

WASTE AVOIDANCE AND RESOURCE RECOVERY AMENDMENT BILL 2009

Committee

Resumed from an earlier stage of the sitting. The Chairman of Committees (Hon Matt Benson-Lidholm) in the chair; Hon Donna Faragher (Minister for Environment) in charge of the bill.

Clause 5: Section 73 amended —

Progress was reported after the amendment moved by Hon Sally Talbot had been partly considered.

Hon LJILJANNA RAVLICH: Prior to the lunch break I had put on the public record that I support this amendment moved by Hon Sally Talbot. Clause 5 aims to restore the integrity of what the original Waste Avoidance and Resource Recovery Act 2007 aimed to achieve. It was a good piece of legislation. It has made some significant progress in the area of waste avoidance and resource recovery. We now have a situation whereby the work of the people involved in this sector is at risk because of the way that these increased levies will be distributed. The levies will be distributed through the creation of a separate account. Therefore, less money will go into the waste avoidance and resource recovery account. This is a very important account. Proposed section 73(5) states —

Any monies paid to the operating account pursuant to paragraph (4) must only be applied for purposes that adhere to the Objects of this Act specified in section 5.

Hon Sally Talbot has already gone through the objects of the Waste Avoidance and Resource Recovery Act, and we all agree with them, although I am not sure whether we all agree with the objects of the amendment bill before us. Likewise, proposed section 73(6) provides a discretionary power for the minister of the day to provide partial exemptions—there is no provision for full exemptions—to the public and private sector enterprises that demonstrate “either an ability or a credible commitment to further reduce the amount of residual waste sent to landfill”. That must be a good thing. The government, which has introduced the Waste Avoidance and Resource Recovery Amendment Bill, should support that part of the amendment.

The Waste Authority is involved in making strategic investments and certainly is progressing discussions with others to identify aspects of the waste stream that could be best assisted by timely investments. It is looking at recycling oil, glass packaging and electronic waste. There is no doubt that those in either the private or public sector who achieve a desirable waste avoidance and resource recovery strategy should be recognised and rewarded. I believe that we should reward people who do the right thing because it is in the public interest to do so. I am very supportive of proposed subsection (6). I am hard-pressed to understand why the minister could not accept both these amendments. It is only by accepting these amendments that we can be confident that this bill is what it purports to be. If these amendments are not accepted, one can conclude only that the government does not have a genuine interest in either waste avoidance or resource recovery and that its underlying fundamental interest in this legislation is to make money to fill the budget black hole that has been mentioned time and again. This bill will simply raise revenue, which is very disappointing for the sector as a whole. It would be very hard for a minister of the day to speak with a sense of genuine intent on these matters when this government has done such a backflip on waste avoidance and resource recovery and is not doing the right thing in this area. I support Hon Robin Chapple’s amendments because they are very good. The minister should give them due consideration and support them also.

Amendment put and a division held, the Chairman casting his vote with the ayes, with the following result —

Extract from Hansard
[COUNCIL - Tuesday, 1 December 2009]
p10180e-10200a

Hon Ljiljanna Ravlich; Hon Dr Sally Talbot; Hon Donna Faragher; Hon Robin Chapple; Hon Helen Morton;
Chairman; Hon Helen Bullock; Hon Ken Travers; Hon Jon Ford; Hon Sue Ellery

Ayes (13)

Hon Matt Benson-Lidholm
Hon Helen Bullock
Hon Robin Chapple
Hon Kate Doust

Hon Sue Ellery
Hon Jon Ford
Hon Lynn MacLaren
Hon Ljiljanna Ravlich

Hon Sally Talbot
Hon Ken Travers
Hon Giz Watson
Hon Alison Xamon

Hon Ed Dermer (*Teller*)

Noes (18)

Hon Liz Behjat
Hon Jim Chown
Hon Mia Davies
Hon Wendy Duncan
Hon Phil Edman

Hon Brian Ellis
Hon Donna Faragher
Hon Philip Gardiner
Hon Nick Goiran
Hon Nigel Hallett

Hon Alyssa Hayden
Hon Col Holt
Hon Robyn McSweeney
Hon Michael Mischin
Hon Norman Moore

Hon Helen Morton
Hon Simon O'Brien
Hon Ken Baston (*Teller*)

Pairs

Hon Jock Ferguson
Hon Adele Farina

Hon Peter Collier
Hon Max Trenorden

Amendment thus negatived.

Clause put and passed.

Clause 6: Section 76 amended —

Hon SALLY TALBOT: There are three amendments to clause 6 on the supplementary notice paper; two in my name and one in Hon Robin Chapple's name. The first two relate to page 3, lines 26 to 28—one to be moved by Hon Robin Chapple; one to be moved by me—and I am happy to withdraw my amendment on the same basis that I withdrew a similar amendment to clause 5. Is it appropriate for me to discuss the other two amendments now?

The CHAIRMAN: Yes.

Hon SALLY TALBOT: I indicate that Labor will support the amendment standing in the name of Hon Robin Chapple—page 3, lines 26 to 28—just as we supported the amendment containing the same wording to the previous clause. Amendment 17/6 standing in my name states —

Page 3, after line 28 — To insert —

- (4) Any monies paid to the operating account pursuant to paragraph (3) must only be applied for purposes that adhere to the Objects of this Act specified in section 5.

I point out to honourable members that this is the same amendment I moved to clause 5 to try to ensure that money raised by the waste levy would be used in an appropriate way in accordance with the objects of the act. On the basis of what the minister has previously said, I recognise that she will not support any of these amendments, but I ask her to respond to one question. I notice that clause 6 relates specifically to payments "paid by way of penalty under subsection (1)". Will the minister inform the chamber how many such payments there have been since the Waste Avoidance and Resource Recovery Act 2007 came into being on 1 July 2008?

The CHAIRMAN: Before the minister replies, does the member propose to move amendment 17/6 standing in her name?

Hon SALLY TALBOT: Yes.

The CHAIRMAN: Could you, then, formally move that amendment?

Hon SALLY TALBOT: I move —

Page 3, after line 28 — To insert —

- (4) Any monies paid to the operating account pursuant to paragraph (3) must only be applied for purposes that adhere to the Objects of this Act specified in section 5.

Hon DONNA FARAGHER: To date, for this financial year there has been none. We do not have the exact figures going back to 1998.

Hon Sally Talbot: I was asking about 2008; back to when the levy started.

Hon DONNA FARAGHER: What is the member referring to?

Hon Sally Talbot: Yes, I understand; 1998 is fine.

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Chairman; Hon Helen Bullock; Hon Ken Travers; Hon Jon Ford; Hon Sue Ellery

Hon DONNA FARAGHER: We do not have the exact figures in the chamber for as far back as 1998, but I understand there have been probably less than one dozen, and there has been none in this financial year.

Hon SALLY TALBOT: I thank the minister for putting that on record. That answer really just underlines the point I have made several times; that is, the government is determined to remove all additional sources of funding from the waste account. Why, otherwise, would there be a specific amendment made to the act to take from the Waste Authority money paid by way of penalties? It seems to indicate that the government's motivation is this desperate scramble for every last dollar and cent to fill the Department of Environment and Conservation's budget black hole.

Hon DONNA FARAGHER: No, that is not correct, because the Waste Avoidance and Resource Recovery Amendment Bill 2009, in effect, guarantees that a set amount of funds—being at least 25 per cent—will go to the waste avoidance and resource recovery account. Any penalties imposed on those who do not pay the levy will actually go against the department, so the bill guarantees that at least 25 per cent will go to the Waste Authority.

Amendment put and negated.

The CHAIRMAN: Was Hon Robin Chapple intending to move the amendment to clause 6 that was originally in his name on the supplementary notice paper?

Hon ROBIN CHAPPLE: I believe I had advised that I would not move it.

Clause put and passed.

Clause 7: Section 79 amended —

Hon SALLY TALBOT: I have some questions for the minister on clause 7. I will go through them, and then perhaps she would care to respond to them in one go. In subclause (1), some words are being deleted. In fact, people who have taken a close interest in this matter will see that not as many words are being replaced as one might think, but the provision is being rewritten. I would like the minister to tell us what is the difference between a special purpose account and a special account. The word "purpose" is being inserted in subclause (1). It must be remembered that we are talking here not about the account that is being set up to take the 75 per cent of the waste levy, but about the existing account that we know as the waste account. Is this a new account that is being set up in this subclause, or is it in fact the same as the existing account? I ask specifically about that: why are the references in clauses 5 and 6 to the Financial Management Act 2006, section 16(1)(a), whereas the reference in this subclause is to the Financial Management Act 2006, section 16, without further specifying the subsection?

Hon DONNA FARAGHER: I understand that it is simply new terminology that is utilised by Treasury regarding "special purpose account" or "special account", but it is the same existing account. It is just a change in terminology, as I understand, by Treasury.

Hon SALLY TALBOT: Existing section 79(1)(b), which is to be removed, states —

with the approval of the Treasurer, at a bank as defined in section 3 of that Act,

Can the minister explain that to us, please?

Hon DONNA FARAGHER: I think I got the member's question. I am sorry; I was just getting some additional advice. It is a special purpose account within the Department of Environment and Conservation's bank account. Is that the question the member asked? I am sorry.

