

**WASTE AVOIDANCE AND RESOURCE RECOVERY AMENDMENT (VALIDATION) BILL 2014**

*Order of Business — Motion*

On motion by **Mr J.H.D. Day (Leader of the House)**, resolved —

That consideration of the Waste Avoidance and Resource Recovery Amendment (Validation) Bill 2014 be resumed.

Several members interjected.

**The ACTING SPEAKER:** Members! Thank you. I am about to put the question.

*Point of Order*

**Mr W.J. JOHNSTON:** Madam Acting Speaker, when I looked up a moment ago, there was nobody in the chair. I am just wondering when the chair was abandoned. What was the proper procedure for the Parliament —

Several members interjected.

**The ACTING SPEAKER (Ms J.M. Freeman):** Members! I will start calling people. Take your seat! I was in the chair; I was moving down, because the Leader of the House had moved that we resume with the Waste Avoidance and Resource Recovery Amendment (Validation) Bill. Members, let us move on to waste recovery. Thank you for a very entertaining question time!

Several members interjected.

**The ACTING SPEAKER:** Member for Albany, I will call you. Member for Albany, stop! Members! Member for Albany! Member for Victoria Park, you are on three calls. Member for Albany, you are now on two calls. Members, move on.

Several members interjected.

**The ACTING SPEAKER:** Member for Wanneroo, you are called! Member for Churchlands, you are called!

*Consideration in Detail*

Resumed from an earlier stage of the sitting.

**Clause 4: Section 102 inserted —**

Debate was interrupted after the clause had been partly considered.

**Mr C.J. TALLENTIRE:** I refer to proposed section 102(4). It is really extraordinary wording when we look at it, but it says —

In subsection (3), a reference to the doing of anything includes a reference to an omission to do anything.

I seek the minister's explanation of the term, please.

**Mr A.P. JACOB:** The subsection refers to that in some instances people will be empowered or people will act under the regulations. Similarly, under the recommendations people will refrain from taking action. So it just picks up from both where somebody may refrain from taking action under the regulations and where somebody may take action under the regulations.

**The ACTING SPEAKER:** Sorry, members; Hansard cannot hear. You can all yell at each other, but Hansard actually works very hard. So let us just keep the rumble to a low level, not a roar, please. Minister, can you repeat your answer because Hansard could not hear.

**Mr A.P. JACOB:** As I said, that is a reference to when an action may be taken under the regulation or they may have refrained from taking an action under regulations. An example of what I mean by refraining to take an exemption may be an exemption that applies under those regulations. Where an exemption is provided, that is refraining from taking an action under the regulations.

**Mr C.J. TALLENTIRE:** Refraining from taking an action does not sound to me like an omission. What is an example of an omission?

**Mr A.P. JACOB:** As I said, an omission is essentially not doing something. An operator may be given an exemption from the levy under the regulations. We talked about a few examples in which an exemption may apply, such as recycling construction and demolition waste into road base. In certain circumstances, that may attract an exemption under the levy, so that is an omission or a decision not to take action under those regulations. That is why that wording has applied.

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**Mr C.J. Tallentire:** The reference to an omission needs to be specifically stated somewhere. I am not clear where. To use your example about the road base, where would that be referred to?

**Mr A.P. JACOB:** It is an exemption as an exemption applies under the regulations. Obviously, this clause refers back to the regulations. The regulations apply for various actions and various courses of action. They also apply for a course of action not to be undertaken. An example of that would be where an exemption applies to an operator if they are achieving a recycling outcome. I just gave a brief example of that. That is an example of not taking an action under these regulations.

**Mr B.S. WYATT:** This is obviously the key clause of this bill. The minister is seeking, by way of this bill, to retrospectively make valid a number of actions, decisions or omissions under three different regulations. Can he tell the chamber how many decisions, actions or omissions under each of those regulations we are seeking to retrospectively ensure the validity of? Of those, are they all money-raising matters?

