

**WASTE AVOIDANCE AND RESOURCE RECOVERY AMENDMENT BILL 2009**

*Committee*

Resumed from an earlier stage of the sitting. The Deputy Chairman of Committees (Hon Jon Ford) in the chair; Hon Donna Faragher (Minister for Environment) in charge of the bill.

**Clause 1: Short title —**

Committee was interrupted after the clause had been partly considered.

**Hon ROBIN CHAPPLE:** Just before the dinner break I was trying to seek from the minister clarification of Hon Wendy Duncan's statement that there would be increased resources to monitor and police illegal dumping. I was trying to find out whether there is a budget line item for that; and, if there is, where the increased policing will come from. The minister in response so far has indicated that a number of people are being trained for that. I am trying to find out whether the words of Hon Wendy Duncan, when referring to the minister's commitment, are correct.

**Hon DONNA FARAGHER:** I did respond to that before the dinner break.

**Hon ROBIN CHAPPLE:** I am sorry, I did not hear the response.

**Hon DONNA FARAGHER:** I will go through it again. Approximately 200 trained inspectors are authorised to investigate enforced offences under the Environmental Protection Act. A Liberal Party commitment was to increase the number of officers for monitoring and compliance, and their role would include investigating illegal dumping and any other matters in that regard. There will be an additional number of officers for those general monitoring and compliance duties, around 200 trained inspectors and a Department of Environment and Conservation landfill inspector as well.

**Hon ROBIN CHAPPLE:** We will have additional staff. Can the minister identify how many additional staff will be employed? Are those the staff that she referred to in her reported comments to Hon Wendy Duncan that there would be increased resources to monitor and police illegal dumping? Previously the minister indicated that local government officers would be taking on an increased role. How will that increased role be funded?

**Hon DONNA FARAGHER:** I have responded to Hon Robin Chapple's request. I advised him in terms of additional staff for monitoring and compliance. This does not relate to the bill currently before us.

**Hon SALLY TALBOT:** On this same subject of illegal dumping, minister, imagine a situation where the fines were much more. Imagine the fines were \$1 000 at the moment. Let's say we had 300-odd prosecutions a year for illegal dumping—about one a day—and those people were prosecuted. Imagine that the minister wanted to try to reduce that amount of illegal dumping. I think the minister might then look at increasing the penalties. The minister will be familiar with the "Freakonomics" argument in the book bearing the same name. The public reaction to taxes, charges and fines and that sort of thing is quite unpredictable and quite counterintuitive sometimes. The minister might look at that situation and think, "For \$1 000 maybe people have come to regard that as a fee for dumping illegally." The minister might think about significantly increasing the fines. In the case of Western Australia, in four years we have had two prosecutions. One of those was acquitted. In other words, we have had one prosecution in four years. What sort of model is the government working on that says we can reduce the amount of illegal dumping by changing the amount of the fines? I cannot see how the two things are connected.

**Hon DONNA FARAGHER:** Again, I am more than happy to discuss this matter at length when we actually have a bill before us to deal with illegal dumping. Having said that, there is currently no offence of illegal dumping. We are seeking to address that problem through the drafting of legislation to ensure that we have appropriate penalties, and much more severe penalties. The reality is at the moment if a case for pollution cannot be made, the maximum fine is up to \$1 000. That is under the Litter Act. The reality is there is currently no offence of illegal dumping. We are seeking to address that.

**Hon SALLY TALBOT:** I still cannot make the link to stopping people dumping illegally. One does not stop people dumping illegally by changing the name of what they are doing; or, if one does, can the minister show us the evidence that that is the case. Maybe I have not explained myself sufficiently. We have got an activity that is currently illegal. It is not that we are making it illegal—we are giving it a different name but it is the same activity we are talking about. The government's argument seems to be that we can stop people doing this by giving the offence a different name and ramping up the fines. Can the minister explain to the house how those two things are connected?

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**Hon DONNA FARAGHER:** Again, I draw the member's attention to the fact that illegal dumping is not what we are discussing in this bill. I do not want to keep going on about this, but the reality is there is no offence of illegal dumping. I would like to think that the fact we are increasing penalties will increase the incentive for people to not dump illegally. I cannot—nor can Hon Sally Talbot or anyone else for that matter—stop someone from illegally dumping. I would like to think that no-one would illegally dump, but I cannot watch every single person to make sure that they do not do that. However, what we can do is make sure that we actually have appropriate penalties in place so that they might think twice about it. An increase in the penalty from \$1 000, at most, to \$62 500 might make people think about it more closely than they do now.

**Hon SALLY TALBOT:** Given that we have had only one prosecution in four years —

**Hon Donna Faragher:** That was under your government, not ours.

**Hon SALLY TALBOT:** That is a bit of a tired argument in this context.

Several members interjected.

**The DEPUTY CHAIRMAN:** Order! All members are tired, but everyone interjecting at once does not help Hansard or the debate.

**Hon SALLY TALBOT:** I will leave that and move on to something else.

**Hon Ken Travers:** I have some issues on that.

**Hon SALLY TALBOT:** It is on the same subject. The minister just said that we are not here to discuss illegal dumping. The government introduced this bill into the house and we stood up and said that there was a major problem with it. Surely the reasons that people dump illegally are that they cannot get to a landfill site or the landfill site is too expensive. The government wants to ratchet up the amount of levy to make it more expensive. We asked whether that would increase illegal dumping and the government said that we were right and that it would change the law. Now the minister is saying that the government will introduce a law but that is all she will tell us. Illegal dumping is still as much of a problem today as it was on the night of 14 May, which is when we raised it. All the minister has said is that she will change the name of the offence and ratchet up the fines. I will ask the minister this question one final time and if she cannot answer it this time, I will let it go. Where is the connection and the proof that changing the name of the offence and increasing the fines will make people change their minds about dumping illegally?

**Hon DONNA FARAGHER:** Forgive me, but I do not make decisions about increasing penalties following advice from Hon Sally Talbot. As I said in my summing-up, I asked the department what the current penalties are for illegal dumping and the department informed me that the penalty was up to \$1 000. Whether or not there is a 300 per cent increase is irrelevant. The fact is that a penalty of up to \$1 000 is clearly inadequate. Whether or not we were increasing the levy by 300 per cent is irrelevant. I would be seeking to increase the penalties anyway because, as I have said, I would like people to think twice about illegal dumping if they know that they could face a penalty of between \$62 500 and \$125 000. That is an awful lot more than \$1 000.

**Hon SALLY TALBOT:** The minister is now altering the story a little bit.

**Hon Donna Faragher:** You make your own story. I am telling you what I have said, consistently, but you don't like listening to me.

**Hon SALLY TALBOT:** If the minister keeps calm, we should be able to get through this.

Several members interjected.

**The DEPUTY CHAIRMAN (Hon Jon Ford):** Order, members! This is a debate on the short title of the bill. The purpose of the debate is about canvassing amendments that have been put on the notice paper and talking about the clauses that members feel will not achieve the aims of the bill. Having said that, during my time as a member, the range of discussions on the short title has broadened. It would be very hard for me or for any other Chair to make a ruling to restrict that. I make that point in the interests of progressing the bill. With regard to interjections, I was starting to feel that some of the debate was becoming personal rather than objective. I remind members—I know it is late and it has been a long year—to restrict their comments to specific items in the bill.

**Hon SALLY TALBOT:** I want to be absolutely clear. Maybe I misunderstood the minister at the time. Is she now saying that the changes that she has foreshadowed to the Environmental Protection Act to create the offence of illegal dumping are entirely unconnected to this amendment bill?

**Hon DONNA FARAGHER:** I really do not know how many more times I have to say that a bill is being drafted that will seek to increase the penalties for illegal dumping. Illegal dumping is currently not an offence. The

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matters surrounding illegal dumping will be the subject of a bill that I would like to think will be debated when we come back next year. This issue does not relate to the bill that is currently before us.

**Hon ROBIN CHAPPLE:** I would like to ask the minister two questions relating to matters that have been discussed about bringing this bill forward and matters that will be dependent on the bill. My first question relates to the policing of illegal dumping. Does illegal dumping cause environmental harm? If so, is it caught by the new regulations, which carry fines of \$1 million for a corporation or \$500 000 for an individual?

**Hon Norman Moore:** Where's that in the bill?

**Hon Donna Faragher:** It's not in the bill.

**Hon ROBIN CHAPPLE:** It is not in this bill but it is in one that the government has already introduced.

*Point of Order*

**Hon NORMAN MOORE:** Mr Deputy Chairman, members are now canvassing a bill that is in the process of being drafted. It has nothing whatsoever to do with this bill. I ask that you remind members that we are debating the Waste Avoidance and Resource Recovery Amendment Bill 2009 and their comments should relate to this bill, not some other bill that may or may not be in the pipeline. If members want to talk about another bill, they should wait until it gets to the house.

**THE DEPUTY CHAIRMAN (Hon Jon Ford):** The Leader of the House is absolutely right. That was completely out of order and it is out of the scope of the bill.

**Hon ROBIN CHAPPLE:** My understanding was that that bill had been enacted, and it was not something to be enacted.

**THE DEPUTY CHAIRMAN:** Even so, it is not within this bill.

**Hon ROBIN CHAPPLE:** I take the Chair's position on that.

**THE DEPUTY CHAIRMAN:** We are dealing with the Waste Avoidance and Resource Recovery Amendment Bill 2009.

*Committee Resumed*

**Hon ROBIN CHAPPLE:** I turn to my second point. The minister has spoken about prescribed additional officers, and they were budgeted for. Could the minister tell us how many additional officers there are?

**Hon NORMAN MOORE:** This is not a point of order; I am simply making the point that, again, this has nothing to do with this bill. If the member wants to talk about the bill in committee, that is what he is supposed to do. Members can range widely in the second reading debate but we are talking about clause 1 of this bill. I ask you, Mr Deputy Chairman, to remind Hon Robin Chapple, as you did a moment ago, that this debate is about clause 1 of this bill, not about all sorts of extraneous matters that he wants to introduce at this point.

It is getting late and we are all getting very irritable. That irritation could be diminished if members would just stick to the bill and deal with the issues before the house, not something they want to talk about because they think it happens to be of some relevance to them.