Hon SALLY TALBOT: The amendment that is proposed in this bill deletes existing section 79(1)(b), which currently reads —

with the approval of the Treasurer, at a bank as defined in section 3 of that Act,

I assume "that act" means the Financial Administration Act.

Hon DONNA FARAGHER: As I understand, originally the Waste Authority could utilise a bank on its own, but as a result of the Financial Management Act 2006 the account, as I mentioned before, becomes a special purpose account within the bank account of the Department of Environment and Conservation. It was changed as a result of changes to the Financial Management Act.

Hon SALLY TALBOT: If I can be absolutely clear about that, has the Financial Management Act already been amended to remove the reference to this account that can be established at a bank as defined in section 3 of that act? I ask because my reading of the Financial Management Act shows that those sections are still there.

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Chairman; Hon Helen Bullock; Hon Ken Travers; Hon Jon Ford; Hon Sue Ellery

Somewhere in my pile of papers I have that section of the act. I understand that those provisions are still available to departments setting up accounts such as the waste account.

Hon DONNA FARAGHER: I understand that the special purpose account that is proposed in this bill is exactly the same as the special account that was referred to before. As I understand, the WARR account has always been a special account within the bank account of the Department of Environment and Conservation. We are simply changing the terminology to reflect changes in Treasury's terminology, but it has always been an account within the Department of Environment and Conservation's bank account operating under the same guidelines. There will be no change to that bank account.

Hon SALLY TALBOT: If I have understood the minister correctly, there is now no provision under the Financial Management Act for an account as stated in the unamended section 79(1), which reads —

There is to be established and kept —

- (a) as an agency special account established under the *Financial Management Act 2006* section 16; or
- (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act, an account to be called the "Waste Avoidance and Resource Recovery Account".

Is the minister telling this committee that that facility is no longer available under the FMA?

Hon DONNA FARAGHER: I understand that Treasury does not allow for separate bank accounts.

Hon SALLY TALBOT: Is an error in the substantive act being rectified? I understood the minister earlier to be saying that it was being brought into line with changes that had been made under the Financial Management Act.

Hon DONNA FARAGHER: I understand that it is a change in the way that Treasury deals with these sorts of matters, not only in terms of terminology, but also in the way that it allows or does not allow separate bank accounts. As I said, we are not changing the way that the account is currently constructed, if I can put it that way.

Hon SALLY TALBOT: We will move along from there, and I will come back and reconsider that matter later, if I may. I note that there is an amendment on the notice paper standing in the name of Hon Robin Chapple, which essentially deletes the whole of clause 7(2). Before we consider the removal of those lines, I would like to ask the minister a couple of questions about the amendments that are proposed by this clause. Is that satisfactory?

The CHAIRMAN: That is in order.

Hon SALLY TALBOT: I refer to proposed section 79(3A). What do the words "as is specified by the Minister" mean? The proposed subsection reads —

The Minister is to direct in each financial year that there is to be credited to the WARR Account such amount of the levy credited to the Department's operating account under section 73(4) as is specified by the Minister.

What does "as is specified by the Minister" mean? What does the minister have to take into account? Would the decision go to cabinet?

Hon DONNA FARAGHER: Proposed section 79(3B) refers to the amount to be specified by the minister and that matter would be subject to the budget. The member can see that proposed section 79(3C) refers to the budget papers, so obviously it would be matters surrounding the budget.

Hon SALLY TALBOT: I can see very clearly that in proposed sections 79(3B)(a) and 79(3B)(b) that formulae are set out, both of which are not to be less than 25 per cent of the forecast levy amount. Proposed section 79(3A) has the words "as is specified by the Minister". Clearly, the minister takes the budget into account, but this is about the amount that the minister will determine has to be taken out of the consolidated revenue account and credited to the WARR account, but then there is some kind of ministerial discretion—namely, "as is specified by the Minister". I am asking a very simple question and "the budget" is just a generic answer. What factors does the minister have to take into account? While the minister is considering this, I will give the house an example of what I am trying to get at. Does the minister have to take into account the Waste Authority's financial plan for the year? Does the minister have to take into account any sort of joint ventures that the Waste Authority proposes entering into in the next financial year? It seems to me that both those sorts of considerations might lead the minister to credit a little more to the WARR account in a particular year than we might have done otherwise. Therefore, my question is: what does the minister have to take into account?

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Chairman; Hon Helen Bullock; Hon Ken Travers; Hon Jon Ford; Hon Sue Ellery

Hon DONNA FARAGHER: Again, I suppose it is clear in proposed sections 79(3B) and 79(3C) that they look at matters surrounding the forecast levy, for example, and any other matters surrounding perhaps the business plan or any other relevant matters.

Hon SALLY TALBOT: I will pursue these matters as we work through the questions. I want to know now whether that decision would go to cabinet. Who would be consulted? Would the Waste Authority be consulted?

Hon DONNA FARAGHER: All of this would be taken into account as part of the budget process. Obviously, the budget process involves cabinet, so that would occur and as part of that, as with any other matters, I would seek advice across a range of areas, whether that is from the Waste Authority or others. However, there is a clear process as part of each year's budget process.

Hon SALLY TALBOT: This, with respect, is the most extraordinary response to my questions. The minister is saying that she or whoever is the minister of the day would engage in the normal processes that are undertaken as part of the budget deliberations. That would involve talking to various people and getting various bits of advice. We already have on the record the fact that the minister spoke to no-one in relation to this year's budget—the budget brought down on 14 May. The minister did not take any of the expert advice that was being offered to her by any of the stakeholders, so I would really like a response to that. How can the minister assert that the normal consultations will be entered into when she has already admitted to us that, in relation to this very bill we are considering today, she took absolutely no advice whatsoever?

Hon DONNA FARAGHER: I refer again to the fact that it will be part of the normal budget process. Obviously, we are referring to proposed section 79(3C), which refers to the “forecast levy amount” and estimates and the like being tabled in the budget papers. Whether it is part of consultation is determined by the minister and by the government. However, I have said that it would be all done as part of the normal budget process.

Hon SALLY TALBOT: Honourable members will be able to see my amendment to proposed section 79(3B) in the supplementary notice paper whereby I seek to delete “25” and replace it with “100”. That amendment will enable the retention of the total hypothecation. This is our one chance, as I read this bill, of altering the 75-25 per cent split. I will attempt to do that when I move my amendment on the supplementary notice paper. I refer now to proposed section 79(3C). We are talking about the forecast levy amount and how that is calculated. Proposed section 79(3C)(a) reads —

the estimate of the levy amount for the financial year set out in the budget papers for that financial year tabled in the Legislative Assembly; ...

Is that the way it is done now?

Hon Donna Faragher: It is the way that it will be done.

Hon SALLY TALBOT: By that answer, do I understand that is not the way it is done now? How is the levy calculated now? We already look at a forecast levy amount. That is the amount that goes into the budget papers. How is that figure arrived at if it is not by an estimate of the levy amount set out in the budget papers?

Hon DONNA FARAGHER: There is no requirement to forecast the levy, but, having said that, proposed section 79(3C) provides for future budgets to include the forecast levy and to show that in the budget papers.

Hon SALLY TALBOT: That is extraordinary. I had not anticipated that response. In that case, what on earth does proposed section 79(3C)(b) mean? It reads —

if another means of determining the forecast levy amount for the financial year is prescribed ...

Is proposed paragraph (a) not going to be done anyway? In other words, why do we need both proposed paragraphs (a) and (b)?

Hon DONNA FARAGHER: Proposed paragraph (a) is the way it will be done; however, proposed paragraph (b) is there in the event that in future years there is a change in the way the levy can be determined, and that would have to be prescribed in regulations. It is actually there for, I suppose, future years if something is to change in that regard. However, proposed paragraph (a) is the way it will be done in the normal course of events.

Hon SALLY TALBOT: I ask the minister to give us some concrete indication of what might be envisaged by proposed paragraph (b).

Hon DONNA FARAGHER: There is no concrete example because proposed subsection (3A) provides for the way that it would be done. Again, it would allow another means of determining the levy to be prescribed by regulation. That would be perhaps outside the budget process, but it is there in the event that there are changes to how the levy may be determined.

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Chairman; Hon Helen Bullock; Hon Ken Travers; Hon Jon Ford; Hon Sue Ellery

Hon SALLY TALBOT: So the minister is not saying to us that, for example, things are done this way in another jurisdiction? I am just trying to get the minister to help us so that we can be clear about what this means.

Hon Donna Faragher: No.

Hon SALLY TALBOT: In that case, I move onto my final question on clause 7. I imagine that section 79(3)(c) and (d) of the act will be retained at the end, so paragraphs (c) and (d) will stay in the substantive act. What other money goes into the WARR account at the moment? In section 79(3), which will be amended with the insertion of proposed subsections (3A), (3B) and (3C), reference is made to income derived from the investment of moneys. I want to know what those investments are. What other money goes into the WARR account?

Hon DONNA FARAGHER: Yes, paragraphs (c) and (d) will remain in the act. Other examples of funds coming into the account include interest on the bank account and perhaps financial assurances from landfill operators.

Hon SALLY TALBOT: I ask the same question about paragraph (d), which refers to any other moneys lawfully payable to the credit of the WARR account.

Hon DONNA FARAGHER: Again, an example perhaps would be financial assurances.