**Mr A.P. JACOB:** The member for Victoria Park was obviously not here earlier when we were debating this matter. Essentially, in the first instance—there is an element of retrospectivity here—the Waste Avoidance and Resource Recovery Levy Regulations, as they were enacted in mid-2008, are held to be valid and to have always been valid. The reason the other two regulations are included is that on coming into government, the former Minister for Environment Hon Donna Faragher enacted levy amendments in 2009 and there was another suite of amendments in 2011. However, those amendments amended the regulations as they stood from 2008. They did not remake those regulations, hence why they ultimately come under the existing regulations that came into force on 1 July 2008.

**Ms M.M. QUIRK:** The minister mentioned in his second reading speech that two companies have taken action in relation to what is termed a technicality. If this bill is passed, what status do those actions have? Will any compensation be paid to those companies for legitimately taking a legal action and then, if you like, having the rug pulled under their feet; and, if so, what is the approximate cost of any compensation that the government will give to those companies?

**Mr A.P. JACOB:** Quite simply, this does not seek to determine the outcome of that litigation. As I outlined, that litigation is being conducted on a number of fronts. However, this bill addresses a technicality that existed under the previous government and has recently come to our attention. It retrospectively states that although there may be some questions in and around a technicality, the intent of the Parliament and the government of the day, being the Carpenter government, was relatively clear and that is taken to have had full effect from that day forward to now.

**Ms M.M. QUIRK:** With respect, no doubt resources have been taken into researching this point, drafting the action, taking legal advice and so on in relation to that portion of the action. It seems to me intrinsically unfair to now effectively override what was the position by legislation when there are proceedings on foot.

**Mr A.P. JACOB:** I do not believe that the member for Girrawheen was in the chamber for the substantive debate so she may have missed the discussion relating to this. We are not seeking to override anything; we are simply saying that the state of play as it has existed since July 2008 is taken to have been valid. It has been operationally valid since that time. As a Parliament, we are saying that we consider the decisions made under the then minister and the then government to have been taken validly and to have been applied validly from that day forward to this day. It does not change the state of play as currently existed to this point.

**Mr B.S. WYATT:** Further to that answer, the minister just said “decisions by the minister” since that time. Are we talking about decisions of a minister or are we talking about decisions, as is my understanding, of a different organisation—the Waste Management Board? Can he clarify that point? If so, what decisions of the minister is he referring to?

**Mr A.P. JACOB:** I thank the member for Victoria Park for that question. I believe I said “under”, not “of”. If I said “of”, I apologise; I meant “under”—obviously, under the purview of a minister. The structure as it was set up at that time, if my memory serves me correctly—my advisers can give me a prod if I am incorrect—is that from early 2008 the levy regulations would be brought into force on a recommendation from those five members of the Waste Authority directly to the Governor. That process was amended under Hon Donna Faragher during her time as minister. However, that was the process that applied when this was initially brought into force.

**Mr W.J. JOHNSTON:** Obviously, this is the guts of the bill. I understand that we are overcoming a problem in the legislation that we did not realise we had. We do not want to make the same mistake twice. I draw attention to the decisions that related to the Tent Embassy in Canberra in 1972. The ordinance that was created by the then Prime Minister of Australia, Billy McMahon, was found by the court to be invalid. When that ordinance was found to be invalid, it also invalidated all the other ordinances that had been made relating to the ACT going back to the 1930s. Has the minister received any advice from the State Solicitor’s Office about whether the issues that are

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involved in this matter may also be relevant to any other piece of legislation and whether there is anything else that we need to be thinking about when dealing with this bill? We are specifically dealing with the waste avoidance and resource recovery arrangement but has the government considered any other issues that may relate to similar matters? Are there any other precedents that we could look at that will assist us in determining whether the words that we are being asked to vote on are sufficient to deal with the issues that have been raised by the decision of the court?

**Mr A.P. JACOB:** Matters come up from time to time in other areas of government and in other jurisdictions of government. I can neither speculate nor bring a hypothetical forward; however, this particular matter —

**Ms M.M. Quirk:** Yes, you can.

**Mr A.P. JACOB:** Member for Girrawheen, the particular matter that sits before us applies specifically to that structure and how the waste levy regulations were formulated in the first instance, which was under the previous waste authority model. I do not know whether the member for Cannington was listening to the debate earlier when we outlined that structure, but, as I said, we are able to document that four of the five members assented to the levy recommendations; however, we are not able to document the fifth member assenting at that time. That structure has since changed; however, the regulations as they were originally formulated are essentially what we are seeking to validate through this legislation.

