [4.18 pm]: I support the motion that the matter be referred to the appropriate committee. My reasons are similar to those that the previous speakers have outlined.

Hon Norman Moore: Surprise! Surprise!

Hon JOCK FERGUSON: I am not surprised it does not surprise the Leader of the House.

Hon Norman Moore: I just draw your attention to standing order 100.

Hon JOCK FERGUSON: What is that?

Hon Norman Moore: It says that you can't keep repeating yourself ad nauseam.

Hon JOCK FERGUSON: I am not repeating myself ad nauseam. I just said that I agree with the previous speakers, and maybe along the same lines.

Hon Norman Moore: I suspect it will be, and I could regurgitate the speeches of somebody else, to help you.

The DEPUTY PRESIDENT (Hon Matt Benson-Lidholm): Order, members! I think the honourable member is going to get a move on with his speech.

Hon JOCK FERGUSON: I will if I can get the opportunity without interjections, Mr Deputy President.

I base my opinion around this issue of consultation. I do not think that anyone should underestimate how angry local governments are that they were never given an opportunity to voice an opinion in relation to this legislation. A consultation process certainly did not take place. In my view, effective consultation is a key factor in good decision making, good policy and good legislation. The bill should be referred to the Standing Committee on Legislation so that local government, industry and environmental groups, which are the major stakeholders in this issue—apart from the community at large—can put their points of view in a consultative process, and put their views to the committee, and the committee should take them into consideration. An examination should occur to show that this proposal is in the public interest. There should be systematic scrutiny given to this legislation to allow Parliament to consider whether this legislation is justified. We have heard a number of speakers outline why it is not justified. Local governments certainly would not have a problem if this tax—it is a tax—was applied in the appropriate way, but obviously it is not the case.

Local government has been very vocal in the East Metropolitan Region that I represent. As I said during the second reading debate, not one local government that I spoke to supported the legislation. The government should take a leaf out of the trade union movement's book. I see a few smiles on the other side! Within the trade

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union movement, no policies are made and nothing is done without full and frank consultation with the membership and with delegates. That is why the trade union movement is one of the pillars of democracy in our society—unlike this government. This measure is just a case of, “We’re going to tax you. Just suck it up. Take it or leave it. That’s the end of it!” It is an absolute disgrace that this government will not consult local government and will not consult the various stakeholders. I think at the end of the day, it will come back and bite it because if it continues in this vain, it will cause a real problem for this government. I think it is already starting to cause a problem for this government.

There are a couple of members here who also represent the East Metropolitan Region. I do not know whether they have spoken to local governments within the East Metropolitan Region, but I can tell members they are very angry that this tax is being applied at a time when they face various other charges. I note with interest that it was reported again in the media today that Western Australia is more expensive than anywhere else in the commonwealth to buy a basket of groceries. That is also an indication that some people within this community are doing it pretty tough and struggling. This measure will impact on them because, obviously, rates will increase. Some rates have already increased. People out there are struggling and doing it tough. This government should do something to alleviate that issue and not impose extra charges and taxes on them by way of this disgraceful tax.

I urge the government to think again about referring this legislation to a committee so that the major stakeholders in this issue can put their positions. It seems to me that it does not matter what we on this side say, it does not matter how much of a logical argument we put up, everything is being completely ignored. The government has adopted this absolutely myopic position: “We’re going to tax them. That’s the end of it.” It does not matter what we say, but at least let the major stakeholders on whom it impacts have a say. Let it go to committee and then review the decision and make a decision appropriate to the issue.

Question put and a division held, the Deputy President (Hon Matt Benson-Lidholm) casting his vote with the ayes, with the following result —

Ayes (12)			
Hon Matt Benson-Lidholm	Hon Jock Ferguson	Hon Ljiljanna Ravlich	Hon Giz Watson
Hon Robin Chapple	Hon Jon Ford	Hon Sally Talbot	Hon Alison Xamon
Hon Sue Ellery	Hon Lynn MacLaren	Hon Ken Travers	Hon Ed Dermer (<i>Teller</i>)
Noes (17)			
Hon Jim Chown	Hon Donna Faragher	Hon Col Holt	Hon Max Trenorden
Hon Peter Collier	Hon Philip Gardiner	Hon Michael Mischin	Hon Ken Baston (<i>Teller</i>)
Hon Mia Davies	Hon Nick Goiran	Hon Norman Moore	
Hon Phil Edman	Hon Nigel Hallett	Hon Helen Morton	
Hon Brian Ellis	Hon Alyssa Hayden	Hon Simon O'Brien	

Pairs

Hon Adele Farina	Hon Robyn McSweeney
Hon Kate Doust	Hon Wendy Duncan
Hon Helen Bullock	Hon Liz Behjat

Question thus negatived.

Second Reading Resumed

HON DONNA FARAGHER (East Metropolitan — Minister for Environment) [4.30 pm] — in reply: I thank members for their contributions to this debate. I do not intend to speak at length in my summing up.

Hon Max Trenorden: The process of getting here has been very long.

Hon Ken Travers interjected.

Hon DONNA FARAGHER: I say to Hon Ken Travers that I am not someone who filibusters. I know there are a few members on his side of the chamber who like to very much. Eight hours is probably a pretty good record so far.

A few issues were raised during the second reading debate that I want to pick up on in my summing up. It is fair to say that pretty much all the opposition speakers spoke on very similar matters, so I will speak in general terms on some of those issues. A couple of specific questions were asked, and I am happy to provide some information to the house in response.

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The government's decision, as reflected in this bill, to enable at least 25 per cent of the landfill levy to be provided for waste-related purposes, with the remainder to be utilised for broader environmental and conservation purposes within the Department of Environment and Conservation, is not novel. The approach is not dissimilar to the practices in New South Wales, South Australia and Victoria, which apply levy revenue to a broader range of purposes than waste alone. I appreciate that the Western Australian Local Government Association would like to see all the levy funds used for waste-related purposes. I accept and acknowledge that. However, the government has made a decision. That decision is now reflected in this bill. It was also reflected in the budget papers.

Despite the claims that have consistently been made by the opposition, I have clearly said that funding will still go towards waste management. The opposition has consistently tried to suggest that nothing will go to waste management. The fact is that there is a specific requirement under clause 7 of the bill that not less—I repeat, not less—than 25 per cent of the forecast levy be credited to the waste avoidance and resource recovery account. This year that will be around \$13 million.

The opposition, in particular its lead speaker, Hon Sally Talbot, has made some wild claims, if I can put it as mildly as that, that the world is going to end. After what we have heard today, I do not know whether we will be allowed to have Christmas. We are getting close to Christmas and I would like to think that members had some Christmas spirit. The way Hon Sally Talbot has been acting over the past few days, we have not quite got there. At some point the member even suggested that the proposed new glass recycling plant was already in trouble. That is just ridiculous. I say to Hon Sally Talbot that it does not do her cause any justice when she makes remarks that are quite simply wrong. Hon Sally Talbot thinks that she can say things in this place and hope that they will stick. That is wrong.