Hon SALLY TALBOT: I thank the minister for those comments. I will now quickly move through the amendments that are listed on the supplementary notice paper in my name. The first is amendment 18/7. I think the purposes of all these amendments will be very clear. I do not hold out any hope that the minister is prepared to not just consider, but also even negotiate on, any of these. My amendment 18/7 seeks to retain a degree of hypothecation. I have already referred to the two amendments 19/7 and 20/7, which seek to retain the hypothecation by making sure that 100 per cent of the collected amount is paid into the WARR account. I want the minister to at least consider the possibility that is captured in my amendment 23/7. I referred to this in my questions on an earlier clause when I asked about how the forecast levy amount will be determined. I attempted to get the minister to explain to us who she would consult and what she would be obliged to take into account when arriving at that forecast levy determination. My amendment 23/7 seeks to insert after "31 December 2009" at line 21 on page 4 the words —

unless the Waste Authority is able to demonstrate to the Minister's satisfaction that it has fully costed plans to expend more than would be available under this formula

I will be moving that the same words be inserted at page 4, after line 23. This is simply the provisions for this financial year and the next financial year.

The CHAIRMAN: Order! Hon Sally Talbot, I just want to clarify a few things. I thought you were looking at amendment 18/7 initially. Have you moved that amendment?

Hon SALLY TALBOT: I have moved amendment 18/7. I have also moved amendments 19/7, 23/7 and 20/7, and I have just this instant moved amendment 24/7.

Point of Order

Hon HELEN MORTON: The member has foreshadowed five amendments in a row, but we have not had the opportunity to deal with any one of those amendments. I am finding this very confusing to follow. I would prefer it if each amendment could be dealt with before we go to the next amendment. In that way, we will deal with the amendments one at a time. I do not know that it is appropriate for the member to try to move five amendments at once before any one of those amendments has been dealt with. I think we need to deal with amendment 18/7 before we go to the next amendment.

Hon Ken Travers: I do not think it is appropriate for the minister not to give an answer, but we still have to put up with it.

Hon HELEN MORTON: I am just asking for some clarification from the chairperson.

The CHAIRMAN: The point to be made about amendment 18/7 is that even though it is obviously to the same page of the bill, it is not directly related to amendment 19/7. So, I would suggest that Hon Sally Talbot might like to formally move amendment 18/7, and we can then move on, because there is no significant continuity between that amendment and subsequent amendments.

Committee Resumed

Hon SALLY TALBOT: I do appreciate that point, Mr Chairman. I was merely trying to move things along a bit for the benefit of honourable members who might wish to address later clauses in the bill. I did get a look from the minister to the effect that she agreed with what I was doing, but I am happy to move as you suggest, Mr Chairman. I move —

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Page 4, lines 11 to 14 — To delete “such amount of the levy credited to the Department’s operating account under section 73(4) as is specified by the Minister.” and insert —

- (a) any levy paid; and
- (b) any amount paid by way of penalty under section 76.

I have already spoken to this amendment.

Hon DONNA FARAGHER: The government will not be supporting this amendment.

Amendment put and negated.

Hon SALLY TALBOT: Mr Chairman, I think it would be appropriate to deal with amendments 19/7 and 20/7 together.

The CHAIRMAN: Yes, that would be fine.

Hon SALLY TALBOT: I move —

Page 4, line 18 — To delete “25” and insert —

100

Page 4, line 22 — To delete “25” and insert —

100

Hon DONNA FARAGHER: The government will be opposing both these amendments.

Amendments put and a division taken, the Chairman casting his vote with the ayes, with the following result —

Ayes (13)

Hon Matt Benson-Lidholm
Hon Helen Bullock
Hon Robin Chapple
Hon Sue Ellery

Hon Jock Ferguson
Hon Jon Ford
Hon Lynn MacLaren
Hon Ljiljana Ravlich

Hon Sally Talbot
Hon Ken Travers
Hon Giz Watson
Hon Alison Xamon

Hon Ed Dermer (*Teller*)

Noes (18)

Hon Liz Behjat
Hon Jim Chown
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Hon Alyssa Hayden
Hon Col Holt
Hon Robyn McSweeney
Hon Michael Mischin
Hon Norman Moore

Hon Helen Morton
Hon Simon O’Brien
Hon Ken Baston (*Teller*)

Pairs

Hon Adele Farina
Hon Kate Doust

Hon Peter Collier
Hon Max Trenorden

Amendments thus negated.

Hon SALLY TALBOT: Amendments 23/7 and 24/7 insert identical words and refer to the amount that will be paid into the waste account every year from this new consolidated slush fund, given that we have just lost the opportunity to do anything other than the 25-75 per cent split for end hypothecation. I move —

Page 4, line 21 — To insert after “31 December 2009” —

unless the Waste Authority is able to demonstrate to the Minister’s satisfaction that it has fully costed plans to expend more than would be available under this formula

Page 4, line 23 — To insert after “for the financial year” —

unless the Waste Authority is able to demonstrate to the Minister’s satisfaction that it has fully costed plans to expend more than would be available under this formula

I think that the amendments are self-explanatory. They seem to me and other members on this side of the chamber to be sensible. What minister, having in front of herself or himself fully costed plans by the Waste Authority—after all, its members are appointed by the government—to spend more money than would be available under the forecast levy calculation of the waste avoidance and resource recovery levy, would not think it would be a sensible move to be able to increase the amount that was paid to the waste account for that year?

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Hon DONNA FARAGHER: The government will oppose both amendments. The discretion is already there. The Waste Authority can already seek to expend more, given that there is also a carryover. The funds can be accumulated and, therefore, expended. The authority does not lose the funds at the end of the financial year if they have not been utilised. The funds can be carried over to the following year. The discretion is already there.

Hon SALLY TALBOT: This is exactly the problem. The minister said that the discretion is already there. Yet, when I asked the specific question about what the minister had to take into account, she was unable to give any sort of answer that was remotely satisfactory to members on this side of the chamber or, indeed, anybody involved in the waste industry. I maintain that these amendments are still necessary, because the minister has not been able to indicate to the opposition that the provisions in this bill, as the government proposes to amend it, will go anywhere near addressing the problem of the Waste Authority not having enough money to effectively do what it has been charged to do—that is, increase the facilities and resources for waste avoidance and resource recovery.

Hon HELEN BULLOCK: I understand that, under clause 7, 25 per cent of the levy is transferred from the Department of Environment and Conservation account to the waste avoidance and resource recovery account. Is there a schedule indicating how 25 per cent of the levy will be transferred to the WARR account? Will it be transferred periodically? Is a formula or plan in place?

Hon DONNA FARAGHER: It will come in in quarterly instalments, which is the same process that applies now. Currently, the levy payments come in each quarter; therefore, under this bill it will be transferred each quarter.

Hon HELEN BULLOCK: Will that be based on the budget forecast or will the quarterly instalment be based on what is received?

Hon DONNA FARAGHER: It is based on the budgeted income and is paid at the end of each calendar quarter.

Hon HELEN BULLOCK: My reading of that is that there should be an adjustment at the end of each quarter. Because the 25 per cent of the levy is based on the budget forecast, what would happen if more than 25 per cent is transferred at the end of a quarter than should have been? Would the extra amount be transferred back or would it be credited to the next quarter?

Hon DONNA FARAGHER: It will be a quarterly payment of the forecast amount.

Hon HELEN BULLOCK: Will there be any adjustment to the real amount that is received?

Hon DONNA FARAGHER: No; the Waste Authority is provided a fixed amount, which is determined at the beginning. Then, each quarter, when the levy funds come in, it will be credited to the authority as per the normal process.

Hon HELEN BULLOCK: Twenty-five per cent is based on the forecast levy. There would be no adjustment quarterly or yearly.

Hon DONNA FARAGHER: The member is correct. It is based on the forecast levy amount—for example, 25 per cent. At the end of each calendar quarter they will be credited with that quarter of that forecast amount.

Hon SALLY TALBOT: Those were excellent points made by Hon Helen Bullock. The answers she received are very troubling and very disappointing. That is why Labor is moving the amendment standing in my name at 21/7. I might speak to that now.

The CHAIRMAN: Before the honourable member does that, I need to put amendments 23/7 and 24/7.

Amendments put and negatived.

Hon SALLY TALBOT: I move amendment 21/7 standing in my name —

Page 4, after line 23 — To insert —

- (c) where the forecast levy for a financial year and the actual amount of levy collected for a financial year differ, the higher amount is to be used to calculate the amount specified under subsection (3A).

We have already heard the minister say that she is clawing back every cent that she can that might have gone to the Waste Authority; even penalties that have never been levied. Should any levies arise in the future, they also will not go to the waste account. The amendment standing in my name at 21/7 exactly addresses the point made very eloquently by Hon Helen Bullock about the difference in the forecast levy and the actual amount of the levy collected. The point I make by moving the amendment is that when the actual amount of levy collected is greater

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than the forecast levy for the financial year, why on earth would we not be using the higher amount to calculate the sum paid to the waste account for that year?