**Mr W.J. JOHNSTON:** Can the minister point to any other legislation that contains the words that we have in front of us to deal with other situations? I apologise that I was not in the chamber for the whole of the debate.

**Mr A.P. Jacob:** I can go back through the list, but we did address that when the member for Gosnells asked about it.

**Mr W.J. JOHNSTON:** So the minister is saying that there have been other occasions when other legislation has been amended in accordance with the same set of words or a similar set of words. The question then is: has any of that legislation been subsequently challenged and have those words then been dealt with by a court and, therefore, is there any further advice about whether the outcomes of those other cases show that the words that the minister is suggesting to us are sufficient to deal with the issues that we have found ourselves needing to confront?

**Mr A.P. JACOB:** It has been formulated on what is known as the Humby formula, which relates to a case from 1973 to do with —

**Ms M.M. Quirk:** More like Gumby!

**Mr A.P. JACOB:** Well, it kind of is, member for Girrawheen, yes; but we are trying to fix it. That case related to the exercise of the Family Court jurisdiction by court officers other than judges. The validity of legislation expressed in similar terms has previously been upheld by the courts. So the Humby method —

**Mr W.J. Johnston:** Which cases?

**Mr A.P. JACOB:** The cases are *Re Macks*; *Ex parte Saint* in 2000, which involved the vesting of state jurisdiction in the Federal Court, and also *Haskins v The Commonwealth* in 2011, which had to do with the Military Court of Australia.

**Mr W.J. Johnston:** From which court were those decisions?

**Mr A.P. JACOB:** It was the High Court.

**Ms M.M. QUIRK:** Can the minister outline all of the grounds the plaintiffs are putting in the Supreme Court? It is not sub judice, minister.

**The ACTING SPEAKER (Ms J.M. Freeman):** Excuse me; the minister has the floor. Let the minister answer and then the member for Girrawheen can ask another question. I will not brook general debate across the floor. The minister has the call.

**Mr W.J. Johnston:** He's not on his feet.

**The ACTING SPEAKER:** Member for Cannington, are you questioning my ruling?

**Mr A.P. JACOB:** As I have said, there are a range of other substantive matters on which this case has been pursued. In fact, as was —

**Ms M.M. Quirk:** That is not what I am asking.

**Mr A.P. JACOB:** Member for Girrawheen, as it was initially actioned, which I believe had been taken against us, and we then have counterclaimed for costs relating to unpaid levies. This addresses only one of those grounds— that is, the technical breach relating to the original construction of the levy.

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**Mr W.J. JOHNSTON:** How much would have to be refunded to Western Australia if this legislation does not pass? Has the government made that assessment?

**Mr A.P. JACOB:** That would be tested in the court. If the member's question ultimately relates to how much has been collected by the state since mid-2008 from the waste levy, I outlined in the second reading speech that it is \$187 million; but that is a hypothetical.

**Mr W.J. JOHNSTON:** Minister, it is not a hypothetical, because as I understand the second reading speech, if we do not pass this legislation the government has not validly collected the money. I am not sure what the minister means when he says it is a hypothetical. I am not sure why he gave that answer, because it appears the other way around—that, in fact, there is no authority to collect the money and the minister is asking for authority to collect the money. That is my understanding of the second reading speech. If the minister is saying that the money has been lawfully collected, what is the purpose of the legislation, because then it would be a hypothetical question? I am not sure from the answer the minister has given whether he understands the second reading speech, because clearly that is not what he was talking about in the second reading speech. I need to clarify this matter. If the minister is saying that none of the money collected by the waste avoidance and resource recovery levy has been validly collected, or there is some that has been validly collected but the rest has not been validly collected, or that that is the case but there has been no calculation of how much has been validly or invalidly collected, I am not sure what answer the minister is giving. The matter is not hypothetical. I am asking for an answer to why it is being done; otherwise, the minister would not be asking us to pass the legislation. If the legislation was of no effect, then the minister would not be bringing it here. It does not make any sense to say that it is hypothetical but then bring the legislation to us. I would appreciate it if the minister could let us know how much has been invalidly collected—not the total amount collected, but how much of that was collected invalidly.