**Hon KEN TRAVERS:** Is the Leader of the House making a comment or taking a point of order?

**Hon Norman Moore:** I made a speech. I am entitled to make a speech.

**Hon KEN TRAVERS:** I just want to make a speech as well then. I understand that we are dealing with the short title of the bill. We are trying to deal with potential issues so that when we get to specific clauses, we can be informed of whether we can amend them to achieve certain outcomes. The Waste Avoidance and Resource Recovery Amendment Bill 2009 does not, as far as I can tell, seek to amend the objects of the substantive act, the Waste Avoidance and Resource recovery Act 2007. Section 5 of the act states —

- (1) The primary objects of this Act are to contribute to sustainability, and the protection of human health and the environment, in Western Australia and the move towards a waste-free society by —
  - (a) promoting the most efficient use of resources, including resource recovery and waste avoidance; and
  - (b) reducing environmental harm, including pollution through waste; ...

I think that was Hon Robin Chapple's point. Section 5 continues —

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- (c) the consideration of resource management options against the following hierarchy —
  - (i) avoidance of unnecessary resource consumption;
  - (ii) resource recovery (including reuse, reprocessing, recycling and energy recovery);
  - (iii) disposal.

That is the object of the substantive act we are seeking to amend tonight, and I think it is important for us to understand the context in which we find ourselves, as to whether or not any of the amendments in this bill actually counteract the object of the substantive act. If it is the view of members that that might be the case, we then may seek to try to amend the clauses of the amendment bill in a way that mitigates that, so that we are in accordance with the objects of the substantive act, and we are also trying to obtain the policy of this bill, which must be, by its own nature, in accordance with the objects of the substantive act. I think many of the questions that have been asked have been very relevant, and certainly I am interested in the answers for my own understanding, so that as we move through the debate we will be informed by that knowledge and take it into account in the amendments that we may or may not move to try to improve the detail of the bill. To talk about the context in which this is framed is absolutely crucial, and this is the appropriate time to have that debate.

The minister said earlier that she intends to bring in legislation to deal with legal dumping —

**Hon Donna Faragher:** Illegal dumping.

**Hon KEN TRAVERS:** Illegal dumping. This bill contains a number of clauses that we will come to at a later stage about which it will be quite crucial to have an understanding of this issue. The minister has talked about introducing legislation some time next year; is the minister able to give us a more precise time line of when she would expect that legislation to be introduced into this Parliament? I am also interested to know what processes the department has in place at the moment to monitor illegal dumping in and around the Perth metropolitan area because, again, I think those answers will certainly assist me to determine how we may handle clauses as we progress through this bill.

**The DEPUTY CHAIRMAN (Hon Jon Ford):** Before I give the minister the opportunity to respond: we have now had about six or seven minutes of debate between members across the floor about whether what they want to say is relevant or not. I have made a ruling that Hon Robin Chapple's comments were out of order and had no relevance to the bill before us. The point I made before—I will make again—is that the Committee of the Whole stage is about canvassing the scope of the bill, inasmuch as it is able to achieve what was stated to be the object in the second reading speech. Since I have been in the chair the debate has broadened. I am simply making the point that if we want to proceed and get through this bill, we should just bear that in mind. I was not trying to encourage people to have a debate over that opinion, or the views expressed in the past few minutes between Hon Ken Travers and the Leader of the House. It is about getting to the business of proceeding with the bill. Please, members, bear that in mind.

**Hon DONNA FARAGHER:** As I have said, this matter does not pertain to the bill before us. I have answered a number of questions about the issue of illegal dumping; however, it does not pertain to the bill that is before us. I am very happy to discuss these matters at any point in time that we are dealing with a bill that will introduce an offence of illegal dumping. As I have said, that bill is being drafted and when it is ready for introduction and debate in this house, we can canvass all these issues. I have made some general comments and there is nothing further that I can add at this point in time because it does not pertain to the bill before us.

**Hon SALLY TALBOT:** I have one last question on illegal dumping. I have listened very carefully to the minister's advice and I want to draw the house's attention to the amendment to clause 8 standing in the name of Hon Robin Chapple, which deals with "particularly enforcement activity that relates to illegal dumping". I make this comment in the debate about the short title of the bill, but with specific reference to an amendment that is on the supplementary notice paper.

**Hon Norman Moore:** Why can't the member make the comment when we deal with that clause?

**Hon SALLY TALBOT:** I want to do it now because it is —

**Hon Norman Moore:** That's transgressing the rules.

**Hon SALLY TALBOT:** I am taking guidance from the Deputy Chairman who said that the comments in the debate on clause 1 should relate to either the clauses of the bill or to amendments that are on the supplementary notice paper. That is the reason that I think I am —

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**The DEPUTY CHAIRMAN:** Order, members! It is to the amendments you propose to move, or to broadly canvass the reasons why a clause will not achieve the purpose of the bill.

**Hon SALLY TALBOT:** In relation to these amendments to the WARR bill, when the opposition made the point that the provisions contained in the bill are likely to lead to illegal dumping, the minister then said that she would introduce a new offence and new fines. In answer to our question at the time about who would be responsible for monitoring and catching people doing this, the minister said the police. The Commissioner of Police then made it known the next day that the police would not do it, so I would like some clarification from the minister about what her understanding is.

**Hon DONNA FARAGHER:** I am not going to continue to engage on discussions about illegal dumping, which is not the subject of this bill.

**Hon Ken Travers:** It is.

**Hon DONNA FARAGHER:** It is not.

**Hon KEN TRAVERS:** With due respect to the minister, this bill—I will go through it again so she can get all the acts out and follow them very clearly—seeks to amend the Waste Avoidance and Resource Recovery Act 2007 and the Waste Avoidance and Resource Recovery Levy Act 2007. We know this because the long title of the bill says that. I have already read out the objects of the Waste Avoidance and Resource Recovery Act and I will not waste the house's time by re-reading them out; however, a primary object of the act is "reducing environmental harm, including pollution through waste". I do not know what the minister would call illegal dumping if it is not environmental harm including pollution through waste. There are a number of sections in the act that deal with the ways in which the money that is raised under the existing levy of the Waste Avoidance and Resource Recovery Act 2007 can be used. Clause 7 seeks to amend it, so only 25 per cent of the levy will be applied to recycling. It is possible that by applying the levy that is currently in place to other purposes, including recycling, dumping would be minimised. However, by putting it into consolidated revenue for DEC, and not using it according to the objects of the act that I talked about—we have accepted the policy of the bill—it is possible that it will have an implication for illegal dumping. That is the point members on this side of the chamber are making. I know we can deal with the clause in more specific detail when we get to it. Hon Robin Chapple, for instance, will seek to delete everything on page 4 of the amendment bill from lines 8 through to 33. That is the clause that deals with how this money is dealt with. At this stage of the debate, to get a general sense about the issues that surround this bill and to determine whether we support Hon Robin Chapple's amendment, for me, issues about illegal dumping are absolutely crucial to achieving the objects of the act because the two are interlinked.

The minister can get upset that we are going down this path, but it is important we ask those questions. I want a clearer indication of when she expects that legislation to be introduced into Parliament. That will help me determine how, down the track, those amendments are handled. Under this government, ministers have promised that legislation will be introduced and it has taken significantly longer than indicated. That is why I am looking for a clearer indication on the time line and how the department intends to handle monitoring illegal dumping. That is absolutely crucial because, without that, we will not be able to make decisions about whether more of that money that will be paid into consolidated revenue should be allocated to that issue or be put into the waste account to be used in another way to try to minimise environmental harm, including pollution through waste. We need those answers.

**Hon Norman Moore:** She gave you the answers; she told you she will put it in legislation.

**Hon KEN TRAVERS:** If she does not want to provide the answer, that is fine, but she will not help the progress of this legislation tonight by being obstructive.

**Hon Norman Moore:** Let Hansard record loud laughter from the government front bench.

**Hon DONNA FARAGHER:** I cannot see that I am being obstructive after I have answered probably a number of questions on illegal dumping.

**Hon Ken Travers:** You have given answers but you have not answered.

**Hon DONNA FARAGHER:** I have answered those questions. I have indicated that the government is currently drafting legislation, and that will be introduced when we return next year.

**Hon Ken Travers:** In the first session?

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**Hon DONNA FARAGHER:** I would like to think so. The previous government might have taken an awfully long time to introduce legislation, but that is not my problem. I have indicated that we see this, and I do, as a priority. I have nothing further to add about matters surrounding illegal dumping than what I have already canvassed.

**Hon SALLY TALBOT:** I have asked a number of questions and they have not been answered. I draw the minister's attention to page E4 of the uncorrected transcript of the estimates hearing of Thursday, 18 June, when the minister said in this place —

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.

I do not think that could be more clear, minister. It is all very well for her to say in this place that she will not talk about illegal dumping because it is not in the bill before us. We pointed out to the minister on 14 May that a problem with this bill was that it makes no provision, as she has admitted on the record, for a likely increase in illegal dumping. I am quoting the words she spoke in this very chamber —

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 is on the record as saying that the police would have responsibility for monitoring illegal dumping. The police commissioner has said that that is not true. What is the minister's understanding now about who will police the offence of illegal dumping?

**Hon Donna Faragher:** I have nothing further to add. We have gone through this.

**Hon KEN TRAVERS:** Can the minister answer the question about whether the department has any processes in place to monitor illegal dumping and whether any of the money that will be raised as a result of the passage of this bill will be used to monitor illegal dumping?

**Hon DONNA FARAGHER:** I have said that around 200 officers are authorised to deal with matters arising under the Environmental Protection Act. The legislation that we are drafting will, in effect, place illegal dumping in the Environmental Protection Act. This will be monitored by DEC inspectors and rangers. At the moment, all they can do is impose an on-the-spot fine of up to \$1 000; that is it.

**Hon KEN TRAVERS:** I am sorry. Perhaps I have not made myself clear enough in explaining what I am interested in. I take the minister's point that there are officers, and I heard her earlier answers to Hon Robin Chapple and I accept them. However, when I talk about monitoring, I am not talking about people physically being out there; I am asking whether the department collects and records statistics on the incidences of dumping, where it is occurring and the volume and type of material dumped. When I talk about monitoring, I am talking about it in that context, not just whether officers drive around. Does the department keep any records of the type and volume of material that is dumped, so that after the passage of this bill we will be able to see whether there has been an increase or decrease in illegal dumping? That is the sort of information about the operations of the department that I am trying to understand.

**The DEPUTY CHAIRMAN (Hon Jon Ford):** Members, we are dealing with clause 1 and the question is that clause 1 stand as printed.

**Hon Ken Travers:** Are we going to get an answer?

**Hon Norman Moore:** You've had more answers tonight than you've had in your whole life!

**The DEPUTY CHAIRMAN:** Members! Can the minister sit down for a moment? Members need to be mindful that they can ask a question and the minister can choose whether to answer that question. Members might be happy with the answer. Members also have to be mindful of the call. I have given a bit of latitude in giving the minister adequate time to respond when members ask questions. I remind members to pay attention to that point. The minister has the call.