Hon Ken Travers: Let's not make it personal.

Hon DONNA FARAGHER: I am not making it personal. I had to listen to eight hours of personal attacks from Hon Sally Talbot. I am quite happy for Hon Sally Talbot to say whatever she likes but I am saying that she is wrong, just like she was wrong in the press statement she put out yesterday, I think, suggesting that I had misled the Parliament.

Hon Sally Talbot: Sorry, it was Hon Simon O'Brien. He came in here and apologised.

Hon DONNA FARAGHER: Hon Sally Talbot should not get too cute. She said in a press release that I had misled Parliament and the Western Australian community, which are very serious allegations, particularly when made outside parliamentary privilege. Hon Sally Talbot should withdraw that statement. I am sure she will not because she has no integrity.

Several members interjected.

The DEPUTY PRESIDENT (Hon Matt Benson-Lidholm): Order! Minister, if your remarks were made through the Chair, maybe you would find there may well be fewer interjections.

Hon DONNA FARAGHER: Thank you, Mr Deputy President; I will continue.

Hon Ken Travers: And focus on the Waste Avoidance and Resource Recovery Amendment Bill 2009.

Hon DONNA FARAGHER: I am very focused on the bill, Hon Ken Travers. Most of the opposition speeches were not actually, necessarily, focused on the bill, but anyway.

The truth is that Hon Sally Talbot just hates the fact that the Liberal-National government has actually done a number of very positive things for the environment—she actually hates that. She hates the fact that we have made very good decisions such as an independent Environmental Protection Authority; Camden Sound; glass recycling plant; community grants—I could go on and on. Many things still need to be done, but I know that she hates that we have already done those things, but that is something for her to deal with, not me. I can go home knowing we have done those things, and she is the one who has a problem, not me.

Hon Sally Talbot: Now back to the bill!

Hon Ljiljanna Ravlich: Why don't you get it all off your liver; it is Christmas!

Hon DONNA FARAGHER: I actually do not have a problem; I can actually go home, Hon Ljiljanna Ravlich, and know that —

Hon Ken Travers: Before the bill's finished?

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THE DEPUTY PRESIDENT (Hon Matt Benson-Lidholm): Order, members!

Hon Ljiljanna Ravlich: That's a good idea!

The DEPUTY PRESIDENT: Order, members! The way the comments are going, it will be Christmas fairly soon, so I would continue to suggest that the minister simply make her remarks through the Chair, and avoid the necessity for excessive interjection.

Hon DONNA FARAGHER: Yes, I will, Mr Deputy President.

Hon Ken Travers: She's smiling; that's the important thing!

Hon DONNA FARAGHER: I am always smiling.

Hon Sally Talbot does not know how to smile, but that is not my problem! With respect to the staffing issues, particularly those related to clause 4, Hon Sally Talbot has indicated that staffing should not be paid for out of levy funds. I can advise the house that currently the Waste Authority includes the costs of all services provided by the department, including staff from the waste management branch, in its annual work plan. This amendment will legislate for this practice. It has been suggested that this is new; it is not. In fact, the previous Minister for the Environment, Hon David Templeman, signed off on the same arrangement, and I understand it is the same arrangement that was undertaken previously when it was the Waste Management Board. I have not veered from the arrangement set up by the previous government and others, and the amendment within this bill just verifies the procedure that already occurs.

Hon Kate Doust, who is out of the chamber on urgent parliamentary business, indicated in her contribution that none of the staff of the waste management branch assists the Waste Authority; that is simply incorrect. The fact is that the branch is dedicated to supporting the authority; in fact, the department advised the Standing Committee on Environment and Public Affairs of that during its hearings, and it was referred to in the committee's report. To say that it does not is wrong. It has consistently had access to professional staff within the department for the provision of administrative policy and program support. Having said that, I have worked to address the outstanding issue with respect to the office of the Waste Authority with both Mr Carbon and the director general of the department, and it has been agreed that the authority will have five additional staff as part of that office.

With regard to the levy being extended to rural councils, at no time since the budget announcement have I said that it would be extended. The opposition has peddled that story, and, if I can be blunt, some of the metropolitan councils have suggested to me that there be an extension of the levy to their rural counterparts. That is not something I have indicated. I am just not sure where that started from.

Hon Sally Talbot: If you will take an interjection, have you said that it won't be extended?

Hon DONNA FARAGHER: Hon Sally Talbot asked me a question in the Parliament, as she knows as well as I do, about whether or not it would be extended, and I said no and that I had not ever said that.

Hon Sally Talbot interjected.

Hon DONNA FARAGHER: I am the minister, and I have never said that it would be extended.

Hon Sally Talbot: But that is my point; why have you not said that?

Hon DONNA FARAGHER: Okay; I listened to the member for seven hours—seven hours!

Hon Sally Talbot: I'll speak to the hand!

Hon DONNA FARAGHER: Give me a couple of minutes! I can advise, as I have previously done in this house many times, that the advice that I have is that the legislation is valid. The opposition has tried to suggest that the legislation is not valid; the clear advice to me is that it is.

Hon Sally Talbot made a number of interesting claims, if I can be so bold as to say, that we had delayed the increase in the levy because we did not want it to go into the waste avoidance and resource recovery account. However, she continues to change her mind in relation to this because I can recall a speech Hon Sally Talbot gave a little while ago in which she said that the government did not want to increase the levy because we were not supportive of recycling, I think, and that we were never really intending to increase it by 300 per cent, which, either way, is wrong.

Hon Sally Talbot: You must have misunderstood.

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Hon DONNA FARAGHER: I am sure it was, Hon Sally Talbot. We will find it in *Hansard*, just as the member reckons she can find what I said. Either way, the member is wrong. The simple fact, which I reiterate, is that having received legal advice, the government decided it was appropriate that prior to the 300 per cent increase identified in the budget taking effect, this bill should be passed first. I did not dream up that advice; it was advice that was provided through the State Solicitor's Office. I have responded to that point on a number of occasions in this place.

Hon Ken Travers: Is the minister able to table a precis of it?

Hon DONNA FARAGHER: No, I am not. Governments as a general rule do not provide legal advice that has been provided to them, as the member would know.

Hon Ken Travers interjected.

The DEPUTY PRESIDENT (Hon Matt Benson-Lidholm): Order, members!

Hon DONNA FARAGHER: Some members have raised issues about illegal dumping and as they noted, this is not an aspect that is part of this bill. Notwithstanding that, I want to reiterate that legislation is currently being drafted to significantly increase the penalties for illegal dumping. Currently, if a case for pollution cannot be made, the penalties are only up to \$1 000. We intend to increase those penalties quite significantly to \$62 500 for individuals and \$125 000 for bodies corporate. When I spoke to the department and asked what the penalties were for illegal dumping and it told me only up to \$1 000 under the Litter Act, my view was that that was a clearly inappropriate penalty. Whether or not we have an increase in the levy, that penalty is clearly inappropriate, which is why the government is taking action to increase the penalties. That legislation will be introduced on our return to this place. Also in relation to illegal dumping, I advise the house that there are now no unmanned landfills operating on the fringe of the metropolitan area—I think that was a question asked by a member. I am advised that all the nearest rural landfills are also manned. Furthermore, as part of the monitoring program, the department employs a landfill levy inspector to monitor compliance with the levy regulations. The department also has about 200 trained inspectors who are authorised to investigate and enforce offences under the Environmental Protection Act.