**Mr A.P. JACOB:** It is a hypothetical question because it remains untested to this point. In addressing the earlier queries, what this seeks to do is address that technicality in and around how the regulation was constructed under the previous government, which I acknowledge is a very minor technicality but which was an error. Anyway, it seeks to address how that was structured at that time. In picking up on the member for Girrawheen's earlier question—which concerned the constitutional validity of the act or the validity of the regulations under the act or the application of the regulations to the taxpayer—this legislation does not seek to address those three grounds. The validity of the regulations under the act are addressed in this legislation but the constitutional validity of the act and the application of the regulations to the taxpayer do not seek to be addressed in this legislation simply because of the way they were structured in the original instance and they have been taken to have been applied. That has been practised in this state.

It is also worth noting that landfill levies are used extensively in other states as well and have been fantastic drivers of recycling outcomes and waste avoidance outcomes in those states, and that is why Western Australia has continually lagged behind its interstate comparators. Other states have also applied waste levies at far higher rates than they have been applied historically in Western Australia, and they have clearly driven both waste avoidance outcomes and recycling outcomes in those states. This practice has been fairly well tested across Australia and has been shown to yield very good results for waste avoidance and recycling outcomes.

**Ms M.M. QUIRK:** I persist in asking these questions because the minister is effectively eliminating a ground for a plaintiff in proceedings that will commence next week. Before I talk about that, it is clear that this legislation is not going to be passed in the upper house before those proceedings commence, so I am curious why the legislation is urgent in this place when there is absolutely no way that the legislation can be passed before the commencement of the proceedings. The parties will have to argue as if the status quo exists. That is the first thing I wanted to say. I will continue so that the minister does not have stop and answer me on several occasions.

Proposed section 102(2) reads —

The rights, obligations and liabilities of all persons are to be taken to be, and to have always been, the same as if the regulations listed in subsection (1) had been validly made.

This will have the effect of retrospectively endorsing any action under the legislation whether that action was lawful or ultra vires. The constitutionality is another ground. It may well, for example, affect the success of the grounds of appeal that relate to constitutionality. In other words, if something was purported to be done and is ultimately found to be ultra vires, proposed subsection (2) effectively endorses that conduct irrespective of its validity or legality.

**Mr A.P. JACOB:** Clearly, members are seeking to run time out on this one.

**Ms M.M. Quirk:** I am not! I want to know the answer, because this is the most extraordinary clause I have seen in 12 years in Parliament.

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**The ACTING SPEAKER:** Order, member for Girrawheen!

**Mr A.P. JACOB:** We will be seeking an adjournment so that the court can decide on this matter. As I said in the closing remarks of my second reading speech, I appreciate the opposition's support on this one. As I said, broadly there is a level of agreement on the fact that we want the state to end up with a high level of recycling and waste avoidance; we agree on that goal. We also agree on the importance of a waste levy as a market mechanism to help drive that. There is agreement in this house on that and what this clause seeks to do.

**Ms M.M. Quirk:** It is effectively prospectively, minister, not retrospectively.

**Mr A.P. JACOB:** Yes, that is correct. With this legislation the house seeks to hold that the regulations were validly made in the first instance and that subsequently from that point up until this day they have been valid in their application.