**Hon DONNA FARAGHER:** As I have said, these officers deal with a range of offences under the act. The department also keeps statistics on littering and other offences, and that information is available in the annual report.

**Hon SALLY TALBOT:** Other honourable members on this side of the chamber may want to come back to this point, but I will take this opportunity to ask a couple of questions and survey some of the clauses of the bill, and, if I have time, some of the amendments in my name.

I want to start with this whole question about whether this tax is legal. I know that we have covered one particular aspect of that, and I thank Hon Ken Travers for the work that he did on the whole question of that

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excise. I suppose that my question arose before that, and it is about the legal advice that the government sought. I wonder whether the minister could give me an answer to the question of when she sought legal advice. Was it before or after the Western Australian Local Government Association had raised the question about the illegality of what the minister was attempting to do? Perhaps in that context the minister could also confirm my understanding—which I have checked with a number of people who I think are in a position to advise me correctly, including Mr Barry Carbon, the chairman of the Waste Authority—that we are not here today looking at the 300 per cent increase and that the increase can be done by regulation. What I want to know is at what moment did the minister walk into her office and think of this, or did she take a call from the Premier or Hon Norman Moore, saying, “We are going to have to check the legality of this.” I want to know what it was that went through her mind before she made that decision. In this context she might also want to consider my earlier question. My recollection is that she did not answer this in her summary of the second reading debate. What aspects of the bill did the government conclude might be open to the challenge of being ultra vires? It is a very particular question. I know it is a bit technical, but it is very important that we have an understanding about this.

In relation to clauses 2 and 3, which we will move to in due course, that is where this question about whether we are considering the 300 per cent increase arises. We need to be very clear when we are debating clauses 2 and 3 whether we are talking about the 300 per cent increase. Have the regulations been changed already? We know that many local councils are already charging the increase, but have the regulations been changed already? What is the government’s contingency plan if the regulation is disallowed? There must be a plan B, surely.

*Points of Order*

**Hon SIMON O’BRIEN:** Again, I appeal to the Chair. This is patently not a clause 1 debate that is being conducted. I listened closely to every single item that was just raised by the member, and none of them could be seen as relating to a debate on clause 1 of the bill—none of them. At best it got back to a rerun—and it was even admitted by the member by the way she phrased it that it was a second reading debate—but beyond that, it was an interrogation wanting to know what was in the mind of the Premier, the minister or someone at some remote point in time. This is not, I would submit to you, Mr Deputy Chairman, with respect, a clause 1 debate that is going on here. I would ask you to make sure that members —

**Hon Ken Travers:** This is not a point of order, the way you are going on; it is very much —

**Hon SIMON O’BRIEN:** I am not wasting as much as the chamber’s time as you are, sunshine! Quite clearly, my point of order is that this is not a clause 1 debate that is happening here.

**Hon JOCK FERGUSON:** Point of order.

**The DEPUTY CHAIRMAN (Hon Jon Ford):** Hon Simon O’Brien needs to finish his point of order.

**Hon SIMON O’BRIEN:** Hon Jock Ferguson is obviously keen to rise to support me, so I will let him.

**Hon NICK GOIRAN:** I would respectfully draw to your attention, Mr Deputy Chairman, that Hon Sally Talbot has in effect ignored your previous requests to this chamber. I am happy to be corrected if I am wrong on this, Mr Deputy Chairman, because, as you have pointed out on a number of occasions, I have been in this place for a short period of time, but I seem to recall that there were two things that we ought to be doing under this clause. The first is speaking to amendments that will be moved—in other words, the amendments themselves—and the second is giving any reasons that clauses will not achieve what the bill seeks to do. Mr Deputy Chairman, I would just like to remind you and the chamber that apart from what was pointed out in the excellent comments made by Hon Simon O’Brien a moment ago, the other thing that Hon Sally Talbot has asked for is the timing of legal advice. She then went on to ask what went through the minister’s mind at the relevant time. Neither of those two things does what you have asked the chamber to do, Mr Deputy President, with regard to the short title. So I would certainly support the point of order made by Hon Simon O’Brien.

**The DEPUTY CHAIRMAN:** Would anyone else like to make a point of order before I —

**Hon Sally Talbot:** I would like to carry on with the debate.

**Hon Nick Goiran:** Stick to the standing orders and you won’t have a problem.

**The DEPUTY CHAIRMAN:** Order, members! Before I respond, sometimes points of order can be counterintuitive, because they end up adding to the debate. But I agree with the general thrust of what Hon Simon O’Brien is saying. It is true—I am going back to my earlier comments—that there is a limit to the debate. However, what has happened in my past eight years or so in this chamber is that there has been a broad-ranging debate on the short title. I am just asking members to bear in mind that we need to get on with the debate. We need to not so much concentrate on having snipes at each other across the chamber. But I do agree with the comments that have been made. I am sure Hon Sally Talbot was bringing to a conclusion the point that she was making.

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**Hon NICK GOIRAN:** I would ask, Mr Deputy Chairman, that you rule those questions out of order. I take the gist of what you have just ruled. But, with respect, you made it very clear that there are two things that members of this chamber are entitled to do under this particular clause. The questions are not pertinent—they are about the timing of legal advice, and they are about what went through the minister's mind. I would respectfully submit that those questions are out of order at this point in time for this committee.

**The DEPUTY CHAIRMAN:** Well, member, I have made my ruling, so if you are now challenging or questioning my ruling, then that is a different matter. I have made my ruling. I want the business of the chamber to proceed. If the member wants to question my ruling, there are other standing orders to deal with that matter. I am quite happy to leave the chair and seek the advice of the Chairman of Committees or the President, if that is what the member wants to do. But, at the moment, I will give the call to Hon Sally Talbot, and I am hopeful, as I have said, that she is going to come to a conclusion in the near future.

*Committee Resumed*

**Hon SALLY TALBOT:** Thank you, Mr Deputy Chair. I think I can put Hon Nick Goiran more at ease if I relate my question about the legal advice directly to the letter from the minister to me dated 14 October. That letter answered the question that I had raised at the briefing provided to me—an excellent briefing—by one of the minister's officers. I had asked what was the reason for the change in date for the implementation of the proposed landfill increases. The minister said in her letter —

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

My question to the minister is quite straightforward. Why could not the levy have been raised by regulation? Given that the government has the numbers in both houses of this Parliament, and that, presumably, even if we had moved disallowance motions, they would not have been successful, if the levy had been raised by regulation, the money from the increase in the levy would now be being paid into the waste account. Surely, if the government had done that, there would now be a lot more money in the waste account. Then, as we progressed through the legislative program for this year, at some point this bill would have come up, and we would have then considered the ending of the hypothecation to the waste account. All the minister has ever been able to say to me on this matter is that, having received the legal advice, the government decided that it wanted this bill enacted before the regulations were changed. My simple question is: why?

**Hon DONNA FARAGHER:** With respect to the legal advice, parliamentary counsel advises on the legality of bills during drafting. Other advice is obviously sought from time to time; that is, whether it is with respect to this bill or any other bill.

I appreciate that the member does not like the answer that I am giving her. I have said consistently, and I will repeat it again, that having received legal advice it was determined appropriate that we do not increase the levy by 300 per cent until such time as the legislation has passed. We have received legal advice and we have accepted that advice and we have determined that it is appropriate that this bill passes both houses first—I think it will pass at some point in time—and then we would seek to increase the levy on 1 January. The reason we decided to choose 1 January was that we were not sure of the timing of when this bill might pass; therefore, to provide certainty we gave an actual date rather than the date on which the bill would pass. Therefore, if the bill were to pass tonight, it would not come into effect tomorrow. We have received legal advice, and accepted that legal advice, that it is appropriate that we pass this bill first before we increase the levy.

**Hon SALLY TALBOT:** I was endeavouring to ask the minister a range of questions in an attempt—last week we talked about roughage bills; I was about to do a roughage clause 1 speech—to have the minister address them in the context of the clause 1 debate and we could then move on to clause 2. I do not think it will work in this chamber because members opposite are getting so agitated that they keep jumping in and interrupting us.

I ask the minister once again: what aspects of the bill has she had concerns about in the context of them being ultra vires?

**Hon DONNA FARAGHER:** As I have consistently said the advice is that the bill is valid. We do not have a problem with that. The advice is that the bill is valid. All I have said is that, having received legal advice, it was deemed appropriate that we pass this bill first before we introduce the increase of 300 per cent to the levy. That was the announcement we made. I have consistently said that the advice that we have is that the bill is valid.



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**Hon SALLY TALBOT:** I ask the minister what would have been the effect if the events had been the other way around? What would have been the effect if we had changed the amount of the levy by 300 per cent by regulation and then introduced this bill?

**Hon DONNA FARAGHER:** The fact is that we did not increase it and we are not increasing it until 1 January. We are dealing with the bill now.

**Hon SALLY TALBOT:** I am asking the minister what would have been the effect if we had increased the levy first?

**The DEPUTY CHAIRMAN (Hon Helen Morton):** With all due respect, that question is irrelevant.

**Hon SALLY TALBOT:** I accept your ruling, Madam Deputy Chairman. In that case I will have to pursue this in a different context. Before I do that, I will refer to something else that the minister said in connection with the amendments to the bill. The minister talks constantly about using New South Wales as her model—in New South Wales things are happening that we are trying to put into effect with this amendment bill. How did the minister form the opinion that New South Wales is the model that we should follow?

**The DEPUTY CHAIRMAN:** Order! That is considered not relevant either.

**Hon SALLY TALBOT:** Perhaps the minister would care to answer it anyway.

Government members interjected.

**Hon SALLY TALBOT:** That is fine. I am not in any way dissenting from —

*Point of Order*

**Hon JOCK FERGUSON:** Hon Phil Edman keeps interjecting, and he is not sitting in his seat.

**The DEPUTY CHAIRMAN:** Members must be in their seats when they speak.

*Committee Resumed*

**Hon KEN TRAVERS:** I want to touch briefly on issues that were raised earlier. The minister gave me the advice that I would find the answer in the annual report. I have actually had a look in the annual report. I can find the examples of prosecutions and I can find general environmental harm statistics, but in terms of the issue of illegal dumping and what volume of waste is discovered in areas around Western Australia, I am still keen to know whether that is something the department monitors, whether it is something it keeps statistics on and whether the minister has those statistics.

**Hon DONNA FARAGHER:** As I have said previously, because there is no offence of illegal dumping there are no statistics as such. Clearly, there may be statistics for those under the Litter Act. We are seeking to address that issue. We will then be able to have that specific information, if that helps.