Hon Sue Ellery mentioned pensioner rebates. I am advised that if waste management charges are not included in the general council rates, a rebate on that portion cannot be accessed by pensioners or those who would otherwise be eligible. However, I am advised that many councils, probably for this very reason, choose to keep their waste charges within the general rates for this very purpose—that is, so that the rebate can be given. I suppose my response to that is that the councils are in fact in charge here. They are the ones who can change the situation by changing their own rate charging practices. That is the advice I have through the department. With regard to the matters surrounding a potential conflict of interest, I noted the comments by Hon Robin Chapple who suggested that, as a result of this bill, the department will now not regulate landfills—I am paraphrasing his words—because of a conflict of interest.

Hon Robin Chapple interjected.

Hon DONNA FARAGHER: Yes. That is just wrong. The fact is that the department and its officers have clear obligations under the act and they will enforce those provisions. The suggestion that the department and the officers would not undertake those duties is just wrong.

With respect to the comments made by Hon Wendy Duncan, who is away on urgent parliamentary business, I noted her comments about local governments and access to funding. The member was correct in saying that local governments have a number of opportunities to apply for funds. There is the strategic waste initiative scheme and the household hazardous waste and used oil management program. These are some of a number of examples of either funds that can be applied for or partnerships that are in place.

Hon Robin Chapple interjected.

Hon DONNA FARAGHER: As I said at the beginning of my summing up, the reality is that at least 25 per cent of levy revenue will be going, deliberately and correctly, into the WARR account. It will be used solely for waste-related purposes. These programs will continue. We have supported measures such as improved battery recycling and mattress recycling. Of course, the glass recycling facility is the most recent example. It is a very good example of where a great deal of work has been undertaken to ensure the establishment of what will be a \$5.4 million facility in Western Australia. I anticipate it will be operational by the first half of next year. In the first year, up to 20 000 tonnes of glass will be recycled, increasing to 40 000 as demand increases. That is a far better situation than we have now, whereby only around 15 000 tonnes are recycled and sent to South Australia at quite an extreme cost to local government and others. When it gets there, if it is deemed to be not clean glass,

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it must be either sent back or, I understand, put into South Australian landfill at quite significant cost. The development of this new facility will be a very good thing for Western Australia.

Hon Sally Talbot, in mentioning the ministerial council, made quite a few comments in support of her commonwealth counterpart. As a state, we recently endorsed the new product stewardship scheme relating to TVs and computers. Given that there will be a lead-in time for that scheme, the state is in discussions with industry to see whether there are opportunities for the establishment of a voluntary scheme before that national scheme comes into place. We think there is an opportunity here for that to happen, knowing the national scheme will come into effect shortly. If we can do something positive in that area in the intervening period, we will do that.

A number of other issues were raised during the second reading debate that do not pertain directly to the bill. Given that none of us wants to be here until Christmas, I might have those arguments in this house on another day.

Finally, I will not have another opportunity throughout the debate to record my thanks to some very good officers in my department. Therefore, in closing, I thank in particular Mr Robert Atkins and Mr Bernard Ryan; and Ms Cara Babb from my office. I also particularly want to acknowledge Mr Stuart Cowie, who could not be here today but who has sat diligently through many, many hours of debate in both the other place and this place. I thank those officers and others within the department for their work on this bill and many other important waste-related matters. On that note, I commend the bill to the house.

Question put and a division taken with the following result —

Ayes (17)

Hon Liz Behjat	Hon Brian Ellis	Hon Alyssa Hayden	Hon Max Trenorden
Hon Jim Chown	Hon Donna Faragher	Hon Col Holt	Hon Ken Baston (<i>Teller</i>)
Hon Peter Collier	Hon Philip Gardiner	Hon Norman Moore	
Hon Mia Davies	Hon Nick Goiran	Hon Helen Morton	
Hon Phil Edman	Hon Nigel Hallett	Hon Simon O'Brien	

Noes (12)

Hon Matt Benson-Lidholm	Hon Jock Ferguson	Hon Ljiljanna Ravlich	Hon Giz Watson
Hon Robin Chapple	Hon Jon Ford	Hon Sally Talbot	Hon Alison Xamon
Hon Sue Ellery	Hon Lynn MacLaren	Hon Ken Travers	Hon Ed Dermer (<i>Teller</i>)

Pairs

Hon Robyn McSweeney	Hon Adele Farina
Hon Wendy Duncan	Hon Kate Doust
Hon Michael Mischin	Hon Helen Bullock

Question thus passed.

Bill read a second time.

Committee

The Chairman of Committees (Hon Matt Benson-Lidholm) in the chair; Hon Donna Faragher (Minister for Environment) in charge of the bill.

The CHAIRMAN: Order, members! We are dealing with the Waste Avoidance and Resource Recovery Amendment Bill. Before we get to clause 1, I just remind members that we do have another amendment at clause 3, so a new supplementary notice paper will be distributed shortly. However, in the meantime we will move to clause 1. Given the nature of the debate we are having, I just remind members of the specific nature of the short title debate. It does no more than give members an opportunity to range over the clauses of the bill, foreshadow amendments and indicate, consistent with the policy of the bill, how its form or content might be improved. I would go so far as to say that it is also not a vehicle for continuing debate on policy.

Clause 1: Short title —

Hon KEN TRAVERS: This is an interesting bill and I find it a little fascinating. I do want to range across some general issues in respect of the way in which the different clauses in the bill operate, to get a sense of how the government foresees the different clauses coming together and operating. Has the government taken any advice on whether, in the way this tax is structured, it will actually become an excise, in that it will be a tax on a chain of production? Is that something the government has considered?

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Hon DONNA FARAGHER: I think that Hon Ken Travers would be referring to section 64 of the act in respect of excise. The advice I have is that it does not apply because the bill specifies where the funds will go.

Hon KEN TRAVERS: Perhaps the minister misunderstood me; if she does not have the correct advice, perhaps she might like the Chairman to leave the chair until the ringing of the bells to seek the correct advice. I am not referring to clauses within the bill; I am talking about the way in which this legislation will operate. As all members know, states are not able to levy excises. We are all familiar with cases in which excises have been charged on petrol and alcohol consumption. An excise is a tax on production. This situation is quite interesting, because this is a levy on the production of waste. It is based on the volume of waste produced; therefore, it could be described as an excise. If it is an excise, it is contrary to the Constitution for the state government to impose it. I am not referring to a specific clause in the bill; I am talking about the way in which the bill is structured, the various clauses, and whether this legislation will impose a tax on the production of waste. If it does, the question is whether this Parliament is able to pass legislation of this nature.