As I have already said, the Labor government had built increases into the levy in the regulations. They were laid out and specified in the regulations. Everybody knew that the levy will increase over the next few years. It seems to be the height of folly to move the Waste Authority income to a situation in which it is just a fixed amount every year. It seems that the only discretion that the minister is willing to impute to the minister of the day—whether it is this minister or one of her successors—is the discretion about setting the levy. We will come to that in relation to discussion on clause 12 later today. This is just the height of meanness, to say nothing about very foolish public policy to say in effect “whichever amount is the lower”. We know that a 300 per cent increase is likely given that it takes some years for changed behaviour by individuals to take effect. We know that the amount collected is likely to be higher. This amendment standing in my name at 21/7 reads —

- (c) where the forecast levy for a financial year and the actual amount of levy collected for a financial year differ, the higher amount is to be used to calculate the amount specified under subsection (3A).

My amendment is really an attempt to claw back a little sanity into this process for making payments into the waste account.

Hon DONNA FARAGHER: The government will oppose the amendment. The forecast levy is determined at the beginning of the financial year. That gives the Waste Authority certainty in terms of the funding that it will receive. If we were to wait until the actual amount, obviously that would be at the end of the financial year. That is why we use the forecast levy at the time of the budget.

Hon KEN TRAVERS: On that point, the minister says she uses the forecast levy at the time of the budget, but proposed subsection (3C)(b) actually states that the minister can come up with her own magical equation. I want to know why the minister needs her own magical equation and why the forecast levy in the budget is not sufficient. I have never seen any legislation that states, “Ignore everything that is in the budget; we’re going to come up with our own figure.” On what basis; and why do we need it?

Hon DONNA FARAGHER: Hon Ken Travers might have been out on urgent parliamentary business when we went through the reasons for proposed subsections (3C)(a) and (b). I have been through that.

Sitting suspended from 3.45 to 4.00 pm

Hon HELEN BULLOCK: I refer to proposed section 79(3B)(a). I would have thought that if 25 per cent were calculated on the forecast levy amount based on the budget, it would not be necessary to have proposed section 79(3B)(a) here for an adjustment. What is the reason for this proposed paragraph?

Hon DONNA FARAGHER: Essentially, it is for a partial year of the increased levy because we have delayed the increase until 1 January.

Hon HELEN BULLOCK: Is that the only reason? There must be another reason. Could the other reason be that the budget is normally released in May but this levy is calculated on a quarterly basis?

Hon DONNA FARAGHER: The forecast levy is for the full year; they are instalments or payments over that year. That is how the payments are made but the forecast levy is for that financial year.

Amendment put and a division held, the Deputy Chairman (Hon Helen Morton) casting her vote with the noes, with the following result —

Extract from Hansard
[COUNCIL - Tuesday, 1 December 2009]
p10180e-10200a

Hon Ljiljanna Ravlich; Hon Dr Sally Talbot; Hon Donna Faragher; Hon Robin Chapple; Hon Helen Morton;
Chairman; Hon Helen Bullock; Hon Ken Travers; Hon Jon Ford; Hon Sue Ellery

Ayes (13)

Hon Matt Benson-Lidholm
Hon Helen Bullock
Hon Robin Chapple
Hon Kate Doust

Hon Sue Ellery
Hon Jon Ford
Hon Lynn MacLaren
Hon Ljiljanna Ravlich

Hon Sally Talbot
Hon Ken Travers
Hon Giz Watson
Hon Alison Xamon

Hon Ed Dermer (*Teller*)

Noes (18)

Hon Liz Behjat
Hon Jim Chown
Hon Mia Davies
Hon Wendy Duncan
Hon Phil Edman

Hon Brian Ellis
Hon Donna Faragher
Hon Philip Gardiner
Hon Nick Goiran
Hon Nigel Hallett

Hon Alyssa Hayden
Hon Col Holt
Hon Robyn McSweeney
Hon Michael Mischin
Hon Norman Moore

Hon Helen Morton
Hon Simon O'Brien
Hon Ken Baston (*Teller*)

Pairs

Hon Adele Farina
Hon Jock Ferguson

Hon Peter Collier
Hon Max Trenorden

Amendment thus negatived.

Hon ROBIN CHAPPLE: I move —

Page 4, lines 8 to 33 — To delete the lines.

The rationale for this amendment is similar to our rationale for the amendment we moved to clause 5. We therefore seek to delete the complex two-step process that results in the WARR account receiving just 25 per cent of the forecast levy revenue in any ordinary financial year, with the situation in 2009-10 being a little more complex.

Hon SALLY TALBOT: The Labor Party will be supporting this amendment. It is obvious that it essentially does the same thing that we were trying to do to stop the government ending the hypothecation to the waste account.

Hon KEN TRAVERS: I, too, support the amendment to delete the words. This is the crux of the Waste Avoidance and Resource Recovery Amendment Bill 2009, through which the government seeks to use money collected from the waste levy to fulfil its unsustainable expenditure growth. It wants to take the money away from its specified purposes—being waste management—and put it into general revenue for the purposes of government. This is one of four items of legislation that have come through this chamber in recent times that have been about dealing with the unsustainable expenditure growth of this government, being this levy bill, the parking levy, the mine safety levy bill that it has applied, and the fishing tax. Those are four areas in which this government has massively impacted upon ordinary citizens of Western Australia. That is why in this clause it needs to specify 75 per cent of revenue: without this clause, that money would be used for its proper purpose. I suspect that the levy would not have been increased as significantly as it has if it was to be used for its proper purpose.

For the information of members, people who live in the City of Wanneroo will be paying around \$22.30 a year over and above what they currently pay because of this 75 per cent clause. What will that mean for someone who is a cleaner, a gardener, or an education assistant? The government is offering those workers a 44c an hour pay rise for this year. If they work a full working week, they will earn about \$16.72 a week extra, which means that, after tax, two weeks worth of their pay rise will not cover the money that they will be charged if this clause is passed, 75 per cent of which will go to government revenue. We are seeing a \$22.30 increase so that the government can collect this money. If this clause is defeated, the people of the City of Wanneroo will not need to pay that increase, and then at least the measly 44c an hour pay rise that this government has offered to cleaners, gardeners and education assistants will be available to them to use for other purposes, rather than fund unsustainable election commitments. If we add that to the five or six weeks they will have to work just to cover additional bus fare increases, not to mention the increased cost of gas and electricity, they will be working for seven or eight weeks a year just to cover the increase in costs that this government has imposed upon them through this bill and bus fares.

This is one area where we can take a stand as a Parliament. We can oppose this clause and say to the government that if it cannot pay the workers enough, at least do not increase the fees and charges that they have to pay. This is one clause that will do that, and the government should be ashamed of itself. It either needs to pay the workers a reasonable salary or defeat this clause so that those people will not be charged so much. The workers in the City of Wanneroo—the education assistants, cleaners and gardeners—will be working two weeks a year just to

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cover the \$22.30 that they will have to pay in additional revenue if we pass this clause this afternoon. I oppose it—I oppose it strongly—and I say shame on anyone who supports it.

Opposition members: Hear, hear!

Hon DONNA FARAGHER: The government will be opposing the amendments.

Hon ROBIN CHAPPLE: Does the minister believe that raising this level of funding through the waste avoidance and resource recovery account for purposes other than the facilitation of waste avoidance and resource recovery is the proper thing to do? It is a very simple question.

Hon DONNA FARAGHER: This has been a source of significant debate during the second reading debate and during debate on clause 1. I have said consistently that the government has made a policy decision that at least 25 per cent of funds will continue to go to waste management; the remainder will go to broader environmental and conservation purposes. We have already had that debate.

Amendment put and negated.

Hon ROBIN CHAPPLE: I withdraw amendment 4/7 standing in my name because it is consequential to an earlier amendment that was defeated.

Clause put and passed.

Clause 8: Section 80 amended —

Hon ROBIN CHAPPLE: My first amendment, 5/8, should get up, because it does not involve the minister and her budget in any way, shape or form. It defines what certain wastes are. I move —

Page 5, line 17 — To insert after “waste” —

, other than —

- (i) any programmes that relate to the nuclear fuel cycle in any way, including programmes relating to uranium mining; and
- (ii) any programmes that relate to mining tailings

We already know that under previous legislation both nuclear waste and mining tailings are now classified as hazardous waste and therefore should be included in this bill in terms of that description.

The first of these two amendments is inspired by one moved by the member for Gosnells in the other place—which was this chamber—that was not exposed to any debate by virtue of the use of the gag motion. Given the government’s desire to increase the landfill levy without increasing the amount of money going into the waste avoidance and resource recovery account for waste production, these amendments seek to rule out what would be the inappropriate potential use of a future WARR account.

Hon SALLY TALBOT: Labor will most definitely support this amendment. As Hon Robin Chapple mentioned, debate on this amendment, which the member for Gosnells attempted to move in the other place, was gagged in the most disgraceful way. There is absolutely no reason for the minister or the government to resist this amendment. As Hon Robin Chapple pointed out, these waste materials most definitely come under the category of hazardous. Therefore, the amendment does not change what the government is doing in any way; it just underlines the fact that we are not going to turn around in a time of extreme financial difficulty, because of the sorts of things that the government is doing in its mismanagement of the state’s budget, and insist that the Waste Authority add these substances to its long list of responsibilities. Therefore, without reservation, the Labor opposition will support this amendment moved by Hon Robin Chapple.