**Hon KEN TRAVERS:** I understand that the minister may not have specific statistics about the number of illegal dumping charges, but is it something that the department has been monitoring? Is it something that is on the increase or on the decrease? I suspect that a lot of illegal dumping occurs in state forests. It may be that the former Department of Conservation and Land Management and other joined-up agencies are the best people to get this information from. I am still keen to find out what sort of information the department might hold, though I accept that it may not have specific statistics about it because it does not have a specific offence.

**Hon DONNA FARAGHER:** We do not obviously have that information to hand. If we can get more information for the member at another time, I am happy to provide that to him.

**Hon SALLY TALBOT:** I want to ask the minister a question about a further piece of information that she provided to me when I attended a briefing on this bill. I asked about regional landfill sites. I was particularly concerned about some of the claims that we have heard from government members that regional landfill sites do not pay the levy—I accept that. I am not entirely sure why the minister has so categorically ruled out extending the levy to regional tips. I understood that that was still a question for open discussion at forums being run by the Waste Authority. I would have thought that there is a disadvantage in closing off that option at this very preliminary stage. It seems that the heart of this bill is gaining more revenue for the minister's department. Closing off the option to extend the levy to regional landfill sites was a very curious step to take. I am not saying that we on this side would support an extension of the levy, but I know that it was a topic of live discussion. Many people in regional communities have very firm ideas about what they need at those regional tips, and were the government in a position to start negotiating about the provision of things like weighbridges and proper resource recovery facilities in the regions, that that might have opened up the discussion about the extension of the levy to regional tips.

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My question is about the situation that we on this side of the chamber have said might occur if the amendments in this bill are passed. Small and large businesses in the waste and recycling industries might be tempted to drive to regional landfill sites instead of paying the increased levy at the landfill sites in the metropolitan area. In that context it has been pointed out to me—I will check this figure in a moment—that the estimated increase in landfill costs from our resource recovery facilities in the metropolitan area will be in the order of \$3 million a year. That is a huge cost impost as a result of the measures in this bill. There is no way that the regional councils will allow their contractors to drive out to the bush to dump their rubbish on free landfill sites. However, who is to say that some of the non-government companies that are involved in this industry will not drive to Geraldton or to Kalgoorlie to use the tips there when they are faced with costs of that magnitude? I would like to know whether there is any evidence that that will not be the case. My specific question is about the minister's response when I asked for more detail about the regional landfill sites that have paid the levy. I am not sure where the Light Range Cashman's Tyre Disposal is. Is the minister able to tell me where it is, by way of interjection? That is one of the two sites that are not manned; the other is the Chittering landfill.

**Hon Ken Travers:** Is the tyre disposal site not staffed?

**Hon SALLY TALBOT:** It is not manned, according to the chart that the minister provided to me. It is called the Light Range Cashman's Tyre Disposal. I am also interested in the Chittering landfill site, which is also unmanned. At an earlier stage of this debate, the minister said there were no unmanned landfill sites where people have ever paid the levy. According to the information that I received from the minister, that is not the case. I will leave that point and make some other points when the minister has had a chance to consider those.

**Hon DONNA FARAGHER:** I do not know the exact location of the Light Range Cashman's Tyre Disposal, but that would be able to take only tyres. If someone took metropolitan waste to Geraldton—I think the member mentioned Geraldton—the landfill levy would need to be paid. If metropolitan waste is taken to a rural landfill, the levy will have to be paid. That is the normal process.

**Hon SALLY TALBOT:** That being the case, how would the levy be calculated? We have a cubic metre measurement for inert waste but putrescibles are measured in kilograms. If a truckload of putrescibles was transported to Geraldton, although I am not sure whether Geraldton has a weighbridge —

**Hon Robin Chapple** interjected.

**Hon SALLY TALBOT:** In Chittering there is no —

**Hon Ken Travers:** For your information, Hon Sally Talbot, Light Range Cashman's is at Meekatharra.

**Hon SALLY TALBOT:** I thank the member. Have I asked enough of a question?

**Hon DONNA FARAGHER:** Yes, I think the member has. I understand that there are guidelines for estimating the weight; that is, the size of a trailer or truck and those sorts of things. The guidelines that are utilised estimate the weight.

**Hon SALLY TALBOT:** How is that calculated? I understand that the technical term in the regulations is "eligible waste". Imagine my truck arriving at Meekatharra, Chittering or Geraldton. How do we know that it is eligible waste? Is it self-reported or is it monitored? If the waste goes to an unmanned landfill site, how does self-reporting work if there is no monitoring?

**Hon DONNA FARAGHER:** The levy is calculated on the basis of the landfill that it goes to. For example, if it is putrescible landfill, the levy relating to putrescible waste will be paid. If it is inert landfill, the levy relating to inert waste will be paid. It is the responsibility of the landfill operators to monitor that, and the department monitors that back as well. As I said, whether the landfill is inert or putrescible determines what levy will be paid.

**Hon SALLY TALBOT:** I can absolutely understand how that works at a tip that is staffed because, clearly, pairs of eyes will look at what has come into the landfill. We have just spoken about Chittering. We will use that as an example because we have confirmed that it is unmanned. Is the minister telling the chamber that it will simply be self-reported?

**Hon DONNA FARAGHER:** It is the operator's responsibility to monitor what goes into landfill, whether it is manned or unmanned. In addition to that, I think I mentioned in my reply to the second reading debate that the department employs a landfill levy inspector to monitor compliance with the levy regulations. One of the function of a landfill levy inspector is to patrol the major transport arterials out of the metro area, looking for any evidence of waste being transported to rural landfills. The department has a role, but the operator has a responsibility as well.

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**Hon SALLY TALBOT:** Just for the record, minister, how many landfill inspectors do we have in Western Australia?

**Hon DONNA FARAGHER:** We have one dedicated, and we also have about 50 licensing inspectors.

**Hon SALLY TALBOT:** The minister also referred to the landfill operator. Would I be right in assuming that the landfill operator, in almost every case in Western Australia, is the local council?

**Hon DONNA FARAGHER:** It is a mixture of local government and private industry.

**Hon SALLY TALBOT:** So, minister, is this yet another impost on local councils? The government is expecting them to not only monitor all the other things we have talked about for the past couple of hours—illegal dumping being the prime example—but also monitor the use of these unmanned landfill sites looking for people who decide to inappropriately use those regional tips, and Chittering is hardly regional; Chittering is almost part of the metropolitan area. Is the government expecting local councils to monitor those for inappropriate use?

**Hon DONNA FARAGHER:** They are actually already required to monitor them; I am not changing that. That is a requirement of their licences. If they were not monitoring them, they would actually be in breach of their licences. I am not proposing any change to licensing; that is a requirement upon them now. There will be no change to that.

**Hon SALLY TALBOT:** That is a very reasonable point.

**The DEPUTY CHAIRMAN (Hon Helen Morton):** Can I just interrupt. Would Hon Sally Talbot wait for the call, because other members are seeking the call from time to time. Hon Sally Talbot has the call.

**Hon SALLY TALBOT:** Thank you, Madam Deputy Chair; I will do that. I was just getting interested in what is happening.

That is a very valid point, minister, and I accept it, but the crucial thing is that anyone who has looked at this bill—not just the opposition—believes that there might be a quite significantly increased use of those unmanned regional tips as a result of this legislation. I just make the point to the minister again that it looks as if it is yet another reliance on local government, with which, I suggest, they will be profoundly unimpressed.

I will move on to another question in relation to the clause 1 debate. This is really something else that will have an effect on our deliberations on each of these clauses as we move through the bill. We had the ministerial councils meeting in Perth recently: what did we commit to financially at the MINCO? And I ask the minister to consider a couple of related sub-questions: how much; and will the Waste Authority or the Department of Environment and Conservation pay, or will it be some other authority or part of government?

*Point of Order*

**Hon MICHAEL MISCHIN:** I take a point of order. This has nothing to do with the policy or whether the bill is satisfactory to implement the policy that has been written and decided by the chamber. This has got no relevance at all to the bill that is being considered in the Committee of the Whole.

**The DEPUTY CHAIRMAN:** That point of order is taken and the matter is considered irrelevant to the bill.

*Committee Resumed*

**Hon SALLY TALBOT:** Thank you, Madam Deputy Chair; I accept your ruling on that. Let me try to phrase it a different way.

*Point of Order*

**Hon MICHAEL MISCHIN:** I will raise a point of order again because it is not about how the question is phrased. The substance of what is being asked has nothing to do with whether the bill meets the objectives and policy that have already been decided by the chamber.

**The DEPUTY CHAIRMAN:** Does Hon Sally Talbot have a different question?

*Committee Resumed*

**Hon SALLY TALBOT:** Thank you; I will phrase that differently. I will ask a different question.

*Point of Order*

**Hon MICHAEL MISCHIN:** I raise another point of order.

**Hon Robin Chapple:** She is asking a different question.

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**Hon MICHAEL MISCHIN:** She said she was going to phrase it differently. It is not a question of how it is phrased; it is the substance of what is being asked. I do not care how the member phrases her question; she could do it in Greek for all I care! The point I make is that it has nothing to do with this bill. If the member wants that sort of information, it is probably suitable to ask a question on notice or a question without notice.

**Hon Ken Travers** interjected.

**The DEPUTY CHAIRMAN:** The Chair will make the decision about the relevance of the question when the question is put. The question Hon Sally Talbot asked before was considered to be irrelevant. I invited Hon Sally Talbot to ask a different question if she had one.

*Committee Resumed*

**Hon SALLY TALBOT:** Thank you, Madam Deputy Chair. It would be an interesting test of the standing orders to ask a question in a different language. I do not think that that would make any difference because it would not change the substance of what I was asking.

**The DEPUTY CHAIRMAN:** Hon Sally Talbot, you might be interested to know that the standing orders indicate that we do speak in English.

**Hon SALLY TALBOT:** Thank you, Madam Deputy Chair.

**Hon Ken Travers:** That will be news to a few members around the chamber!

**Hon Simon O'Brien:** I'll stand by you, Jock; don't worry!

**Hon SALLY TALBOT:** It is a big problem for Hon Jon Ford!

This bill is a move that will take away 75 per cent of the funding that the Waste Authority would have expected to receive and put it to other purposes to do with the general revenue of the Department of Environment and Conservation. My question is: what will the Waste Authority be liable to pay as a result of commitments that the minister made at the recent ministerial council meeting held in Western Australia? I want to know: What did Western Australia commit to financially and who will pay? Is it the Waste Authority or is it the Department of Environment and Conservation? Because, clearly —

*Point of Order*

**Hon MICHAEL MISCHIN:** With respect, this has nothing to do with the bill before the house.

**Hon KEN TRAVERS:** On the point of order, I would have thought that the question Hon Sally Talbot just asked has everything to do with clause 7 of this bill, which determines how much money will go to the Waste Authority and how much will be appropriated to the department. The question the member is asking will help inform us about whether the 25 per cent that is contained in the bill as it stands is good or whether we might need to modify it. Therefore, I put it to you, Madam Deputy Chairman, that that question is absolutely relevant to this bill.