Hon DONNA FARAGHER: I understand that the department has received legal advice on this matter and, as I have said, that advice is that it does not apply.

Hon KEN TRAVERS: I would like more of an explanation from the minister about why it does not apply. When I read the clauses in this legislation, it strikes me that it very much imposes a tax on the production of something. In this case, waste is being produced, and this legislation places a tax on it. It is a tax on the production of waste. That is, *prima facie*, an excise, but if the department has received more detailed legal advice, I would like an explanation from the minister about why it is not an excise.

Hon DONNA FARAGHER: As I understand it, it does not apply because the legislation specifies where the funds will go—that is, into the Department of Environment and Conservation account rather than into general revenue.

Hon KEN TRAVERS: Mr Deputy President —

Several members interjected.

Hon KEN TRAVERS: I cannot quite recall whether you have identified the term by which you wish to be known.

The CHAIRMAN: I have always been one for appropriateness. While I am sitting here, I am the Chairman.

Hon KEN TRAVERS: My apologies to you, Mr Chairman, and to the chamber.

The CHAIRMAN: Quite all right.

Hon KEN TRAVERS: The main issue with an excise is not where the money is applied; it is how the money is raised. In this case, the money is being raised on the production of waste. It concerns me that the minister keeps referring back to section 64, which is about how the money is spent. I suspect that the minister's advice relates to some other legal matter on which she has sought advice, not excises. I again ask the minister whether she can explain to the house why this is not an excise. The issue with an excise is how the money is raised, not how it is spent. To refer to section 64 is to refer to a matter that I am not asking the minister about.

Hon DONNA FARAGHER: The funds have been raised in the same way as they were under the previous act and the current act. This bill does not change the way in which the funds are collected.

Hon KEN TRAVERS: Mr Deputy President—sorry, Mr Chairman —

The CHAIRMAN: It will be Christmas soon.

Hon KEN TRAVERS: It will be. All of us may have celebrated a birthday before we finish considering this bill.

The CHAIRMAN: Certainly not a sixtieth.

Hon KEN TRAVERS: I certainly hope it is not my sixtieth!

It may be that the levy is being collected in the same way as it has always been collected. However, often people do not consider matters when money is going to a cause that they believe is noble. In other words, these questions may not have arisen in the past. A number of clauses in this bill deal with how money will be distributed. Therefore, I suspect there will be a greater focus on whether this levy is an excise. Until now, people might have said that they would not ask the question because they believe it is a good tax, but technically it is illegal. I think that is what happened with the fuel levy. Nobody really asked whether it was an excise when it was introduced.

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Now that we are considering this bill and dealing with clauses that provide for the purposes for which the levy will be raised, some people might feel that the purposes are not as valid as they previously once were. The issue of whether this levy is an excise will become far more crucial to these people.

Before we delve further into this bill and spend time going through, in detail, each of these clauses, it is important that we understand what this levy is. The minister should explain to the committee that this bill is not seeking to impose an excise. People would then be confident. If that does not happen, and if the bill and the fundamental way of raising the money is invalid, going through each clause in detail will be a waste of time.

Hon Norman Moore: What has changed to make it different?

Hon KEN TRAVERS: This is what happens when the Leader of the House walks into the chamber halfway through a debate.

Hon Norman Moore: I know what you are saying, but you tell me what is different.

Hon KEN TRAVERS: I just went through it. I will not waste the time of this chamber by repeating my statements. The Leader of the House might want the time of this chamber wasted, but I do not. I have made my comments. This minister is a capable minister and is quite competent on her own, without the Leader of the House's interference, to answer my questions. I ask her to answer my question. I am sure she heard it. If she did not hear it and wants me to repeat it, I will.

Hon DONNA FARAGHER: I will repeat what I said previously. The funds will be raised in the same way as they have been raised previously, under both the current act and the previous act. It is raised in the same manner in which the levies are raised in other states.

Hon KEN TRAVERS: Mr Chairman —

Hon Norman Moore: You just will not accept the answer, that's your problem.

Hon KEN TRAVERS: I have not had an answer. I have had what we have become used to from this government. I accept that in question time that is the government's right. We can ask questions and government ministers can give an answer about something that we did not ask about. We are left with that, and we proceed. One of the advantages of the committee stage when we consider a bill in detail is that we can ask a question, and if we do not get an answer, we can ask it again to ensure that the minister understands it. If the minister does not want to answer the fundamental question I am asking, that is absolutely her right. It would be, I think, of grave concern to this chamber if a fundamental question about whether the bill that we are dealing with is valid and whether the levy is an excise is not answered. I think it is a fundamental question and the minister should be able to say that she has advice that it is not and then give the reasons. If she does not have that advice, because of the lateness of the hour, I suggest that she ask you, Mr Chairman, to leave the chair so that she can get that advice before it gets too late into the evening and that advice may not be available. The answers we have had to date have included comments such as, "Oh, look every other state does it." Every other state may do it. Every other state raised petrol taxes and alcohol taxes that were deemed to be an excise and had to be returned! It is not unreasonable for members in this place to get a clear explanation from the minister on whether or not this bill creates an excise. I would like an explanation about that point: is it an excise—not that it has always been done that way!

Hon Simon O'Brien: Where is the provision that creates an excise? Is it in the 2007 act or in the bill before us?

Hon KEN TRAVERS: That is the interesting question. The point I made earlier in debate is that a fundamental issue is the raising of the levy. I know that this bill will amend the Waste Avoidance and Resource Recovery Levy Act 2007, which is the taxation vehicle. That is why I am raising this point at this time, because I do not want to waste a whole lot of time as we go through the debate dealing with these matters and finding out later that it is an excise.

Hon Simon O'Brien: Where is the thing that you're suggesting is an excise? Is it in the current legislation or the bill before the house? That is so I can follow the argument that you're proposing.

Hon KEN TRAVERS: I accept that it is in the existing act.

Hon Simon O'Brien: Where?

Hon Norman Moore: Are you saying that the current act is unconstitutional?

Hon KEN TRAVERS: I am asking whether a vehicle by which money is raised is an excise. That is what I am asking!

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Hon Norman Moore: You're saying it is in the act; the current act provides for it, so are you saying that the current act is invalid?

Hon KEN TRAVERS: It very much could be.

Hon Norman Moore: Is that what you are saying? You are saying that, are you? So your government operated under an unconstitutional act for eight years?

Hon KEN TRAVERS: I am asking the question. The point I am making and the point I made earlier is that this bill is seeking to change the way in which money is spent. I accept that. But when the government changes the way in which money is spent that may make people think again. I will have to go back over my earlier comments, and I apologise to members for doing that, especially for those who were listening earlier and understood. The point I made earlier is that when we have a taxation regime that people believe is going to a noble cause, they may not seek to ask the question of whether it is a legal tax. Members may think, "Well, I will not get into a fancy argument about this because I actually agree with the bill." The reality is that we all did that.