Hon DONNA FARAGHER: The government will be opposing these amendments. I just make the point that the storage and transportation of radioactive waste are currently prohibited by an act that was passed by the Richard Court government—the Nuclear Waste Storage and Transportation (Prohibition) Act 1999. So there is no cause for the Waste Authority to apply WARR account funds to programs such as those that have been referred to by Hon Robin Chapple. We actually have legislation that prohibits it. With regard to the regulation of mine tailings, which relates to proposed subparagraph (ii), the regulation and management of mine tailings presently occur through mining proposals under part IV, division 3 of the Mining Act, and under part IV of the Environmental Protection Act. Therefore, there is no reason why the Waste Authority, because it plays no role in regulating these activities, would put any funds towards them.

Amendment put and negated.

Hon ROBIN CHAPPLE: I move —

Page 5, line 20 — To insert after “schemes” —
(including container deposit schemes)

This amendment is based on the amendments put forward by the members for Fremantle and Alfred Cove in the other place, both of which were inadequately debated when a gag motion was applied. The public debate in this area has advanced since the debates in the other place, but state and federal action has not yet been forthcoming. It should be noted that this amendment does not bind the hands of the minister, but gives symbolically higher status to this key litter reduction strategy, which is also an iconic way of funding individuals and community groups through their involvement in the recycling process. Again, this amendment does not go to the basic substance of the fundraising aspect of this legislation. We add to that of course the fact that the money from the WARR account need only be spent on container deposit schemes during the start of such schemes, because unredeemed deposits will quickly generate an annual income stream for whichever agency administers the scheme—potentially the Department of Environment and Conservation, or possibly the Department of the Environment, Water, Heritage and the Arts, if a national container deposit scheme is instituted.

Hon SALLY TALBOT: Labor will once again support this amendment. It may look as though the minister is simply being churlish. I am anticipating that she will not support this amendment.

Hon Simon O'Brien: What a graceless remark!

Hon SALLY TALBOT: I do not think “churlish” is graceless. I think it is quite a nice word; it has a sort of Victorian tinge to it.

Several members interjected.

The DEPUTY CHAIRMAN (Hon Helen Morton): Order! Hon Sally Talbot has the floor. Can you just continue with your comments, please?

Hon SALLY TALBOT: Thank you very much, Madam Deputy Chair.

It may appear to readers of *Hansard* that the minister is simply being churlish in rejecting these inclusions to the list detailed in section 80 of the act. However, she is concealing the fact that this government has no commitment whatsoever to introducing a container deposit scheme. The WARR act gave the minister a head of power to get the scheme off the ground. The minister has spent a year now sitting on her hands. I am not sure that it is possible to sit on one's hands and twiddle one's thumbs at the same time—I suspect that may not be physically possible—but the minister has spent more than a year now doing precisely nothing.

Several members interjected.

The DEPUTY CHAIRMAN: Order! Take a seat please, member. It is very late in the year and we all want to go home tonight. Can we please keep the comments relevant to the bill, and not made as personal comments. Hon Sally Talbot.

Hon SALLY TALBOT: Thank you, Madam Deputy Chair. Twenty past four in the afternoon might be getting late for you, Madam Deputy Chair, but I can assure you that at this time of day I just start coming alive.

I will make this point briefly. Through the response of the minister to these two attempts to insert additional things into the list in section 80, the government is concealing its complete failure to undertake to do anything like introducing a container deposit scheme. We have seen the minister run away at a million miles an hour on the whole issue of plastic bags. There is simply no commitment. In the 15 months of this government we have seen nothing but the dust left by government members' feet as they beat a retreat on some of these things that are, frankly, just waiting there to be picked up and run with. It would be one of the best gigs available, to walk in as environment minister in the first 15 months of a new government, because all the work has been done, but the minister even failed when this was sitting there on a plate waiting for her to pick it up and run with it. She has done absolutely nothing. I must confess that in indicating Labor's support for this amendment I am anticipating slightly that the minister will reject it.

Hon DONNA FARAGHER: The member is correct: the government will oppose this amendment. It is getting somewhat late in the day but I cannot resist the opportunity to reflect for a slight moment on the fact that —

Hon Ken Travers: Resist!

Hon DONNA FARAGHER: No; I want to reflect for a moment, Hon Ken Travers, on the fact that the Labor Party was in government for eight years. Hon Sally Talbot was the parliamentary secretary to the Minister for the Environment and what did she do? Did she introduce container deposit legislation?

Several members interjected.

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Hon DONNA FARAGHER: No, the member did not!

Hon Ken Travers: Which allows the mechanism!

Hon DONNA FARAGHER: And Hon Ken Travers has just answered my question! The fact is that this amendment is actually not required because part 5 of the Waste Avoidance and Resource Recovery Act 2007 has capacity through extended producer responsibility schemes for a container deposit scheme, or any other schemes for that matter, to take place. For example, despite what Hon Sally Talbot might say, we agreed at the recent ministerial council to a national scheme for televisions and computers. That can be done without changing the act. Therefore, for those reasons it is not necessary to include container deposit schemes within the legislation because there is already scope to allow for that anyway. I just make the point that if Hon Sally Talbot was so committed to the environment, her ministers would have introduced container deposit schemes; she was either not capable of convincing her ministers to do so or she was unable to change their minds.

Hon ROBIN CHAPPLE: In relation to the minister's response, am I getting the understanding that the government will introduce container deposit legislation using the funding that is already available?

Hon DONNA FARAGHER: I said that that it is being looked at currently at the ministerial council level through a potential national scheme; work is being done. I also said that I am open to the scheme but I am working on the basis that we are looking at it from a national perspective. That work is continuing. We had expected that some information would be finalised by the time of the ministerial council meeting earlier in November, but that was not completed. That is the work that we are currently doing.

Hon ROBIN CHAPPLE: I am trying to get the answer from the minister: would the funding for that come from the existing 25 per cent?

Hon DONNA FARAGHER: I cannot say whether it would because we do not have a scheme in place at this time because it is still being considered.

Amendment put and negated.

Hon SALLY TALBOT: I move —

Page 5, after line 26 — To insert —

(d) at least 50% of the moneys credited to the WARR Account each financial year are to be used for research and provision of approved MSW Resource Recovery Facilities.

(2) Moneys held in the WARR Account are not to be applied —

This amendment is a final attempt to pick up the point, which the minister earlier resisted in this debate, about quarantining some of this money to be used for research and development, particularly for municipal solid waste resource recovery facilities. I do not need to speak to the amendment any more; I have done my best to represent the stakeholders in this area and to alert members of the backbench earlier today to some of these serious concerns that many of their constituents have. Clearly, I am again suffering a little from anticipatory amendment rejection, but I assume that over the lunch and afternoon tea breaks they have been unsuccessful in getting the minister's ear on this point. It is very sad and it will set the waste industry in Western Australia back by at least a decade, if not more.

The second part of this amendment is to expose the trick that the minister played on us in relation to the provision that the Waste Authority would now pay its own expenses. I made that point in relation to debate on the amendment we proposed for clause 4 for which we got the Waste Authority to list the facilities and services that it anticipated needing with a reference back to section 16 of the substantive act. I pointed out at that stage that at clause 8, which is what we are up to now, in proposed section 80(1)(d) those costs would be shifted back to the Waste Authority. With this amendment, I have tried to quarantine those functions from being passed back to the Waste Authority by inserting a new proposed section 80(2), which reads —

Moneys held in the WARR Account are not to be applied to fund the services and facilities referred to in section 36(1)(da); and

...

(e) in payment of the other costs of the administration and enforcement of this Act, including the remuneration of members of the Waste Authority.

Hon DONNA FARAGHER: The government will oppose the amendment. Again, a number of the reasons have already been debated. I confirm again that opportunities already exist in the SWIS programs for local government and private enterprise to take advantage of. With respect to services being funded by the WARR

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account, again, as I said in the debate on Friday, this has been the case for many years. We are not changing the practice that came into effect with the WARR act, when Hon David Templeman was the minister, or indeed when the Waste Management Board was in place. We are not varying or changing that.

Amendment put and negated.

Hon ROBIN CHAPPLE: I move —

Page 5, line 32 — To insert after “Authority” —

and reasonable reimbursement for the role of local governments, particularly enforcement activity that relates to illegal dumping

This amendment is quite simple and goes to the heart of what local government is seeking. WALGA has raised with us, as I am sure it has raised with the minister, that the proposed new landfill levy effectively involves local governments using their own officers to administer a system that generates a substantial revenue stream both to the WARR account via the 25 per cent and to DEC from general revenue through hypothecation. Realistically, local government is only ever entitled to a theoretical chance to access 25 per cent of that revenue. Indeed, nothing in the WARR act at present guarantees local governments will receive anything for their efforts. This amendment seeks not to guarantee WARR money for local governments, but at least that the sector be specifically listed as possible recipients. Specifically, we note that, while there will be a crackdown on illegal dumping to seek to reduce the incidence of people trying to avoid the new landfill levy in this way, this sort of enforcement work will likely weigh very heavily on local governments via their budgetary constraints in terms of their rangers. Subsequent prosecutions will result in penalties that will flow into the WARR account but not necessarily on to local governments, officers of which may have originally caught the illegal dumpers. We therefore urge on behalf of local government that the government accept this very simple amendment, which is not prescriptive, but allows for a reasonable reimbursement to local governments, especially for their enforcement activity related to illegal dumping.