**The DEPUTY CHAIRMAN:** I will read again the Chairman's rulings on the relevance of the debate. Earlier a question was asked about what can be debated under the short title. Particularly for the interest of new members, the Chairman referred to the ruling that the then Chairman of Committees, Hon Barry House, made on 16 October 1996. Hon Barry House stated —

The short title debate does no more than give members the opportunity to range over the clauses of the Bill, foreshadow amendments and indicate, consistent with the policy of the Bill, how its formal content may be improved. It is not a vehicle for continuing debate on policy; rather, if members do not wish the Bill to proceed, the action they should follow is to vote to defeat clause 1 of the Bill as it stands.

I ask members to retain the relevance of their questions.

*Committee Resumed*

**Hon ROBIN CHAPPLE:** I refer again to the question asked earlier about ungated, unmanned tips. I come from the Mining and Pastoral Region and throughout that region we find many unmanned and ungated industrial, shire and town council tips. The minister has already indicated that this legislation is modelled on some New South Wales legislation and how that was developed. We know from New South Wales that waste is trucked into Queensland to ungated tips, so there is no problem with distance about trucking waste into the sandstone areas, the Pilbara or wherever else. If there are ungated and unmanned tips in that area, can the minister assure us that that waste will be caught by this legislation? I am not referring to the ability of her inspectors; but can she assure us all those tips will be manned and gated to inhibit the transportation of waste out of the metropolitan area into the regions?

*Point of Order*

**Hon MICHAEL MISCHIN:** As I understand it, the bill has to do with the imposition of the levy and the mechanisms for imposing it; it has nothing to do with unmanned tips.

**Hon KEN TRAVERS:** The substantive bill has to do with the levy. This has to do with distribution of the levy and how that operates.

*Committee Resumed*

**Hon DONNA FARAGHER:** The legislation we are dealing with does not deal with matters surrounding manned or unmanned landfills. As I said in response to Hon Sally Talbot, landfills are monitored and are required to be monitored as part of their licence. If a landfill operator does not monitor his site, he is in breach of his licence. There is no change to that. It does not pertain to the bill currently before us.

**Hon KEN TRAVERS:** I want a bit of an understanding from the minister about the way in which she sees the bill operating once it has been amended. Under clause 5, the levy is to be credited into an operating account of the department established under the Financial Management Act. Obviously, there are further amendments for how much will then be credited to the WARR account and the like. Before we get into the detail of those specific clauses, I want to make sure I fully understand how it will operate. Will all the money initially go into a central account and be allocated to a departmental account and an account of the Waste Authority? Will that money be required to be appropriated as part of the annual budget or will the money be considered a standing appropriation rather than requiring further appropriation come budget time each year?

**Hon DONNA FARAGHER:** It will be determined at budget time. It will be paid in quarterly instalments. That is what is currently done; that will not change. The funds will go into an operating account of the department. Then the funding that is to go into the WARR account will be transferred across to the WARR account. As I said, that will be through the quarterly instalments.

**The DEPUTY CHAIRMAN (Hon Helen Morton):** The question that the member has just asked, and the follow-up question that I anticipate he will ask, is more relevant to clause 5 of the bill than clause 1.

**Hon KEN TRAVERS:** Madam Deputy Chair, I absolutely accept your ruling in terms of any detail I might go into; I am just trying at this point to get a general understanding of how clauses 5 and 7 will interact with each other, and I think it is appropriate to do so during debate on the short title. I certainly accept your ruling on any matters to do with the detail of the bill. It is important that we have a broader understanding of the bill before we deal with the specifics in the other clauses.

**The DEPUTY CHAIRMAN:** The previous question was too detailed for clause 1, but I will listen to the member's next question and determine whether it is appropriate at this stage.

**Hon KEN TRAVERS:** I appreciate the minister's comment that the amounts will be determined as part of the budget. What I was trying to understand was whether those amounts will need to be reappropriated through the appropriation bills, or whether this bill, once it is passed, will provide for an automatic standing appropriation. Will this bill provide for a standing appropriation or will a further appropriation of the moneys that are collected from the levy be required as part of the appropriation bills that come in with the budget package?

**Hon DONNA FARAGHER:** I understand that it will be a standing appropriation, but it will be determined at the time of each budget. The appropriation for the year will be published in the budget papers.

**Hon KEN TRAVERS:** In that case, I ask you, Madam Deputy Chairman, to give us a ruling on whether this bill is an appropriation bill.

*Ruling by Deputy Chairman*

**The DEPUTY CHAIRMAN (Hon Helen Morton):** There is already a Waste Avoidance and Resource Recovery Levy Act and a Waste Avoidance and Resource Recovery Act 2007. The bill before the house will amend both acts. The principal act, the Waste Avoidance and Resource Recovery Levy Act 2007, authorises the levy. The bill seeks to amend these acts to provide for the broadening of the purposes for which the levy imposed under the Waste Avoidance and Resource Recovery Levy Act 2007 can be applied. Section 46(6) of the Constitution Acts Amendment Act provides —

A Bill which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

As a former President ruled in 1983, "ordinary" describes an annually funded service of a type which government must provide by law or which is provided by a government in the course of giving effect to its

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policy. Clause 8 of the bill before the house seeks to amend section 80 of the act by deleting subsections (1) and (2) and inserting a proposed new subsection (1) of the act. This will expand the application of moneys as currently provided in the act. The ruling states in part —

... I need to exclude some appropriations that clearly are not for the ordinary annual services. As the High Court has said —

... the Parliament forgoes its annually-exercised power over expenditure by government when a law containing a standing appropriation is enacted. Standing appropriations need not be included in annual appropriations.

It is not a bill that appropriates revenue or money for the ordinary annual services of the government and, therefore, section 46(6) does not apply.

*Point of Order*

**Hon KEN TRAVERS:** If I may seek some further clarification from you, Madam Deputy Chairman. I understand the clauses of the bill in respect of the Waste Management Authority in terms of your ruling, but what I understood the minister to say was that this also appropriates money for the department, which is a separate entity and not contained within the existing bill. I just want to clarify that your ruling covers that side of the legislation as well.

**The DEPUTY CHAIRMAN:** Yes, it does.

**Hon KEN TRAVERS:** If I may seek further clarification. In light of your comments about the ordinary annual services of government and waste management not relating to those, the department itself surely would come under the ordinary annual services of government.

**The DEPUTY CHAIRMAN:** Can you just repeat the last comment, please?

**Hon KEN TRAVERS:** I took your point about the Waste Management Authority. I think that is very clear. The point I am asking about is the standing appropriation that will be applied by this bill, which is not in the existing act, for the purposes of the department, but is the ordinary annual services of government and is currently provided for as part of those appropriations. Is the section of the bill that relates to that not an appropriation for the ordinary annual services of government, because it is appropriating money to the department? As I understand it, from what the minister said, the department will receive, as well as the Waste Management Authority, a standing appropriation as a result of this bill, which is not currently there.

**The DEPUTY CHAIRMAN:** I want to reiterate the comment that it is not a bill that appropriates revenue or moneys for the annual services of the government and, therefore, section 46(6) does not apply.

**Hon KEN TRAVERS:** I understand that. I would just like to get a bit more detail, if I could, of how that decision is arrived at with respect to the fact that appropriating money for the purposes of the department will not now be required to go through the budget processes. There will not be a requirement for the department to now have at least part of its budget appropriated on an annual basis. Could I get some more detail from you as to how your ruling applies in respect of that issue?

**The DEPUTY CHAIRMAN:** This bill will become a standing appropriation bill and will not be a bill for the ordinary annual services. Ordinary annual services are usually appropriated in the normal appropriation bills.

**Hon KEN TRAVERS:** If I may just seek to understand that ruling a little bit clearer. Is the logical extension of your ruling that where it is appropriated on an ongoing basis so that it becomes a standing appropriation, then a bill that does that is not required to comply with the rules of the Constitution Acts Amendment Act with respect to the annual appropriation of services of government?

**The DEPUTY CHAIRMAN:** That is correct. This is not a bill that appropriates revenue or moneys for the ordinary annual services of government. Therefore, section 46(6) does not apply.

**Hon KEN TRAVERS:** I must say I am still particularly confused, because I note that this is for the department. This is actually an appropriation for the operations of the department.

**Hon SALLY TALBOT:** I would like to come at this from a slightly different direction, in support of the points that Hon Ken Travers is making. This bill contains references —

**The DEPUTY CHAIRMAN:** At this stage, that ruling has been well considered, on the advice that has been given to me. The position is that the member either accepts my ruling or dissents from my ruling. It is not going to be further considered.

*Committee Resumed*

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**Hon SALLY TALBOT:** Madam Deputy Chair, would you allow me to do neither of those things but to ask a further question?

**The DEPUTY CHAIRMAN:** So long as it has nothing to do with this particular ruling or issue.

**Hon SALLY TALBOT:** I do not think it has to do with this particular ruling, but I will stand guided by you, Madam Deputy Chair, once I have asked the question. Within this bill, we find several references to the Financial Management Act 2006, and specifically to section 16(1), which states in part —

- (1) The agency special purpose accounts of an agency consist of —
  - (a) any account established for the purposes of the operations of the agency; and

Does that come under the ruling that we have been discussing?

**The DEPUTY CHAIRMAN:** I reiterate that this is a bill that does not come under section 46(6). As such, the ruling that I have previously given stands.

**Clause put and passed.**

**Clause 2: Commencement —**

**Hon SALLY TALBOT:** I know that there is an increasing trend, presumably by the people who draft legislation, to spread out the days on which sections and parts of acts come into operation. This clause states —

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent ...;
- (b) sections 3 and 9 and Part 3 — on the day after assent day;
- (c) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

What does that mean? Why have these distinctions been made?

**Hon DONNA FARAGHER:** Essentially, the reason for these differences in timing is that it will enable me as minister to recommend to the Governor the increase of 300 per cent before 1 January—that is, part 3, in terms of the minister making the recommendation. The remainder of the sections will apply from that day—that is, 1 January—when the higher levy rate will apply.

**Hon SALLY TALBOT:** The minister now seems to be bringing into her explanation something that is not connected to this bill. She is now talking about clause 2(a). Is the timing of that connected to the tabling of the regulation to increase the levy?