It may have been that when the former government made the decision to set up the original act that it was wrong to have done it in that way, because it was a tax on production, which would make it an excise and therefore illegal. Because of the way in which we are dealing with this bill to change the way in which the money is being spent, I believe that people are starting to focus on this legislation to determine whether the fundamental basis of the substantive act is legal; and, therefore, my question is related to the amendments we will be making to the act. If we pass the amendments, then that may direct the focus onto the question of whether it is an excise. Therefore, before we spend an awful lot of time working our way through this legislation, clause by clause, we need to make sure that we have got in our heads the situation and we need to understand what is an excise and whether or not this legislation creates an excise. That is why I am asking the minister the question at this point. That is not an unreasonable proposition to be putting to this place on the short title. That is why I want an explanation from the minister. Has she sought advice on whether this is an excise; and, if it is not an excise, can she explain in a little more detail why it is not an excise?

Hon SIMON O'BRIEN: I have listened with great interest to what has been said, certainly in the context of the question that clause 1 be agreed to. Hon Ken Travers has raised a question of the constitutionality of the parent legislation. I would like to offer the following for the member's consideration. Firstly, I believe the creation of what is in the member's mind as a possible excise is contained in the Waste Avoidance and Resource Recovery Levy Act 2007. That provision is not of itself what we are considering now. In a moment I am going to ask members to consider the question of relevance. The point has been raised now, and I think we need to work it through. The Waste Avoidance and Resource Recovery Levy Act gives the head of power for a levy to be prescribed. The nature of the levy is an amount prescribed by regulation that is payable in respect of waste received at disposal premises. Correct me if I am wrong, but I think that is the head of power that Hon Ken Travers is questioning?

Hon Ken Travers: You make your comments, and I am happy to respond.

Hon SIMON O'BRIEN: We need to know. If it is so clear, I thought he would be able to say whether I am on the right track. If I misunderstand what he saying, I need to be put right before I continue. I think that is the act that the member is referring to.

Hon Ken Travers: Yes.

Hon SIMON O'BRIEN: Looking at that act, which is a very brief act with only six sections in it —

Hon Ken Travers: Because it is a taxation act. It can only deal with the matter of taxation.

Hon SIMON O'BRIEN: Indeed it is. For immediate purposes, that is actually rather useful because it means we can take it all in at a glance. It is basically all on one page. This is the head of power that imposes a levy. Technically, I think it is the case that this is a tax. It is certainly not a fee or a charge, in lawful terms, because the amount is levied to raise money, not to fund a process of administration. The amount of money that will be raised clearly has nothing to do with the modest amounts that might be required in administering a system —

Hon Ken Travers: It is clearly a taxation. It might be called a levy but for the purposes of the Constitution Acts Amendment Act it is a tax.

Hon SIMON O'BRIEN: Indeed. There are probably plenty of other examples where this happens. The Perth parking management levy is one that comes to mind.

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Hon Ken Travers: It is interesting, though, that the Perth parking levy is not a tax on production.

Hon SIMON O'BRIEN: That is a very good point. Now we are zeroing in on the key issue here: is this a tax on production? No, it is not. It is a tax on disposal. It is about how much material an entity is committing as waste at disposal premises. It is not a case of production at all.

Hon Ken Travers: If the minister understands some of the constitutional issues about what "production" means—I do not want to interrupt Simon O'Brien, QC, on this point!—this is why I was hoping the Minister for Environment would be able to give us advice on it. The issue about what is production is the key question on which my question rests. That is why I am seeking to get advice from the minister.

Hon SIMON O'BRIEN: Clearly it is not.

Hon Ken Travers: I think you are wrong on that point.

Hon SIMON O'BRIEN: That is something the member will have to argue if he is to establish a point. I am not a Queen's Counsel, but, as a layman, I believe I have a reasonable understanding of what excise is all about. I do not believe that we are looking remotely at an excise on this occasion. It is not a tax on production; it is a tax on ultimate disposal. There is a very big difference, and it is an important difference. If the Waste Avoidance and Resource Recovery Levy Act 2007 imposed an excise, it would indeed be challengeable on constitutional grounds and could be struck down by a court of competent jurisdiction in response. That is a matter for another day. Even if it is, as Hon Ken Travers has suggested, an unconstitutional and therefore unlawful tax that is being raised, when the Labor government introduced it in 2007 it was somehow wink, wink, nudge, nudge, alright because everyone felt warm and fuzzy about it. Sorry, but that does not cut it. It is either constitutional or it is not. The fact is that it is constitutional and it remains that way until it is challenged. Members cannot challenge it here. The time to challenge here was back in 2007, if members were of a mind to do so.

If I may conclude my remarks, I think that has been a helpful discourse and gets us beyond the yes it is, no it is not aspect. I am sure that the minister has had a chance to obtain even further advice and might be able to tell us whether I am right or wrong. In any case, the matter before the house is not the 2007 act in any way, shape or form. Before the house is the 2009 Waste Avoidance and Resource Recovery Amendment Bill. That is what we are considering. The question is whether clause 1 of the bill should be agreed to. Whether or not one of the parent acts that this bill proposes to amend has a constitutional cloud hanging over it is entirely irrelevant to our consideration in committee of clause 1. It might have been a very valid point to have raised during the many, many hours of debate on the second reading debate, but I am not aware that it was raised. Although it is an interesting point, I do not believe it is a genuine point and, in any case, it is irrelevant. I ask the Chairman to indicate whether we will consider this matter as part of clause 1. I respectfully submit that although the Chairman has exercised the prerogative of the Chair wisely by allowing a matter that has been raised to be considered, now that members have had a chance to consider it, we can clearly see that it is irrelevant and that it should not hold up the progress of the consideration of clause 1.

Hon SALLY TALBOT: I rise on the same point that was pursued by Hon Ken Travers, partly to have my say on this aspect of the problems that we face. Sometimes when people express things in a slightly different way, some of the clouds roll away and that might enable the minister and other frontbench members who are trying to assist her to get their head around our question. I will make four points, but firstly I note that Hon Norman Moore missed the crucial part of what Hon Ken Travers was saying.

Hon Norman Moore interjected.

Hon SALLY TALBOT: I will do my best. Hopefully we can work together on this. During the second reading debate, I canvassed the business about changing the concepts that are central to the management of waste and recycling. Hon Simon O'Brien said that this is not a matter of production but is about the disposal of waste. That is central to his point. During the second reading debate I used the concept of "completing the circle". That is not my concept. I am sure that the Minister for Environment is familiar with it because she talks to the same people whom I talk to. They talk to me about completing the circle so that waste is regarded as a resource. That is absolutely key to changing our concepts if we are to improve the way we do these things. In that regard, clearly there is a production issue going on. Clearly, we are looking at something that is regarded as a resource from the moment it is picked up in a kerbside collection or the moment it is put into a waste skip. Where does it go? It does not become rubbish at any particular point. We have spoken about the fact that a calorific value is inherent in much of this material that is currently going to what we have traditionally called waste. It is a matter of production. Waste is being produced. That is the first point that I wanted to make. I know that it involves maybe changing the conceptual framework that many of us were brought up with, but that is the reality of the nitty-gritty of this debate.