**Mr W.J. JOHNSTON:** What I would like to know is not that complex. The minister is saying that the regulations were valid but that there are some technical issues with them, but that is not my understanding. It is my understanding that they are either valid or not valid. If the minister is saying that there is a technical issue that needs to be resolved, that is not the same as saying that the regulations were invalid. This is a binary decision, minister; either the regulations were valid or they were invalid. The minister was the one who used the term "technical". I do not understand that; it is not a term I am familiar with when dealing with the law of Western Australia. I know what it means in common usage, but it does not seem to apply to this matter. If the minister is saying that the regulations were not validly made, which is what I understand the second reading speech to be arguing, that is something on which I would appreciate his confirmation. If the minister is saying that there is a technical issue with them, I would like to know what the technical issue is because that means that the minister is arguing that the regulations are valid. The reason I ask this goes to the question of retrospectivity. I have no trouble with the idea that we are passing retrospective legislation—none at all—because I think that sometimes Parliaments rightly passes retrospective legislation. But I need the minister to explain whether that is what we are doing. Are the regulations and, therefore, the activities carried out by government valid; or, are they invalid and, therefore, the minister is trying, with retrospective effect, to validate those decisions? That is fine; I am not against that. But I need an understanding from the minister on the record that that is what he is asking the house to do. At face value, that is what the second reading speech is asking us to do. However, the minister has referred to a "technical issue". What does that mean? Is the minister saying that they are valid but that there is a technical issue we have to deal with? I know that the minister is not a lawyer, just like I am not a lawyer. But perhaps he could explain what that technical issue is. Alternatively, if he is saying, as I understood from his second reading speech, that these regulations are invalid and we are now retrospectively validating them, they are two different actions that Parliament is being asked to do.

**Mr A.P. JACOB:** It is very simple actually, member for Cannington. With regard to the final point, it remains untested to this point. I will not presuppose the outcome of what is happening in court. Why are we here today? We are here today because when the member for Cannington's party was in government, the system was set up in a relatively bureaucratic and convoluted way and it seems that some technical points were missed in the making of those initial regulations. Although there is broad agreement in this house that those regulations should exist and apply and that they should have always existed and always applied, back when the Labor Party was in government, the initial structure was so convoluted and so bureaucratic with so many points to go through, it appears as though those points were missed, which is why we are here today going back with legislation trying to retrospectively fix up what the Labor government did in the first place.

**Mr W.J. JOHNSTON:** As the minister said, I raised a very simple issue, which is why I am surprised that he was not able to answer my question. The minister said that the regulation system was so convoluted that the regulations were not validly made. Is that what the minister is saying?

**Mr A.P. Jacob:** We are concerned that that may be the case.

**Mr W.J. JOHNSTON:** But the minister is not saying that they were invalidly made.

**Mr A.P. Jacob:** That is correct.

**Mr W.J. JOHNSTON:** So the minister is not trying to retrospectively change the law.

**Mr A.P. JACOB:** To make it really clear, the argument is not with the regulations themselves; the legislation does not seek to change the structure of the regulations in any way. The argument here is about how they were made under the system that was previously set up to make them and that we should say that retrospectively they applied. The argument is not around the structure of the regulations themselves; rather, it is simply how they were brought into being in early 2008.

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**Mr W.J. JOHNSTON:** I understand the minister's answer. If we do not pass the legislation, what will happen? The minister is the one asking for change. The minister used the term "technical", which is not a real word for us in this debate.

**Mr A.P. Jacob:** I was being nice to you.

**Mr W.J. JOHNSTON:** No, minister. Either the regulations are valid or they are not valid. Rightly, the minister might say that he suspects they are not valid and that he wants to put beyond doubt this problem by passing this law. Alternatively, he could say, no, we think the regulations were validly made and there is no doubt. Those are his two choices. Either the minister says he does not know whether they were validly made but he suspects they were not, or he is confident that they were validly made. If he is confident that they were validly made, then we do not need the legislation. The minister used the term—I am paraphrasing, not quoting—that everybody is happy with what is in the regulations. However, if the regulations do not exist, then nobody can be happy with them because they do not exist; they exist only if they are valid. It is binary. If they are not valid, they do not exist and regardless of whether we are happy with the words that were contained in the invalid documents, which may be true, we cannot be happy with the regulations because they are not valid.

**Mr P. Abetz:** It is not as simple as that.

**Mr W.J. JOHNSTON:** It is as simple as that—they are either valid or they are not valid.

**Mr A.P. JACOB:** I hope we are getting to the crux of the issue. Quite simply, member for Cannington, we suspect that the way the Labor government set this up, it will be considered to have not been validly made; hence, we have brought this legislation in to say that it has been standard practice and that we will consider that to have been fair and valid and go forward on that basis.