**Hon DONNA FARAGHER:** All it is doing is allowing things to be done in sequence. We obviously have clauses 1 and 2 and then we have clause 9, “Section 81 amended”, that provides for the Financial Management Act and the Auditor General Act to apply to the WARR account. Part 3 provides for the transfer of responsibility from the waste authority to the minister to make recommendations to the Governor about the levy. It is being done sequentially.

**Hon SALLY TALBOT:** What would be the latest assent day that would enable the regulations to be tabled on 1 January?

**Hon DONNA FARAGHER:** It would have to be prior to the last Executive Council this year.

**Hon SALLY TALBOT:** I am pursuing this point because I note that this clause has been amended in another place. I wonder whether there have been any changes between the amendments that were made in the other place and the bill before us. I am particularly interested to know whether we have passed the date when there is a workable assent day. I understand it is on the public record that the key date would be two days before the last Executive Council of the year. Can the minister enlighten the chamber as to what that date might be?

**Hon DONNA FARAGHER:** I understand that the department has been advised from the formalities officer that the last scheduled Executive Council meeting is 30 December.

**Hon SALLY TALBOT:** I refer to clause 2(c). I note, and I have expressed my opinions about this before in this place, that when the increase in the waste levy was delayed from 31 July 2009 to 1 January 2010, it was done so with some accompanying narrative about providing certainty for the various stakeholders. I cannot make that emphasis on certainty coherent in the light of the fact that clause 2(c) appears to leave it entirely at the discretion of something other than the act in circumstances in which clauses 4 and 5 would come into effect. Clauses 4 and

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5, as honourable members know, relate to the establishment of the account into which the waste levy is to be paid—to say nothing of clause 7, which effectively ends the hypothecation. Proposed sections 1, 2, 3, 9 and part 3 will automatically have a time frame attached to their commencement if this bill is passed, but the commencement of proposed sections 4, 5, 6, 7, 8 and both amendments relating to the Waste Avoidance and Resource Recovery Levy Amendment Bill—the last two amendments in this bill that relate to the levy bill—float around entirely unfixed in time. Could the minister tell us her reaction to that point, and perhaps also indicate how it is proposed that the day will be determined for the day on which each of those clauses will come into operation?

**Hon DONNA FARAGHER:** They will come into operation on 1 January. I have made statements in this house and elsewhere publicly that the commitment is that, obviously the bill will be passed, but that the levy will increase on 1 January. The member talks about certainty. The certainty is that we seek to increase the levy on 1 January.

**Hon SALLY TALBOT:** In that case, why is that not what the bill says? What would be the difficulty in phrasing clause 2 in the standard way? As I understand it, the standard way is a two-section clause. It just looks as though this is more of the trickery, more of the sleight of hand, more of the attempt to persuade us that everything is under control and that the minister has a plan. I make the point again: this is another example of my Joker analogy. Does she look like a minister with a plan? No, she does not.

**Hon DONNA FARAGHER:** Really; it is almost getting to Christmas! I would like to think there would be a little bit more Christmas spirit by Hon Sally Talbot. But clearly not. It is drafting convention, as I understand, that a date is not generally applied. I do not know how much clearer I can be. Jokes about the Joker are really not all that funny, but anyway! I have said 1 January. I do not know how much clearer I can be.

**Hon SALLY TALBOT:** I make my last attempt: the minister has said 1 January, the bill does not say 1 January. Why does the bill not say 1 January?

**Hon Donna Faragher:** I have said it is drafting convention. It does not apply.

**Clause put and passed.**

**Clause 3: Act amended —**

**Hon SALLY TALBOT:** I simply want to ask the minister about the objects of the Waste Avoidance and Resource Recovery Act, which we are amending, because she did not address this point in her reply to the second reading debate. I have drawn honourable members' attention to the fact that the objects of that act are spelt out in section 5. I will not go through them again because I referred to them at length in the second reading debate and Hon Ken Travers has read them into the record tonight during the committee stage. The objects of section 5(2) of the Waste Avoidance and Resource Recovery Act state —

The principles set out in the EP Act section 4A apply in relation to the objects of this Act.

Section 4A of the Environmental Protection Act is headed “Objects and principles of Act”. I note that this section was inserted in 2003.

**The DEPUTY CHAIRMAN (Hon Michael Mischin):** Order, member! We are dealing with clause 3 of the Waste Avoidance and Resource Recovery Amendment Bill 2009, which, as I see it, simply announces that it amends another act. Is what the member is putting to the minister relevant to that?

**Hon SALLY TALBOT:** I will seek your guidance on that, Mr Deputy Chairman. I will quickly articulate the question and then I would be happy to accept your ruling about whether this is the appropriate place to ask it. There is a cross-reference in section 5 of the act to the EP act.

**The DEPUTY CHAIRMAN:** Section 5 of which act?

**Hon SALLY TALBOT:** Of the Waste Avoidance and Resource Recovery Act, which is the substantive act. There is a cross-reference to section 4A of the EP act. When we read section 4A of the EP act, we find no similar cross-reference to the substantive act. Will the minister consider, by way of an amendment at some point in this debate, accepting an appropriate cross-reference? The reason I am suggesting this is that we are diverting money collected under the substantive act to programs that presumably fall under the auspices of the Environmental Protection Act. It seems to me that it will be of some comfort to people who are expressing great concerns about the ending of hypothecation if we could at least have the objects of the WARR act cross-referenced in the Environmental Protection Act.



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**Hon DONNA FARAGHER:** In effect, it already is cross-referenced because the Environmental Protection Act refers to “The principle of waste minimisation” at paragraph 5 of section 4A of the act.

*Point of Order*

**Hon HELEN MORTON:** I understand that this debate is about seeking leave to amend the substantive act, not the bill that is in front of us. Therefore, from previous discussions, I believe that that is outside of the scope of the consideration of this clause.

**The DEPUTY CHAIRMAN:** If that is so, I accept that point of order and I invite members to confine themselves to dealing with the effect of the clauses in the bill before the house.

*Committee Resumed*

**Hon SALLY TALBOT:** I have one final point. I thank the minister for answering that. I was aware of that section of the EP act. I still cannot see how the amendments that we are considering tonight to the WARR act do not fundamentally contravene the principles of both the WARR act and paragraph 5 of section 4A of the EP act.

**Hon DONNA FARAGHER:** It is consistent with both acts. I invite the member to look at section 80.

**Clause put and passed.**

**Clause 4: Section 36 amended —**

**Hon SALLY TALBOT:** There is an amendment to clause 4 standing in my name. I will address that amendment by asking a number of questions. The intent of the government’s clause is far from clear. Before I move my amendment, I want to check that I have not misunderstood what is happening here. Has the minister received advice to the effect that had this clause already been in the WARR act, it would have solved some of the stand-off that has become very public between the Department of Environment and Conservation and the Waste Authority? I invite honourable members to look at section 16 of the Waste Avoidance and Resource Recovery Act, to which this clause is cross-referenced. It seems clear enough to me. I cannot see why we need this additional paragraph inserted into section 36.

**Hon DONNA FARAGHER:** I responded in my summing-up that the matters that the member refers to with respect to the Waste Authority have been addressed. The purpose of this clause is to, in effect, legislate the current administrative practice of the Waste Authority, which includes the cost of all services provided by DEC, including staff of the waste management branch and the proposed staff of the Waste Authority in its annual work plan. This clause will legislate this practice. To be honest, it actually provides greater transparency. It has been the practice for a number of years that the funding has been utilised for the services that are provided through the waste management branch, not only last year when this new act came into being when Hon David Templeman was the then minister, but also previously under the Waste Management Board. It has been a longstanding practice. This clause creates some transparency with that.

**Hon SALLY TALBOT:** My suspicion is that this is a trick.

**THE DEPUTY CHAIRMAN:** Hon Sally Talbot, we are dealing with your amendment to clause 4. I may be wrong, but I do not think you have addressed that amendment yet.

**Hon SALLY TALBOT:** I seek your guidance, Mr Deputy Chairman. I thought I made it clear in my introductory remarks on this clause that before I moved my amendment, I wanted to check my understanding of what the minister is proposing in this clause. Am I able to do that in the context of this debate?

**THE DEPUTY CHAIRMAN:** Yes, if that is what you are doing. Now I understand what you are doing.

**Hon SALLY TALBOT:** I am worried that this is a trick. It looks innocent enough to get the Waste Authority to list the services and facilities that are reasonably necessary to be provided or used under section 16 for the next financial year in order to enable the Waste Authority to perform its functions. Section 16(1) clearly states —

The Minister must ensure that the Waste Authority is provided with such services and facilities as are reasonably necessary to enable it to perform its functions.

What I am suggesting is, so far so good—no problems. But when we look at clause 8 of the Waste Avoidance and Resource Recovery Amendment Bill 2009, being the amendments to section 80 of the Waste Avoidance and Resource Recovery Act 2007, we find that proposed section 80(1)(d) shifts those costs back to the Waste Authority. I am suggesting that although it is all very well and it looks innocent enough—indeed it looks quite a productive thing to list those services and facilities in connection with section 16—to then, further on in the bill, slip in the clause that the costs are going to be shifted back to the Waste Authority is a trick.

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**Hon DONNA FARAGHER:** I do not understand this notion of trickery and whatever else. I have made it really clear that this amendment legislates for the current administrative practice. As indicated in my previous answer, the Waste Authority—previously the Waste Management Board—has always paid the costs for services provided by the Department of Environment and Conservation, including staff, and, in this case now, the proposed office. We are not changing anything: it has always been the case. If I had it with me, I would actually provide the member with a copy of a letter signed by the previous minister, and, as I say, it is a practice that goes back as far as the Waste Management Board. We are not changing the current practice.

**Hon SALLY TALBOT:** In that case, sadly, I have understood what the minister is attempting to do, so I move —

Page 3, line 9 — To insert after “facilities” —

to be funded from the Department’s consolidated revenue

This amendment will make clause 4 read —

the services and facilities to be funded from the Department’s consolidated revenue that are reasonably necessary to be provided or used under section 16 for the next financial year in order to enable the Waste Authority to perform its functions; and

I move the amendment for this reason: we are putting in place a series of amendments that will, effectively, strip from the waste account the money that had been specifically designated for projects to do with waste avoidance and resource recovery. At the same time, in another clause, we are legislating to make the Waste Authority responsible for the cost of the services and facilities listed under section 16.

The Waste Authority will be in a very difficult position. I have already drawn honourable members’ attention to the fact that the kinds of projects that could have reasonably been expected to be funded out of the waste account are very, very expensive. Honourable members know, if they have listened to some of the representations that have been made in opposition to this bill not just from us in this place, but from the major stakeholders and the community, that the government has a key role to play in at least co-funding—if not solely funding—some of these very expensive projects.