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I turn to the second point. I know that the minister has said a couple of times that she has received legal advice on the specific point made by Hon Ken Travers and that it is not the practice “as a general rule” to provide that legal advice to the opposition. I accept that. However, it is standard practice to provide a precis of that legal advice. If the government has received legal advice on this matter, the minister should be able to clarify this by giving us a precis right here and now within the next couple of minutes so that we can move on. If the government keeps going on like this, it will wish it had agreed to refer the bill to a committee. If it had been referred to a committee, we would have been back here with an answer on 15 December. The way the government is going about this bill, we will still be debating clause 1 on 15 December. I ask the minister to please ask her advisers, her leader or whichever opinion she would take seriously whether we can get a precis of that legal advice in the next couple of minutes.

My third point is that the first group that raised this question about the legality of what the government is doing was not the opposition; it was the Western Australian Local Government Association. Within days of the budget being brought down, WALGA questioned the legality of it. At that stage the head of WALGA, the president, or whatever his title is —

Hon Ljiljanna Ravlich: Bill Mitchell.

Hon SALLY TALBOT: Councillor Mitchell was absolutely pilloried in the other place for having the temerity to suggest that this government could be doing something that was outside the law. The government then came back and said that it had had another look at it. It got the legal advice and then had to backflip on when the levy was changed. I will pursue this point in considerable detail. I seriously doubt that the minister has explained this to the satisfaction of her backbench, but it will not take it up to her. We will take it up to her. What is the connection between the 300 per cent increase in the landfill levy and this bill? The minister has clearly received some legal advice about the legality of increasing the landfill levy before this bill went through. I have asked what the connection is in this house, and during the briefing we had on the bill. The minister has never been able to explain that adequately. I am not saying that she has ignored me; she has not. She has repeated her advice and it was repeated in the other place. She stated —

Having received legal advice, the government decided it was appropriate that prior to the proposed increase in levy charges taking effect, the passage of the Waste Avoidance and Resource Recovery Amendment Bill 2009 should occur first.

That is not an explanation. Again, I ask the minister to provide us with a precis of that legal advice, if she will not share the legal advice with us, which may clarify the point that Hon Ken Travers has made about the excise.

I now turn to my last question on this point. In the minister’s first couple of responses to Hon Ken Travers, she referred to having legal advice on the question about the excise. Is that the same legal advice that she referred to in connection with getting this bill through before the government tries to change the regulations to increase the levy? Is it the same legal advice or did the minister take legal advice on two things? I think that is absolutely germane to the point that Hon Ken Travers is raising.

Hon DONNA FARAGHER: I do come back to what I have said previously, and I do acknowledge the very sterling comments that were made by my colleague Hon Simon O’Brien.

The advice that I have, including that of parliamentary counsel, is that the levy is on the disposal of waste to landfill—that is, rubbish going into the ground. Hon Sally Talbot referred to the whole circle of waste, but we are actually talking about rubbish going into landfill; not rubbish going into a glass recycling plant or something such as that, where there is a continuation of the cycle. We are talking about rubbish going into the ground. The advice that I have, as I have said, is that the levy is on the disposal of waste to landfill; it is not a tax on the production of waste, and therefore it is not an excise.

Hon Norman Moore: Quite right; spot on.

Hon SALLY TALBOT: With respect, I asked four questions, but the minister has chosen only to talk about this notion of production. Let me take that one first: it will not be so just because the minister says so. The minister has to give us the arguments.

Hon Donna Faragher: That is the argument!

Hon SALLY TALBOT: That minister must be familiar with the concept of argument. The most common comment I wrote whilst marking undergraduate essays was, “Who says?” It is not good enough just to assert it.

Hon Donna Faragher: I’m not one of your students, surprisingly enough!

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Hon SALLY TALBOT: I do not think the minister was, because I think I would have remembered her if she had been, but there have been an awful lot of them.

Hon Donna Faragher: I would have certainly remembered you!

Hon SALLY TALBOT: But I have a new job now, and that is the job I am trying to do, and I am perfectly happy to be doing it.

It is a standard point, Mr Chairman, that it will not be so just because the minister says it will. That might be her opinion, but if she is not able to substantiate that, then it counts for nothing. On the basis of what she just said, I have thought of another point I can make on this notion of production: if it is just rubbish going to landfill, and then in some way this cycle that I have talked about obviously, in her mind, closes at that point, how come landfill is being factored into the carbon pollution reduction scheme? I mean, it is not finished; it is still part of the cycle. In itself, it is a producer of carbon. The minister cannot just tell us that the circle closes there, and then sit down and expect us to move on.

Hon Simon O'Brien: But what's your point? What is your point?

Hon Ljiljanna Ravlich: She's got to answer the questions.

Hon Norman Moore: She has answered the question.

Hon SALLY TALBOT: I think the minister knows what my point is. Does Hon Simon O'Brien need me to explain it to him?

Hon Simon O'Brien: Are you saying it's an excise, and therefore unconstitutional; is that what you're saying?

Hon SALLY TALBOT: Yes; I am asking exactly the same question —

Hon Simon O'Brien: It is not a tax on the production of waste. Even if you accept your cycle theory, the product you're talking about is not an excisable product; it is, in your terms, an input.

Hon SALLY TALBOT: That is what we are asking the government to demonstrate to us, but it has not done it yet.

Hon Simon O'Brien: You've been asserting it!

Hon SALLY TALBOT: Can I just remind the minister of my other three questions? I will take them backwards: firstly, in the minister's first couple of responses to Hon Ken Travers, she referred to having obtained legal advice about this specific question; is that the same legal advice that caused the minister to delay the introduction of the 300 per cent increase and the regulation change? Secondly, we know that there are challengeable aspects of what the government is trying to do—the ones that were raised by Western Australian Local Government Association—and was this one of them? Thirdly, if we cannot see the legal advice, why can we not see a precis of the legal advice?

Hon DONNA FARAGHER: We receive a variety of legal and parliamentary advice at different points in time. I will just reiterate what I said: the levy is on the disposal of waste to landfill—that is, rubbish going into the ground. It is not a tax on the production of waste, and therefore it is not an excise.

Hon KEN TRAVERS: This bill seeks to amend the substantive section in the taxing act—that is, the Waste Avoidance and Resource Recovery Levy Act 2007. I might in a minute go to the point about whether it is appropriate that we are seeking to change the way in which the levy is handled, which is arguably a new form of taxation. We can come to that point in a minute, but for now I want to stay on the point about taxation. The question that we face is understanding what an excise is. I understand that it is hard for us to comprehend waste as a product but it is a product and in terms of that —

Hon Michael Mischin: Why is waste a product?