Hon SALLY TALBOT: As Hon Robin Chapple said, WALGA has made representations to everybody with a concern in this debate, including, I am sure, the minister. The minister has put on a spectacular attempt to do a Houdini escape from the comments that are on the public record about the connection between this amendment bill and an increase in illegal dumping. I refer again to page E54 of the uncorrected *Hansard* of the Standing Committee on Estimates and Financial Operations hearing held in the Council chamber on Thursday, 18 June. In answer to a question about illegal dumping, the minister said —

We are obviously very concerned. There is a recognition that an increase in the levy may result in some people who might not ordinarily illegally dump actually looking to do that.

The minister representing the minister in the other place also said —

The government recognises that the levy increase may be seen to encourage some unscrupulous individuals to illegally dump their waste in beautiful forests, parks, rivers or wherever.

That makes an absolutely compelling case—the government has admitted in clear and unequivocal terms that it knows that this is so—for some provisions to be put in place to at least ensure that local government suffers no financial hardship from dealing with the consequences of the government’s reckless action.

Hon DONNA FARAGHER: Notwithstanding the creative discussions that Hon Sally Talbot has just alluded to, I reiterate that the bill that is currently being drafted to deal with illegal dumping will amend the Environmental Protection Act by inserting an offence of dumping waste. We have obviously had this discussion previously, so I will not go through it all again, but this helps explain why we oppose this amendment, because that amendment will be made to the EP act. Section 115 of the Environmental Protection Act enables prosecuting authorities, including local government, to recover the costs of both the investigation and prosecution of offences under the act. Essentially, what the member is seeking to achieve is already in the Environmental Protection Act. Those are the reasons that we oppose the amendment.

Amendment put and negated.

Clause put and passed.

Clause 9: Section 81 amended —

Hon SALLY TALBOT: I understand that clause 9 seeks to make a technical amendment by inserting reference to the Auditor General Act. I want to be absolutely clear. The way that the Waste Authority is set up gives local government a major role—in fact, probably the major role—in the collection of the waste levy. This is the essence of my query and I will express it in one succinct question. Will the Auditor General look at how the money comes into the WARR account or just how it goes out of the WARR account; and will the Auditor

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General have any role in looking at the new slush fund account that has been set up as a consolidated account within the Department of Environment and Conservation?

Hon DONNA FARAGHER: The Auditor General audits all the accounts, whether it be the DEC account or the WARR account. In answer to the member's first question, the amendment corrects an accidental omission from the original legislation.

Hon SALLY TALBOT: I did ask specifically whether the Auditor General would be looking at only what the money is spent on, rather than how the money comes into the account.

Hon DONNA FARAGHER: The Auditor General would audit the expenditure going both into and out of the account.

Clause put and passed.

Clause 10: Schedule 2 amended —

Hon SALLY TALBOT: Proposed new item 2A refers to "such other entities as the Waste Authority thinks fit". Can the minister give us some idea about what those other entities might be?

Hon DONNA FARAGHER: It is a matter for the Waste Authority to determine whomever it might wish to consult with. It might be the Waste Management Association, private enterprise and the like.

Hon SALLY TALBOT: We are about to get to clause 12, which is the substantive clause that will remove the power of the Waste Authority to set the levy. Does this proposed new item have anything to do with the fact that the authority to change the levy rate will be removed from the Waste Authority and be given to the minister? I just cannot understand the purpose of this amendment. Why do we need to put proposed new item 2A in the bill?

Hon DONNA FARAGHER: That provision is already in section 80 of the act. We are proposing to move that provision to after schedule 2 item 1. Again, this will just mean that the Waste Authority can consult whomever it wishes to consult.

Hon SALLY TALBOT: Proposed new item 14A refers to "develop and publish a statement of the objectives to be achieved by programmes". Why would that not be covered by the waste strategy or the business plan?

Hon DONNA FARAGHER: Again, that same provision is already in section 80 of the act. We are just moving it. There is no change.

Hon JON FORD: Proposed new item 14A begins with the words, "From time to time to develop and publish a statement". What does the minister imagine the frequency of that will be?

Hon DONNA FARAGHER: Again, that provision is already in the act. We are just moving it. An example is the strategic waste initiative scheme. From time to time, the Waste Authority may publish objectives for that scheme and the like. This new item will provide the Waste Authority with the opportunity to publish objectives.

Hon SALLY TALBOT: I refer to the amendment to item 14 of schedule 2 to delete the words "from the WARR Fund" and insert the words "under section 80(1)(a)". Presumably the word "fund" in this item is a mistake and the word should have been "account". I cannot understand why the word "account" is not to be inserted rather than the words "under section 80(1)(a)". Does this amendment mean that the audit processes will be extended to moneys other than those from the WARR account?

Hon DONNA FARAGHER: It is now called account rather than fund.

Hon SALLY TALBOT: Can the minister assure the committee that there will be no extension of the audit processes to moneys other than those from the WARR account? It seems to me that if the word "fund" is a mistake, the amendment should be to insert the word "account".

Hon DONNA FARAGHER: If I may refer back to clause 8, "Section 80 amended", we are referring it back to new section 80, which refers to the moneys held in the WARR account.

Hon SALLY TALBOT: My question is: is there any extension of audit processes to anything other than the WARR account? This clause refers to auditing the WARR account. Item 14 of schedule 2 of the WARR Act reads —

To ensure that the appropriate investigations, audits and inspections in relation to the application of moneys from the WARR Fund are carried out.

The amendment changes the wording from "from the WARR Fund" are carried out, to "under section 80(1)(a)" are carried out. Why, if the word "fund" is a mistake, the minister did not just change it to "account" and leave it like that? What is the purpose of referring back to section 80?

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Hon DONNA FARAGHER: We are focusing it back on what are the funded programs, and that is section 80 amended.

Hon SALLY TALBOT: The answer is yes, it does extend audit processes to other moneys.

Hon DONNA FARAGHER: No, because we are still referring to the WARR account and then the programs that are within the WARR account.

Clause put and passed.

Clause 11 put and passed.

Clause 12: Section 4 amended —

Hon JON FORD: I just take the minister to proposed section 4(2B), which reads —

The Minister must give due weight to, but is not bound to accept, the advice of the Waste Authority under subsection (2A).

From an outsider's perspective, how would this be measured? If somebody wanted to know that the minister had given due weight when considering, how would the minister demonstrate that? If somebody wanted to challenge the minister of the day and say that the minister had not given due weight, what is the measure?

Hon DONNA FARAGHER: Given that these will be regulations, they will have the appropriate scrutiny within the Parliament.

Hon JON FORD: I was thinking of it from an administrative law perspective. Is this challengeable from an administrative perspective? Could somebody take the minister to the State Administrative Tribunal?

Hon DONNA FARAGHER: As I understand it, SAT deals with appealable matters. This is not appealable.

Hon JON FORD: I come back to my first question. If the decision cannot be appealed, how does a member of the general public decide in his or her mind that the minister has given due weight to the consideration? The reason I referred to administrative law was to give an example. From an administrative law perspective, the minister must give a written reason for why he or she has not taken the advice provided and has made his or her decision. I am trying to get to the crux of the matter.

Hon DONNA FARAGHER: Ministers make decisions. From that point of view, I am accountable to the public by the very decisions that I make, and that applies to any minister.

Hon SUE ELLERY: Clause 12 provides for the minister to take over the role from the statutory authority of setting the amount of the levy. I raised the question that I will ask again in the briefing and in my second reading speech, and I checked the minister's response to that debate and I did not see an answer to it. I suspect that it would not be from the 2007 act, because it had not been in place long enough. My question was: is there any evidence of a recommendation by a statutory authority on a levy, in this or any other area, for which the minister rejected the amount and amended the levy accordingly? I am looking for the evidence as to what might have led the government down the path of determining that the levy was best set by the minister rather than on the advice of the statutory authority.

Hon DONNA FARAGHER: I am not aware, but I cannot respond with respect to levies that might be in the purview of other ministers. In relation to this account, no.

Hon JON FORD: I come back to proposed subsection (2B). From a mining perspective, if the minister of the day makes a decision that affects somebody's livelihood—for example, if a person applies for a lease that somebody else has arguably let go—the minister must provide, in writing, the reasons for the decision he or she made. If the minister is saying that this decision cannot be appealed and a person does not have the ability to seek to demonstrate that the minister has or has not given due weight to a particular decision, why have proposed subsection (2B) in the legislation?

Hon DONNA FARAGHER: It simply reflects the fact that the minister of the day would seek advice from the Waste Authority. At the end of the day, it is the minister who would make the decision.

Hon JON FORD: That is my point. I would think the minister of the day would give due weight to any advice that had been given, certainly in consideration. I am making the observation that from my perspective it is a pointless proposed subsection. I can speculate and say that it is simply to allow the minister to point to the act and say, "The act says that I give due weight to the decision-making processes of this authority." That is the only purpose for this proposed subsection. I just make that observation.

Hon SALLY TALBOT: With the amendments in clause 12 of the bill, we get to the crux of the problem, as my colleagues on this side of the chamber have pointed out. The existing provisions of the Waste Avoidance and

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Resource Recovery Levy Act make the decision on increases in the waste levy the province of the Waste Authority. However, proposed subsection (1) deletes the words “Waste Authority” and inserts the word “Minister”.

I pressed the minister for a considerable amount of time at the beginning of this debate, some days ago, to come clean with us about the nature of the legal advice that she had received. When the minister said that she was not prepared to do that, I pressed her again on the possibility of providing us with a précis of that legal advice. It feels like I have spent many, many hours on my feet asking the minister to share with us the substance of the legal advice to help us understand what she is trying to do. She has refused to do that.