When we get to the next couple of clauses, 75 per cent of the levy that would have been expected to go into the waste account will be taken away, and at the same time we are asking the Waste Authority to bear these extra costs and we are legislating to make that the case. That is simply unrealistic; it just will not work. The least we can do at this stage—we will attempt to rectify other huge deficiencies of the bill as we move through—is to make the Department of Environment and Conservation responsible for paying for the services and facilities that are reasonably necessary to be provided for the things that are listed in section 16.

**Hon DONNA FARAGHER:** The government will oppose this amendment. Clearly, Hon Sally Talbot is not listening to me. I indicated that all this clause does is to put in place from a legislative point of view what is the current practice. I must say that the amendment that Hon Sally Talbot moved actually goes against the practice that was under her government. The member can shake her head, but the fact is that I have not veered from the arrangements that have been in place for many years.

**Hon Sally Talbot** interjected.

**The DEPUTY CHAIRMAN (Hon Michael Mischin):** The member does not have the call.

**Hon KEN TRAVERS:** I want to come at this from a slightly different position. I note the minister’s comments that this is what is currently occurring. I am trying to understand this clause a bit better and to understand where the current head of power is within the act. Can the minister identify for me where the power is in the current act? If there is a power in the current act, I wonder whether that would be a better place to put this amendment.

**The DEPUTY CHAIRMAN:** Order! Hon Ken Travers should be addressing the amendment rather than the substantive clause at this time.

**Hon KEN TRAVERS:** Mr Deputy Chairman, I am addressing the amendment. I am trying to understand how it fits within the legislation. The minister says that this amendment would simply apply what currently occurs. I am asking where is the head of power in the act to allow the minister to do what currently occurs, which is the basis for having this amendment.

**Hon DONNA FARAGHER:** In the current legislation the minister approves the work plan or business plan where this is actually stipulated. That is the current practice. Therefore, the Waste Authority will provide the minister with a list of things that it would like to do in the current year, and something that will be listed will be matters surrounding, say, staff. The act, though, is currently silent on the extent of services and the like. There is

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a memorandum of understanding between the Department of Environment and Conservation and the Waste Authority about staffing, so that is already in place. Therefore, all this clause seeks to do is legislate that current practice and in effect make it more transparent than is currently the case.

**Hon KEN TRAVERS:** I thank the minister for those comments. I thought it might be the case that there is currently no head of power for doing that. Section 16(1) of the Waste Avoidance and Resource Recovery Act states —

The Minister must ensure that the Waste Authority is provided with such services and facilities as are reasonably necessary to enable it to perform its functions.

“The Minister” would mean the Crown on this occasion and therefore the department probably should provide those services. Although I do not doubt the minister’s comments that the current practice is that this is taken from the waste levy—I think the minister basically confirmed that for me—there is currently no formal head of power in the act to allow it to do so. Therefore, clause 4 of the bill will actually effectively for the first time include in the WARR act a head of power for the administrative costs of the Waste Authority to perform its functions. I am not necessarily opposed to that; I just want to ensure that we are clear about what we are doing.

**Hon DONNA FARAGHER:** Section 16(2) refers to what gives effect to the MOU, which is the current arrangement between the Waste Authority and the department.

**The DEPUTY CHAIRMAN (Hon Michael Mischin):** Hon Ken Travers, are you addressing the amendment moved by Hon Sally Talbot? That is the question before the chamber.

**Hon KEN TRAVERS:** I am discussing it in the context of the clause. Obviously, whether we need the amendment goes to the purpose of the whole clause. With all due respect, this is an amendment whereby we need to talk about the total package.

**The DEPUTY CHAIRMAN:** Proceed.

**Hon KEN TRAVERS:** I think section 16(2) is about the arrangements the minister has with the department to provide those services. It still does not provide for them to be funded from the WARR account. The overall objective of this bill is to give money to the department. To some degree, what we are taking about here is that the WARR amendment bill could contain the percentage of how much goes to the authority at one level, and how much goes to the department. If the funds are put into the department, the percentage might go the other way. It is a good thing that we are formally including a head of power, if there is not one there, to say that the waste management account should pay for the day-to-day operations of waste management. When we get further on into the bill and start dealing with clauses 7 and 8, the only question will be: what is the appropriate percentage to give to the department and what is the appropriate percentage to give to the Waste Authority?

**Hon ROBIN CHAPPLE:** This seems to us to be a clawback from consolidated revenue to effectively provide benefit to the WARR account. I was hoping Hon Sally Talbot, who moved the amendment, would be in the chamber so that I could have tested that with her. On the basis of what the Greens understand the amendment to mean, we will support the amendment.

**Hon KEN TRAVERS:** If this amendment were to pass, would it substantially change the way in which the whole process is intended to operate or, as I said earlier about the percentages shared between the two bodies, will it then be a matter of them being funded?

**Hon Donna Faragher:** It would change where the funding comes from.

**Hon KEN TRAVERS:** It is not really that big an issue. Is that right? Do we have an idea of how much we are talking about here? What is the annual cost of these functions?

**Hon DONNA FARAGHER:** It is about \$3 million.

**Amendment put and negatived.**

**Clause put and passed.**

**Clause 5: Section 73 amended —**

**Hon ROBIN CHAPPLE:** The amendment standing in my name on the supplementary notice paper is to delete the words “an operating account of the Department established under the *Financial Management Act 2006* section 16(1)(a)” and insert “the WARR Account” at lines 18 to 20 on page 3 of the bill. It might seem a very straightforward amendment; in fact, all it will do is ensure that the act is consistent with the original purpose of the landfill levy. An express understanding of Parliament when the original WARR bill was debated was that a

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new operating account would be created to primarily be used for purposes unrelated to waste management. We therefore seek to delete the reference to the proposed new operating account and replace it with reference to the WARR account; thereby the funds raised from the waste avoidance and resource recovery levy will be returned to the instrument that was established to deal with this, not into consolidated revenue. It is a very fundamental amendment, and I hope that I get the support of the chamber for this clause so that we can all go home.

**The DEPUTY CHAIRMAN (Hon Michael Mischin):** Has the member formally moved the amendment?

**Hon ROBIN CHAPPLE:** Sorry; I formally move —

Page 3, lines 18 to 20 — To delete “an operating account of the Department established under the *Financial Management Act 2006* section 16(1)(a)” and insert —

the WARR Account

**Hon SALLY TALBOT:** Honourable members will undoubtedly have noticed that there is a very similar amendment on the supplementary notice paper in my name. I want to negotiate with Hon Robin Chapple. How do I do that?

I am sorry about that, Mr Deputy Chairman; thank you for your indulgence. I would be happy to not move my amendment and speak in favour of the amendment moved by Hon Robin Chapple. It seemed to me that it was as well to do a belt and braces job, given that we are dealing with a government which shifts definitions around and which is clearly looking for ways to duck and weave through the legislation with which it has to deal. It seems to me to be sensible to, as I say, use a belt and braces approach when talking about the fact that the waste avoidance and resource recovery account was established by the relevant act. I am also persuaded that reverting to the WARR account would reflect the way that the legislation was drafted originally. On that basis I am happy to not move the amendment in my name and to indicate the support of the Labor opposition for the amendment moved by Hon Robin Chapple.

**Hon DONNA FARAGHER:** The government will oppose this amendment. It would actually change the entire purpose of the bill.

**Hon Kate Doust:** That’s why it’s been moved.

**Hon DONNA FARAGHER:** I appreciate that, and that is why we oppose it. The issues have been well canvassed and were well canvassed during the second reading debate.

Amendment put and a division taken with the following result —

Ayes (11)

|                         |                   |                      |                                 |
|-------------------------|-------------------|----------------------|---------------------------------|
| Hon Matt Benson-Lidholm | Hon Jock Ferguson | Hon Ljiljana Ravlich | Hon Giz Watson                  |
| Hon Robin Chapple       | Hon Jon Ford      | Hon Sally Talbot     | Hon Ed Dermer ( <i>Teller</i> ) |
| Hon Kate Doust          | Hon Lynn MacLaren | Hon Ken Travers      |                                 |

Noes (16)

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

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Pairs

|                   |                     |
|-------------------|---------------------|
| Hon Adele Farina  | Hon Brian Ellis     |
| Hon Alison Xamon  | Hon Robyn McSweeney |
| Hon Sue Ellery    | Hon Nigel Hallett   |
| Hon Helen Bullock | Hon Wendy Duncan    |

**Amendment thus negated.**

**Hon KEN TRAVERS:** I was just noticing that there are some more amendments on the notice paper. I wonder whether the member still intends to move those amendments to clause 5. I am certainly interested to get his explanation of what they are.

**Hon ROBIN CHAPPLE:** I move —

Page 3, after line 20 — To insert —

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- (5) Subject to subsections (6), (7) and (8), the Minister may grant a full or partial exemption to the levy imposed under this section for residual waste from either a —
- (a) specified Resource Recovery Facility or Materials Recovery Facility; or
  - (b) specified class of Resource Recovery Facility or Materials Recovery Facility,
- provided in all cases that the specified facility or class of facility has demonstrated either an ability or a credible commitment to further reduce the amount of residual waste sent to landfill from that specified facility or class of facility.
- (6) The Minister may grant a partial exemption under subsection (5) using any methodology, including by exempting a specified Resource Recovery Facility or Materials Recovery Facility, or specified class of Resource Recovery Facility, by reference to the percentage of waste diverted from landfill by that facility or class of facility.
- (7) The Minister may only grant an exemption under subsection (5) if that exemption includes as conditions the requirements that —
- (a) an operator of a waste facility the subject of the exemption pays an amount, equal to the levy that would otherwise have been payable on the exempted residual waste, into an account specifically created for that purpose by that operator;
  - (b) an account referred to in paragraph (a) must be named “Landfill Levy Exemption Waste Research and Infrastructure Investment Account”;
  - (c) an operator of a waste facility the subject of the exemption must only spend the money in the account referred to in paragraph (a) on research and infrastructure designed to reduce the amount of residual waste sent to landfill from that particular facility.
- (8) The Minister may revoke, in whole or in part, any exemption granted under subsection (5) for any reason including —
- (a) a specified facility or class of facility is no longer demonstrating an ability or a credible commitment to further reduce the amount of residual waste sent to landfill from that specified facility or class of facility; or
  - (b) an operator of a waste facility the subject of an exemption fails to comply or fails to provide evidence demonstrating compliance with any of the standard conditions applied to that facility under subsection (7).

A government member interjected.