Hon KEN TRAVERS: I am about to use the *Macquarie Pocket Dictionary* to tell members what “production” means. The dictionary states —

production ... the act of producing; creation; manufacture ... something that is produced; products ... the creation of value; producing of articles able to be bought and sold.

Hon Michael Mischin: Rubbish!

Hon KEN TRAVERS: That is what we are talking about—absolutely!

The CHAIRMAN: Order, members! I interrupt the debate for a second to indicate to members that if they want to make a remark, for starters they should make it from their own place in the chamber.

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Hon KEN TRAVERS: The dictionary definition continues —

4. the total amount produced ...

We would not normally think about a business manufacturing waste as a form of production, but that is what happens.

Importantly, later in the committee stage we will deal with Part 3 of the bill and clause 12, which seeks to amend section 4 of the Waste Avoidance and Resource Recovery Levy Act, which is the substantial section by which the levy is raised. The interesting thing about clause 12 is that it will change the act so that the minister, not the Waste Authority, will make recommendations to the Governor. That is a fundamental and significant change to section 4 of the levy act. The minister earlier made the comment that in this particular circumstance the levy is charged at the point of going to landfill, but section 4 states that the levy is “payable in respect of waste received at disposal premises”. “Disposal premises” may be landfill and that may be how it currently operates, but that is a far broader term and a far broader head of power than just “to landfill”. Therefore, once this legislation is passed, the government could make the levy payable at a different point. I do not think that there will be a question mark about whether we are producing the waste; there are more fundamental issues about whether this is an excise. Those are the more complicated issues, which is why I ask whether this is something the government has dealt with. If it is not, just say so and we will have to simply fly blind, unfortunately, through the rest of this process and potentially spend an awful lot of time on legislation that one day might be found to be invalid. If the government has dealt with it, the minister can give us that confidence and we can move on. However, I do not think that the key issue around production will be resolved because I think that is not the hard part. Clearly, this is a tax on the production of waste. It will be very much around the point at which the taxation and the levy is applied, but because we are changing that clause, that has relevance to this debate tonight. I would like to know whether the minister has had advice about whether it is an excise. If she has not she can tell us and I am more than happy to move on to my next point and we will know that we are flying blind on this matter. I am not sure that the minister has that advice. If she has, I want a better explanation. If not, she can tell us and we will move on to the next point.

Hon DONNA FARAGHER: I have already said that the department has received advice.

Hon Ken Travers: On the specific point of the excise?

Hon DONNA FARAGHER: Yes, with respect to the excise. As I have said, the bill does not introduce a new form of taxation. There is no change to the form of the levy and the way it is raised. Waste that is considered a resource for resource recovery and recycling; that is, produced for other things, is not subject to the levy.

Hon Ken Travers: At the moment.

Hon DONNA FARAGHER: I do not know what more I can add. The government has accepted the advice that it is not an excise.

Hon ROBIN CHAPPLE: On this very point, landfill quite often produces methane energy. It is common production these days and it is growing. In future, will we be able to identify that the waste that is going to landfill is producing or is a production and is indeed an energy source, and thereby would it not be caught under the terms Hon Ken Travers is alluding to?

Point of Order

Hon SIMON O'BRIEN: The whole question before the Chair seems to be about whether there is an excise involved here as a ground to make one of the parent acts, at least, invalid and, thereby, for some reason that invalidates the bill before us. Indeed, I respectfully submit that we must be getting awfully close to tedious repetition on that point. If those who are trying to frustrate the passage of the bill are relying on an ultra vires aspect, why are we considering the bill in the first place? Why was it allowed to proceed? Why has the Chair not said before now, “Well, hang on this bill is invalid?”

The CHAIRMAN: As an example of that, in clause 5, proposed subsection (4) is to be inserted after section 73(3) and to include the words “Any levy paid ...”. I am using that as an example of Hon Ken Travers’ capacity to range over clauses of the bill and discuss how its formal content might be improved by way of addressing that very point. If I am mistaken, I do not want to put words in Hon Ken Travers’ mouth. That is my interpretation of where Hon Ken Travers may be coming from.

I also need to say that it is not the Chair’s position to rule on legality or not of a bill; it is not my particular capacity.

Committee Resumed

Hon Ed Dermer; Hon Jon Ford; Hon Robin Chapple; Hon Jock Ferguson; Hon Donna Faragher; Deputy President; Chairman; Hon Ken Travers; Hon Simon O'Brien; Hon Dr Sally Talbot; The Chairman; Hon Michael Mischin

Hon KEN TRAVERS: Yes. I think the Chair has the right to rule on whether the house has a competency to deal with whether a matter contravenes the Constitution Acts Amendment Act, but not the specifics.

You are absolutely right in your interpretation, Mr Chairman; that is why I am raising it at this early point. Understanding this issue will help inform us as we progress through the remainder of the bill of the way it operates. That is why it is important for us to get a good understanding of some of the more general issues about the clauses and the way they operate, so that we can consider whether we need to improve them by way of amendment over and above what exists here. I think there is a real need for us to understand it. It is clear that we are not going to get an answer from the government tonight; it will just keep pushing on. I am not completely satisfied about the legal advice. The minister may have got advice from parliamentary counsel and others that this legislation is legal. That is fine; I accept that. I am not absolutely convinced from the minister's words—she can give us more clarification if she wants to—that that legal advice went into the specifics of whether it is an excise. Often, it is not until these points are raised that people go back and look at them. When I first thought about this, my concept was that we are producing waste, so how can this be a tax on the means of production —

Hon Simon O'Brien: It's not about producing waste. Nothing in here is about producing waste.

Hon Helen Morton: It's about avoiding waste.

Hon KEN TRAVERS: It is not, and that is my next point. I thank Hon Helen Morton for raising the issue of whether this legislation is about avoiding waste or whether it will set up a regime that will encourage waste.

If the minister does not want to answer the question about whether the advice she got dealt specifically with the excise, it is clear that we are not going to resolve that matter tonight, which is unfortunate because we could have moved on. I am more than happy to leave that matter at this point and move on to the next set of questions I have on the short title.

Hon SALLY TALBOT: I also feel that we are probably going to have to move on, but I want to give the minister one last opportunity. I understood the minister, in answer to Hon Ken Travers' first question about legal advice, to say that she had specific legal advice relating to the excise. Can I first of all ask the minister to clarify that point?

Hon DONNA FARAGHER: As I have said, we have received advice and that advice has come at different points in time on different aspects of the bill.

Hon Ken Travers: But not specifically about excise.

Hon DONNA FARAGHER: I have just said that.

Hon Sally Talbot: Not specifically about excise.

Hon DONNA FARAGHER: We have received advice about section 64—that is, excise.

Hon Sally Talbot: So you have received advice about excise?

Hon DONNA FARAGHER: I do not know how much more I need to say.

Hon SALLY TALBOT: I will have one final go at this. Hon Simon O'Brien is obviously taking a close interest in this debate, but I just want to say something about the way he framed his comments. He asked why we did not raise the matter earlier if there was a problem or whether we were making comments about the 2007 act. Being a legislator in this chamber is not like getting married.