With this clause, I suggest we are getting very close to the most troubling aspects, legally, about what the minister has done so far since 14 May. When the budget was brought down on 14 May, the minister shot a letter off to the Waste Authority effectively pre-empting this amendment to clause 12. In her letter dated 15 May to Mr Barry Carbon, the chairman of the Waste Authority, the minister in effect said, “From now on I’ve decided that we’re going to replace the words ‘Waste Authority’ with the word ‘minister’ in the levy act.” I note that Mr Carbon is an extremely experienced administrator. Mr Carbon posted this letter on the Waste Authority’s website within hours of receipt. I suggest that he did that to make the point that the minister, whilst she was obviously not contravening or breaking the law, was coming pretty close to transgressing the spirit of the law. In the letter to Mr Carbon, the minister wrote —

... I ask that as a matter of urgency you seek a recommendation from the Waste Authority to the Governor in Executive Council, to increase the levy to \$28 per tonne for liable putrescible landfill sites and \$12 per cubic metre for liable inert landfill sites. This recommendation should refer to a set of draft regulations which are being prepared and will be provided to the Waste Authority shortly.

Clearly in terms of the existing act, the substantive act that this amendment bill seeks to amend, the minister was way out of order. I notice that in the “Waste Authority Annual Report 2008/09” that was tabled in this place by the minister last week, on page 15 we find the comment under the heading “Consultation on Landfill Levy” —

The Waste Authority held a forum at the Waste and Recycle 2008 Conference in Fremantle on 9 September 2008 to canvass the views of stakeholders on how the levy should apply at category 63 (inert) landfill sites, with a view to modifying the existing levy regulations.

The levy at Category 63 sites had been foreshadowed to rise to \$5 per cubic metre in 2008/9, \$7 in 2009/10 and \$9 in 2010/11. Earlier in the year the Waste Authority decided to freeze the levy at \$3 per cubic metre pending the outcome of more discussions with stakeholders.

This is the key sentence —

The Waste Authority discontinued its deliberations on this matter following receipt of a request by the Minister dated 15 May 2009 to cease this activity.

I put it to honourable members that the thing that will save the minister’s skin on this particular occasion is that the Waste Authority uses the words “request by the minister ... to cease this activity”. Clearly what she was acting in advance of was the move that she has now brought to both houses of this place to get official sanction for—she was pre-empting the amendments moved in this bill. In effect what she did was instruct the Waste Authority not to do what it was proposing to do, but to write to the Governor and get the recommendation up at Executive Council level that this 300 per cent increase would go ahead. I think that we are at the heart of the problem here.

I make this statement in advance of Hon Robin Chapple moving his amendment, which I notice deletes the whole of clause 12. Labor will certainly support that. The minister is to be condemned for the fact that she pre-empted this amendment on 15 May in a desperate attempt to start filling in the financial black hole at the heart of the Department of Environment and Conservation’s budget.

Hon ROBIN CHAPPLE: I have an amendment standing in my name that amends section 4 of the Waste Avoidance and Resource Recovery Levy Act 2007. It is important for members to understand what section 4 of that act currently does, what it may do and what may happen as a result of a fairly simplistic amendment to section 4(1). Section 4, “Levy may be prescribed”, relates to the finances involved in the levy and states —

- (1) The Governor may, on the recommendation of the Waste Authority, make regulations under the *Waste Avoidance and Resource Recovery Act 2007* prescribing an amount by way of levy that is to be payable in respect of waste received at disposal premises.

The Waste Authority makes regulations with no interest other than its own when dealing with matters of the levy. Subsection (2) states —

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The regulations may —

- (a) provide that the amount by way of levy is to be payable in all cases, in all cases subject to specified exceptions or in any specified case or class of case; and

Sections 4(2)(a) to (e) relate to administrative or financial administrative costs. The government has not made a cogent case for moving away from the current WARR structure whereby the Waste Authority provides a vital and independent statutory role in the decisions made about the critical strategic aspects of waste management. One such critical area is the quantum of waste levies, which is provided for under section 4 of the Waste Avoidance and Resource Recovery Levy Act 2007. We believe that it is appropriate for the Waste Authority to continue to recommend whether the levies should be retained. In that regard, we seek to reinstate “Waste Authority” and to oppose the clause that inserts into the act the authority of the minister to be the arbiter of these levies. As has been mentioned previously, we believe that Barry Carbon is an eminent person who has a good understanding of the industry in its broader context and who is able to determine the amount of the levies. It worries us that the minister will be in charge of those levies and the aspects of the class of cases and calculations, and all that ensues from that. We have already seen a cash grab previously, and this legislation possibly leaves the door open for the minister to make further adjustments to the levy recovery, which would affect the wellbeing of those who will have to pay the levies. It will be interesting to see where that money may or may not be hypothecated. We seek to either reinstate or maintain the Waste Authority and Barry Carbon, instead of the minister, as the authority who makes recommendations to the government. The minister can be involved in that process because, by way of those recommendations, the minister is automatically included in that. However, under the current bill, it appears that the minister will become an authority unto herself.

Hon DONNA FARAGHER: The government believes that the responsibility for recommending changes to the levy more appropriately rests with the minister rather than the Waste Authority. The government is responsible for determining fees and charges on a range of things. At the end of the day, the regulations are subject to parliamentary scrutiny. That is the position that the government has taken.

Clause put and passed.

New clause 7A —

Hon ROBIN CHAPPLE: I move —

Page 3, after line 29 — To insert —

7A. Section 78 amended

After section 78(2) insert:

- (3) Any amount paid by way of penalty under subsection (1) is to be credited to the WARR Account.

While drafting our amendments to the amendment bill, we noticed that it did not deal with penalties received under section 78(1) of the principal act. This was probably an oversight in the drafting of the principal act. It is proposed that this now be corrected by inserting a new clause 7A. Believing it to be an oversight, we hope that the minister supports new clause 7A to enable her to fix up this bill.

Hon DONNA FARAGHER: The government will be opposing this amendment. I want to be clear about the reasons we are opposing it. Essentially, section 78 relates to a fine rather than the non-payment penalty. There is a clear separation. It is an offence rather than a penalty. That is why it is normal practice for the payment of fines to go into general revenue. That is why it is not proposed that section 78 be changed.

Hon ROBIN CHAPPLE: I hear what the minister is saying. Surely if everything that is done under this act ends up in general revenue rather than funding an organisation in the way it manages its business—that is, the waste avoidance recovery organisation—we will see further potential for management of illegal dumping, waste and those sorts of things literally going back into general revenue. I would have thought that if the government wanted to enhance the waste recovery, it should at least be giving some succour back to the organisation.

Hon DONNA FARAGHER: I reiterate that we are dealing with a criminal offence; we are not dealing with the non-payment of the levy. That is why we are not proposing to change what is currently in the act.

New clause put and negatived.

New clause 13 —

Hon ROBIN CHAPPLE: I have two versions of new clause 13 on the supplementary notice paper. I will argue the case for the first version, bearing in mind that we have another version if our first one does not get up. New

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clause 13 is a sunset clause. Given the very high level of public interest and interest from local government about this amendment act and its related 1 January 2010 increase in the landfill levy, we propose that either the amendment act is subject to review in two years or that the amendment act expires in two years.

If I may, I would like to deal with amendment 11/NC13 first, and then move to 10/NC13. I move —

Page 7, after line 20 — To insert —

13. Expiry of Amendment Act

- (1) The Amendment Act expires on the second anniversary of the day on which it receives Royal Assent.
- (2) Expiry of the Amendment Act in accordance with section (1) does not affect the validity of anything done while the Amendment Act was in effect.

Hon SALLY TALBOT: I indicate that Labor will be supporting the amendment moved by Hon Robin Chapple. It is necessary to consider these kinds of amendments for all the reasons that Hon Robin Chapple has outlined, but also because we have seen the government, essentially, trashing the budget process in this particular budget round. There can be no other description of the fact that, despite all the wording in the budget papers about the increase in the levy changing the behaviour of individuals and persuading individuals to take less waste to landfill, the amount of projected revenue from the landfill levy shows no sign of reducing as a result of that changed behaviour. This is truly extraordinary behaviour from a government that is exhibiting no sort of financial responsibility whatsoever. In the face of the government's refusal to take responsibility for what surely is an error in its budget papers, all we can do is move to include expiry, or review, provisions to this truly dreadful piece of legislation.

Hon DONNA FARAGHER: The government will be opposing this amendment and the other amendment foreshadowed on the supplementary notice paper. Section 99 of the Waste Avoidance and Resource Recovery Act 2007 already contains a review provision. That section allows for a broader review than that proposed in Hon Robin Chapple's other amendment, which I know he will move, so I am responding to both. The government does not support the expiry clause amendment.

New clause put and negatived.