**The DEPUTY CHAIRMAN:** Hon Robin Chapple.

**Hon SALLY TALBOT:** Mr Deputy Chair, can I move that the honourable member’s words be taken down? There is a standing order to that effect.

**The DEPUTY CHAIRMAN:** I did not hear what the words were. I heard something being said, and I repeated the call to Hon Robin Chapple.

**Hon Ken Travers:** If he wants to repeat it, it can be taken down.

**THE DEPUTY CHAIRMAN:** I did not hear it. Proceed, Hon Robin Chapple.

**Hon ROBIN CHAPPLE:** I think we will let that go through to the keeper, Mr Deputy Chair.

I will go through the rationale for this amendment. The proposed new subsection (6) that I seek to insert will provide a power to create full or partial exemptions from the waste levy. These proposed new subsections are inspired by those forwarded to all Council members for their consideration by the Forum of Regional Councils in an email from FORC chairman, Doug Thompson, dated Wednesday, 21 October 2009. The email noted that FORC is not opposed to an increase in the landfill levy per se—and of course neither are we. FORC is simply seeking—its view is consistent with, as far as we are aware, the entire local government sector of Western Australia—to ensure that the landfill levy does, indeed, provide the driver for further investment in waste management research and infrastructure. Specifically, these new subsections target resource recovery facilities or

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material recovery facilities. It is important to note that these are empowering provisions, and the minister is not obliged to abide by them if they are accepted by this house. But the minister effectively will be empowered to provide real and direct financial incentives for resource recovery facilities and material recovery facilities to drive down the residual waste component; provide those incentives only to resource recovery facilities and material recovery facilities that can, and will, with that assistance, so reduce their residual waste; ensure that any savings from the resource recovery facilities and material recovery facilities that result from the full or partial exemption are ploughed directly back into waste reduction research and infrastructure; and revoke or reduce those concessions if particular resource recovery facilities and material recovery facilities fail to use the benefit of those concessions appropriately.

Whereas the previous amendment sought to return this bill to its original intent, these amendments specifically give the minister an empowering provision. I am interested to know whether the minister has properly considered this amendment, and her rationale for supporting, or not supporting, this amendment.

**Hon DONNA FARAGHER:** The government will be opposing this amendment. I understand the reasoning that has been given by FORC, which is the main body that has proposed this. I recognise that FORC does a great deal of work in resource recovery and the like. However, there are a number of issues with this proposed amendment. The first is that the amendment uses the words “resource recovery facility”, “materials recovery facility” and “residual waste”. Those terms are currently not defined in the act. It could be argued that as a majority of landfill operations also include, albeit at different levels, some recycling, any landfill operation could fall within the definition of “resource recovery facility” or “materials recovery facility”. I appreciate what the member is saying. However, because the terms he referred to are not defined, a loophole could be created in that regard. Also, the term “residual waste” is very broad and could potentially refer to any waste received and deposited at landfill sites that is not recycled.

Furthermore, it could actually lead to the opposite effect that the member is seeking to achieve and what the government is seeking to achieve. The government wants to increase recycling as much as possible. We want to create those incentives. By actually giving them an exemption, they will be exempted from paying the landfill levy. The landfill levy is, Hon Robin Chapple would agree, a disincentive. By actually giving them an exemption the member is taking from them the incentive to continue at every opportunity to increase the amount of waste that is recycled. There is a practical point of view in that some of the terms specified in the member’s amendment are not currently in the act and that could potentially lead to a loophole.

Also, the member’s amendment has the potential to have the opposite effect to what the member and I are seeking to achieve with recycling. I understand that this issue has been raised on a number of occasions and has been considered by both the Waste Authority and the Waste Management Board, when it was in operation. I understand they came to the same conclusion that I have; that is, it would actually have the opposite effect of what we are trying to achieve. For those reasons we will not support the amendment

**Hon SALLY TALBOT:** I indicate that Labor will support the amendment moved by Hon Robin Chapple. Hon Robin Chapple and I spent a considerable amount of time talking to members of the Forum of Regional Councils, as indeed have several other Labor members on this side of the house. It really came down to the question of who was to move this amendment—Hon Robin Chapple or me.

Although I started my contribution to the second reading debate by indicating that Labor thinks that this is such a stinking dead cat of a bill that we would not support it in any way, shape or form, Hon Robin Chapple beat me to submitting an amendment to the supplementary notice paper. Because Labor is the party of resource recovery and recycling we are not going to take waste to landfill; we will try to retreat it to re-use it and reshape it so that we can get on with it. That is why Labor is happy to support Hon Robin Chapple’s amendment.

Honourable members would have noticed that there is a fallback amendment on the supplementary notice paper in my name, which I look forward to speaking to, assuming that we get there and Hon Robin Chapple is not successful in having the government accept this amendment.

I heard the minister explain her reservations about supporting this amendment. I do not think she has referred to anything that has not been considered by the members of the Forum of Regional Councils. Clearly they have come to a different conclusion than that reached by the minister. I would back their judgement over hers in this particular case. I say that for a couple of reasons that I will now enumerate. The main reason is that these people have been dealing with activities in this field for a considerable time and their collective experience must add up to centuries. That is the first thing. They are acknowledged experts in their field. They contribute at an international level to the debate about resource recovery, recycling and waste avoidance. On that basis, it would behove the government very well to be shown to have listened to some of that expert advice. I cannot comment on whether that expert advice is in conflict with some of the expert advice the minister is receiving from her

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department, but when we get to a simple yes-no argument, that is the uniquely powerful position that the minister is in—that she can make up her own mind on these things. I hope she does not hear this as being patronising. I do not mean it to sound that way.

**Hon Donna Faragher:** You do very well in that regard, I must admit.

**Hon SALLY TALBOT:** I know there are occasions when the minister wants to think the worst of me.

**Hon Donna Faragher:** No, never!

**Hon Kate Doust:** I am sure the minister will send you a Christmas card this year!

**Hon SALLY TALBOT:** I hope so. I would treasure it were she to do so. I suppose in some senses it is easier for the minister to see these attacks as “personal” attacks —

**Hon Donna Faragher:** I do not see it as that. They are just wrong!

**Hon SALLY TALBOT:** — rather than accept the fact that she is just trying to take through a dead, stinking cat of a bill.

**Hon Donna Faragher:** That is a bit boring. That is what David Templeman called it!

**Hon SALLY TALBOT:** The minister has made some good decisions and she has shown that she can resist some of the advice that has been given to her by the people closest to her. An example I have given before is the way that she has intervened in the war between the Department of Environment and Conservation and the Waste Authority to quarantine those five positions. I ask the minister to consider the arguments that have been put forward, that are encapsulated in this amendment moved by Hon Robin Chapple, to take it at face value and have the fortitude to stand up and say what, to me, is glaringly obvious—that they are well-thought through amendments that would in fact be more than workable. I suggest that this advice has been provided by people who are experts in the field. Advice has also been delivered by people who are delivering for Western Australia. The Forum of Regional Councils provides services to more than 1.5 million people in Western Australia. I think Geraldton is part of one of these regional alliances. On the whole we are only talking about metropolitan councils coming together in these alliances. One and a half million people is a pretty sizeable proportion of the state of Western Australia.

The reason this amendment is so important to the future of waste recovery in Western Australia is that these resource recovery facilities go to the heart of the cultural change we are trying to bring about in Western Australia. As I have said before, and I say again, these are very, very expensive facilities to provide. FORC’s plans over the next five years would increase its capacity by something like 430 000 tonnes a year. The estimated cost of doing that is about \$450 million. That makes the figures that we are looking at, even in terms of the total amount collected from the waste levy—which is projected to be about \$52 million—look like peanuts. I do not want to talk too much about food because I realise that some members are finding their blood sugar levels a bit low! That is peanuts compared with the amount that an organisation like FORC is looking to expend over the next five years—\$450 million!

It would be a small but significant token of our confidence in these regional councils to exempt them from the landfill levy. I proposed this in my original discussions about this bill. Why would we not want to reward efforts to recycle and reuse with an exemption from the levy? That would have been my first proposition. I believe also that was FORC’s original position. However, I am persuaded by the argument that it came back to me with: that it would be appropriate to have a carrot buried—more food!—in this arrangement. The carrot is that the more people manage to recycle, the less landfill levy they would pay. We are proposing to develop that type of sliding scale. If a company recycled 70 per cent of a product, it would get a 70 per cent reduction on the landfill levy, and a company that recycled 80 per cent of its waste would get an 80 per cent reduction. The more people recycled, the less they would pay for landfill. On top of that, what impressed me about this amendment is that the money is quarantined in an account that is to be used for essential research and development and, eventually, the construction costs towards some of these very expensive projects.

Several members interjected.

**Hon SALLY TALBOT:** Do we want to call some sort of order here, or not?

**The DEPUTY CHAIRMAN:** It seems that what is going on is disturbing the honourable member. I call members to order. Please proceed.

**Hon SALLY TALBOT:** Thank you, Mr Deputy Chairman, I appreciate your assistance. These are complicated arguments and we have a long amendment in front of us. Members were not disturbing me —

**Hon Donna Faragher:** I was listening intently.

Hon Robin Chapple; Hon Donna Faragher; Deputy Chairman; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Hon Nick Goiran; Hon Michael Mischin; Hon Helen Morton

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**Hon SALLY TALBOT:** I know that the minister was listening intently, and that is what matters to me. I thought it would be good to call order for the benefit of other members so that they can concentrate.

Companies are relieved to find that the money will be set aside and quarantined for those purposes. That takes us a small step towards some of the primary objectives of the WARR act—that is, before this bill was up for discussion. I absolutely wholeheartedly support this amendment.

The other point I make goes to the element of ministerial discretion and the use of the word “may” in the first line of Hon Robin Chapple’s amendment, which states —

(5) ... the Minister may grant a full or partial exemption ...

The minister has discretion about not only whether he or she will grant the exemption, but also whether it is a full or partial exemption. I believe that is at the minister’s discretion. I asked members of the Forum of Regional Councils whether we would not want more certainty in the provisions. The people in the field have told me that it is better to put it this way because at least the executive arm of government would examine exactly where these exemptions would be given. Within this excellent amendment, we find a system whereby we will grant full or partial exemptions, but they will not be granted for backyard operations. There is no way that a minister will approve a full or partial exemption for someone who just bought a large truck, drove it around the suburbs picking up rubbish and then into a shed to throw out a few bits and pieces before putting the rest in landfill. That will not happen because the minister will retain control of the application of the full or partial exemptions. This is an excellent amendment and Labor supports it wholeheartedly.

**Progress reported and leave granted to sit again, on motion by Hon Donna Faragher (Minister for Environment).**