Point of Order

Hon MICHAEL MISCHIN: I understand that at the committee stage members are supposed to deal with the bill and question the minister, not have a debate across the chamber with the Minister for Transport.

The CHAIRMAN: I know what the member is saying. I am sure that Hon Sally Talbot is, in essence, talking through the Chair. It is the right of any member in the Committee of the Whole, not necessarily only the minister, to stand and respond.

Committee Resumed

Hon SALLY TALBOT: Thank you, Mr Chairman; I am indeed directing my comments through you. Indeed, I am encouraging the minister, through you, to listen to what Hon Simon O'Brien said and I am raising a question in her mind about it. I am suggesting that being a legislator in this chamber is not like getting married. When people get married —

Several members interjected.

Hon Ed Dermer; Hon Jon Ford; Hon Robin Chapple; Hon Jock Ferguson; Hon Donna Faragher; Deputy
President; Chairman; Hon Ken Travers; Hon Simon O'Brien; Hon Dr Sally Talbot; The Chairman.; Hon Michael
Mischin

Hon SALLY TALBOT: I am trying to make a point. If members let me get through it, I will sit down.

Several members interjected.

The CHAIRMAN: Order, members!

Hon SALLY TALBOT: There is a point in the marriage ceremony at which anyone who has an objection is invited to make that objection or “hold their peace”, which I think is the expression. It does not apply to us here. The moment that any member of this chamber perceives that there might be a problem with a bill that is going through the chamber—however that problem has arisen—that member is absolutely obliged, because of the oath of affirmation that members take when they come into this place, to draw that to the attention of the chamber. If a mistake has been made, let us face up to it and consider what we can do about it. That is the spirit in which we should be proceeding.

Hon KEN TRAVERS: A very quick question to the minister: when the minister referred to section 64, section 64 of which act was the minister referring to? I am just a bit confused.

Hon DONNA FARAGHER: Apart from the patronising comments of Hon Sally Talbot and references to weddings and whatever else, I just say that we have received advice and we have accepted the advice. The member might think that we have a problem. We actually do not have the problem; the member is the one who seems to have the problem. I have been very clear about the advice we have received. We see that there is not an issue—that is, that it is not an excise. As I have said, the member might want to provide her gratuitous advice to me, as she does all the time, which is fine, but the advice I have is that it is not an excise. I just really do not know what more I can add. The member is saying that we have a problem. I am saying that we do not because that is the advice we have received. The member is the one who seems to have the problem; not I.

Hon KEN TRAVERS: Is the minister sure she is not referring to section 64 of the Constitution Acts Amendment Act, which is the section of the Constitution Acts Amendment Act that defines the powers of the two houses and differentiates their ability to deal with taxing bills and appropriation bills?

Hon Simon O'Brien: What we are on is clause 1 of this bill, and you know it.

Hon KEN TRAVERS: The minister made a comment. I am not trying to be —

Hon Simon O'Brien: I give you full marks for your attempts to spin this out as long as you can. Who cares? Get on with it.

Hon KEN TRAVERS: I am trying to get on with it. I made a point a minute ago, and I just want to clarify one simple point. The minister has been talking about section 64. I am just wondering whether she means section 46, which is the section I think we would be more likely to deal with, which is the competencies and the respective powers of the houses with regard to both taxation and appropriation. If that is the case, that is fine. Again I would say that the issue about excise is not in the Constitution Acts Amendment Act; it is actually in the Australian Constitution. Can we get that clarified? I want to move on, but I think it is reasonable to ask the minister to make sure that we are talking about the right section of the act.

Hon DONNA FARAGHER: It is section 64 of the Constitution Act 1889.

Hon ROBIN CHAPPLE: Before we move on from the short title, it would be pertinent for me to question the minister on a couple of matters rather than try to tease them out during consideration of the clauses. I return to the issue of policing and control. The minister indicated that there were five additional officers in the Department of Environment and Conservation who would deal with the issue, and that there were 200 trained inspectors who would be able to facilitate the monitoring of sites. I also return to a comment that was made by Hon Wendy Duncan in this place on Wednesday, 18 November 2009. The debate was about illegal dumping, and Hon Wendy Duncan stated —

This is a real concern and I have raised it with the minister; she assured me that she and her department are very aware of this and that they will be increasing the fines for the illegal dumping —

As we know, the levels of fines do not really make any difference to whether people dump waste —

and increasing resources to monitor and police illegal dumping.

We have seen nothing in the budget that deals with this. I would like to know where the funding is going to come from to increase the resources to monitor and police illegal dumping. Will it come out of the WARR account, or will it come out of the Department of Environment and Conservation account? How many extra officers will there be to deal with that, and where will the funding come from?

Hon Ed Dermer; Hon Jon Ford; Hon Robin Chapple; Hon Jock Ferguson; Hon Donna Faragher; Deputy
President; Chairman; Hon Ken Travers; Hon Simon O'Brien; Hon Dr Sally Talbot; The Chairman; Hon Michael
Mischin

Hon DONNA FARAGHER: For clarification, the member may have mistakenly referred to five officers; I was referring to the new office of the Waste Authority.

There are around 200 inspectors—or, more appropriately, authorised officers—within the department who have the capacity to deal with matters surrounding illegal dumping. Local government officers can also be authorised in that regard. This legislation does not deal with funding, but this will form part of such officers' normal duties. If they were to see illegal dumping taking place, they would undertake the necessary actions. The penalties for illegal dumping are currently so low that they need to be increased. I would like to think that everyone in the chamber will support the increase in penalties. As I said, there are around 200 authorised officers who already have the capacity to deal with that.

Hon ROBIN CHAPPLE: Did the minister therefore advise Hon Wendy Duncan that she would be increasing resources to monitor and police illegal dumping? If so, what is the increase in resources, and where will it be funded from? I will reiterate my entire statement. On Wednesday, 18 November 2009, when Hon Wendy Duncan was speaking on this legislation, she said —

Another issue that was raised was the possibility of increased illegal dumping in forests or native bush, or even in unmanaged tips in regional areas close to the metropolitan area. This is a real concern and I have raised it with the minister; she assured me that she and her department are very aware of this and that they will be increasing the fines for the illegal dumping and increasing resources to monitor and police illegal dumping.

The minister has indicated that local government officers will be able to do this also. How will those local government officers be funded? Will the tab be picked up by local government?

Hon DONNA FARAGHER: Local government officers will have extra powers to look at illegal dumping issues. The Liberal Party made an election commitment to increase the number of compliance and monitoring officers; that obviously includes monitoring for illegal dumping. I think there are an additional eight officers. That is a specific additional aspect. There are around 200 authorised officers. The department also employs a landfill levy inspector to monitor compliance with the levy regulations. One of the inspector's functions is to patrol major transport arteries out of the metropolitan area to prevent waste from being transported to rural landfills.

Committee interrupted.

[Continued below.]