Further new clause 13 —

Hon ROBIN CHAPPLE: Given our understanding of the way that the government has been dealing with this legislation, we did not believe that amendment 10, new clause 13, would get up. We now propose an amendment that will be, I believe, far more palatable to the minister, and one that is indeed very, very palatable to local government, and goes generally to the whole issue of how we deal with waste into the future—that is, that there should be a review of the amended act. We believe that that review should be provided for by way of an amendment standing in my name. I move —

Page 7, after line 20 — To insert —

13. Review of Amendment Act

After section 99(2) — To insert:

- (3) The Minister must review the impact of the *Waste Avoidance and Resource Recovery Amendment Act 2009* to determine whether —
 - (a) the policy objectives upon which that amendment Act was based remain valid; and
 - (b) the terms of that Amendment Act remain appropriate for securing those objectives,as soon as is practicable after the second anniversary of the day on which that Amendment Act received Royal Assent.
- (4) The Minister must prepare and table in each House of Parliament a report based on the review set out in section (4), by no later than the date that is 12 months after the expiry of the period set out in section (4).

I point out to the minister that this is well over and above the review status within the existing act and deals more specifically with the effect of this bill.

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Hon DONNA FARAGHER: Again, the government will oppose this amendment. The fact is that the review of the act that is currently in the act at clause 99 covers the entire act, whether it be the provisions that are currently in the act or those that are being amended through this bill. As I understand, the first review is required by 21 December 2012. In fact, I would argue—we will have to perhaps agree to disagree on this point—that it is a broader review than Hon Robin Chapple is proposing in his amendment.

Hon ROBIN CHAPPLE: We are well aware of the review criteria contained within the act. However, the crux of the matter is that proposed subsection (3)(a) states —

the policy objectives upon which that amendment Act was based remain valid;

Quite clearly, in our view, already this bill does indeed breach the policy objectives upon which that act was based and which remain valid. I do not think that the review outlined in the current legislation does that.

New clause put and negatived.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

HON DONNA FARAGHER (East Metropolitan — Minister for Environment) [5.18 pm]: I move —

That the bill be now read a third time.

HON SALLY TALBOT (South West) [5.18 pm]: My colleagues on this side of the house in the Labor opposition have been generous enough to allow me to make the summary remarks in the third reading on behalf of the opposition. It would indeed be churlish of me to do that for too long, so I shall keep my remarks very brief. During this extensive debate the government has shown that it expects this chamber to be a rubber stamp for the government. This is a very sad moment in the history of this chamber. We have seen a blatant disregard of community opinion and of some cogent and very well articulated arguments that have been put forward; we have therefore also seen stakeholder alienation. I am not in any sense being self-congratulatory here. We have heard some outstanding contributions from members of the Labor Party and the Greens (WA). At one stage this afternoon I thought we were making some progress in persuading the minister that some of the concerns that we know have been expressed to her in the most vehement terms would be opened up to negotiation. Unfortunately, in speaking for the government, she showed us very quickly after that glimmer of light that she was not prepared to countenance any change. The minister, like so many government members, came into the house with a mind totally closed to any arguments, no matter how strong or compelling.

The minister used as a default position a number of times in this debate, as she has done in a number of other debates, the accusation that, although she might be doing nothing, the previous government also did nothing in its two terms. I will say what we never did when we were in government. We never introduced an appropriation bill by stealth, which is exactly what we have seen this minister do. Can members believe that on 1 December we are still discussing a move that the government made on 14 May in the budget? That must be unprecedented in itself, and it shows what a dreadful mess the government made when it brought down the budget on 14 May. We are still here discussing what the government tried to do, because in effect it tried to introduce an appropriation bill by stealth; a bill that would plug the big black hole created at the heart of the Department of Environment and Conservation by the measures taken in the budget, and to cover the mismanagement and lack of foresight —

The PRESIDENT: Order! The member will be aware that this is a third reading debate, which is a very narrow debate, and it is not one in which the second reading or any parts of the committee stage can be rerun.

Hon SALLY TALBOT: Thank you very much for your guidance, Mr President. I do indeed realise that what I have to talk about in this speech is why this bill should not be read a third time. The first reason I think it should not be read a third time is that it is clearly an appropriation bill introduced by stealth, and that is something that this Parliament should never stand for.

I have a number of other reasons why this bill should not be read a third time. The first is that the minister has failed to answer the question about the legality of the tax. It is our belief, which we pursued during the committee stage and at various points in the second reading debate, that the minister has not been able to answer questions about the legality of this tax. We believe that it will be open to legal challenge. A lot more work should have been done on it to refine some of those points, and that work has not been done. The bill should not be read a third time because the minister has failed to reassure the house that passing an amending bill whose provisions contravene the objects of the principal act is not a dreadful precedent for this house and the legislative

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framework, and does not open up the legislation to legal challenge in the future. The bill should not be read a third time until we can be assured that the economic modelling that the minister must have undertaken before she put these measures in place is sound. The minister has been able to give us no such assurance. The bill should not be read a third time until we have seen details of its economic impact on small business. Again, I suggest that this is something the minister must have considered as she put this amendment bill together, yet through lengthy hours of debate she has been unable to shed any light on what that economic impact might be and what moves the government has put in place to mitigate some of that impact.

The bill should not be read a third time because its whole premise involves the price elasticity of the waste avoidance and resource recovery levy. The minister has given us not one indication that she even understands the concept of price elasticity, let alone that she is in possession of an argument to address some of the questions that arise about the price elasticity that she is making assumptions about.

The bill should not be read a third time until we can get some clarity about how the forecast levy amount is to be calculated. I put it to you, Mr President—I know that you have been following the progress of the bill closely as it has wended its way through these long hours of debate—that we have received no assurance that the forecast levy amount will be calculated in a way that will result in a sustainable financial outcome for the Waste Authority and the Department of Environment and Conservation or a sustainable legal framework that will not be open to very serious compromise as we move through the years before this act is reviewed.

The bill should not be read a third time until we can get some understanding and a clear idea of the status of the money already collected by local governments from increased waste levy payments. Conflicting accounts have been put on the public record about the status of that money. It has been claimed in some places that all that money will be used for the purposes that the Waste Avoidance and Resource Recovery Act specifies, yet we have had no assurance from the minister that that is indeed the case. It is a gaping hole in the soundness and the integrity of this amendment bill.

We should not read this bill a third time until we have assurances that illegal dumping will be subject to provisions that will in fact enable the provisions of the WARR act to be put in place. We heard no such assurances, either, when the minister provided her summary to the second reading debate or during the consideration in detail of the bill during the committee stage. The minister has just ducked and weaved around those questions as if the whole issue of illegal dumping is entirely irrelevant to the substance of this amendment bill. That is clearly not the case and we should not contemplate reading the bill a third time until we have those assurances on the public record.

Finally, the bill should not be read a third time until the minister is able to persuade us, rather than simply assert the merits, of the reasons that the minister rather than the Waste Authority should be the agent responsible for determining the rate of the waste levy. For all those reasons, I suggest to the house in the strongest possible terms that this bill should not be read a third time. Were the government to use its numbers in this house to force this third reading to go ahead, I can only warn members of the government, particularly members of the backbench, that they are being hung out to dry by their environment minister and they will almost certainly reap the consequences of those actions in the years to come.

HON ROBIN CHAPPLE (Mining and Pastoral) [5.29 pm]: The Greens (WA) will obviously oppose the third reading of the Waste Avoidance and Resource Recovery Amendment Bill 2009. The rationale for this is that I think Ronald Biggs could be very proud of today: what we have seen is the “Great Waste Robbery”! It has been done on behalf of the Treasurer, Hon Troy Buswell, and this bill is nothing more than a robbery; it is not about waste recovery and it is not about the environment. I do not think that the Minister for Environment should have been handling this bill; it would have been more suited to Hon Norman Moore or somebody of that ilk who could actually define why the government needs the money. I handle the aspects of waste in my portfolio and I am passionate about ensuring that waste recovery becomes a more important part of our society. This bill does nothing for that. The minister must be fairly proud that, in getting to this stage, she has done the bidding of the Treasurer and indeed the Premier in ensuring that a cash-strapped government is in a position to complete the great waste robbery.

Question put and a division taken with the following result —

Extract from *Hansard*
[COUNCIL - Tuesday, 1 December 2009]
p10180e-10200a

Hon Ljiljanna Ravlich; Hon Dr Sally Talbot; Hon Donna Faragher; Hon Robin Chapple; Hon Helen Morton;
Chairman; Hon Helen Bullock; Hon Ken Travers; Hon Jon Ford; Hon Sue Ellery

Ayes (18)

Hon Liz Behjat
Hon Jim Chown
Hon Peter Collier
Hon Mia Davies
Hon Wendy Duncan

Hon Brian Ellis
Hon Donna Faragher
Hon Philip Gardiner
Hon Nick Goiran
Hon Nigel Hallett

Hon Alyssa Hayden
Hon Col Holt
Hon Robyn McSweeney
Hon Michael Mischin
Hon Norman Moore

Hon Helen Morton
Hon Simon O'Brien
Hon Ken Baston (*Teller*)

Noes (13)

Hon Matt Benson-Lidholm
Hon Helen Bullock
Hon Robin Chapple
Hon Kate Doust

Hon Jock Ferguson
Hon Jon Ford
Hon Lynn MacLaren
Hon Ljiljanna Ravlich

Hon Sally Talbot
Hon Ken Travers
Hon Giz Watson
Hon Alison Xamon

Hon Ed Dermer (*Teller*)

Pairs

Hon Phil Edman
Hon Max Trenorden

Hon Adele Farina
Hon Sue Ellery

Question thus passed.

Bill read a third time and passed.