**Ms M.M. QUIRK:** Who are the parties to the action to which the minister referred in his second reading speech? He said that there is a claim and a counterclaim. If that is quantified, I would be interested to know the amount involved. Did I hear the minister say that given that the legislation might be through prior to the proceedings on 17 June, he will seek an adjournment of the matter until this legislation has been passed; and, if so, is that with the consent of the plaintiffs?

**Mr A.P. JACOB:** We have not yet sought an adjournment because the legislation has not been passed. We do intend to seek an adjournment. The proceedings in the Supreme Court are between us, obviously, and Eclipse Resources Pty Ltd, known as Eclipse, and Moltoni Corporation Pty Ltd, known as Moltoni.

**Ms M.M. QUIRK:** I want to know whether the claims have been quantified; and, if so, the amounts of the claim and the counterclaim.

**Mr A.P. JACOB:** The state is seeking to recover \$10 535 632.70, plus penalties of \$7 166 047.85, as at 15 April 2014, from Eclipse. The state is also seeking to recover \$1 221 897.67 plus penalties of \$682 194.68, as at 15 April this year, from Moltoni.

**Ms M.M. QUIRK:** What is the counterclaim?

**Mr B.S. WYATT:** Did the minister just read out the state's claim against the parties?

**Mr A.P. Jacob:** Yes.

**Mr B.S. WYATT:** Is there a monetary claim by those two parties or are they seeking only validity?

**Mr A.P. JACOB:** I believe that there is a claim for payment from them, but that is under old legislation and not related to this.

**Mr B.S. WYATT:** In respect of the legislation before us, the two parties are not seeking a monetary amount. I presume they have not paid any of the levies with which we are dealing; hence the claim from the state for unpaid levies. The only thing that the parties are seeking in respect of what we are concerned about today is the declaration of validity and some constitutional arguments that the minister made. Is that the point of claim?

**Mr A.P. Jacob:** Yes.

**Ms M.M. QUIRK:** What exactly is the constitutional argument?

**Mr A.P. JACOB:** It is that the levy is considered a duty of excise and only the commonwealth can impose that.

**Mr W.J. JOHNSTON:** I had no more questions until the minister just said that. If that is the claim by the parties, our legislation does not help the government.

**Mr A.P. Jacob:** It does not seek to.

**Mr W.J. JOHNSTON:** There is still a chance that it will be declared an excise and beyond the state's power. What will the government do if that happens?

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**Mr A.P. JACOB:** In my earlier comments to the member for Cannington I said that waste levies and how they are applied in Western Australia are not unique in this instance. In fact, we significantly lag behind other states and I presume other states are in much the same circumstances. New South Wales charges \$120 a tonne, which is four times our levy. This regime does not exist only in WA.

**Mr W.J. JOHNSTON:** The question of the excise is very important. I do not want to go on too long, but in 1901 there was a 10-year provision that the states kept the levy. My view was always that the people who founded the country knew what they were doing and they did it deliberately to take the power and give it to the commonwealth, because they were all state MPs heading for the commonwealth Parliament. I am wondering whether this is the bigger leg. As I understand it, the original decision that knocked off state licence fees was because they were based on volume. I wonder whether there is any advice on the fact that this is also based on volume. Is that something the government has sought advice on; and, if so, what is the answer to that?

**Mr A.P. JACOB:** The view of the government is that it is not an excise and we are confident in that view, but this bill does not seek to address that aspect of the case.

**Mr B.S. WYATT:** I want to come back to finishing the discussion we had about the litigation and the arguments. Was the state aware of this problem prior to the argument being raised by Eclipse and the other plaintiff applicant?

**Mr A.P. JACOB:** No.

**Mr B.S. WYATT:** This was the first time the state became aware of this as a result of the discovery process. Are there other areas in which decisions have been made by the Waste Authority under that previous arrangement, outside what we are dealing with today, that may be invalid as a result? Has a review been conducted accordingly?

**Mr A.P. JACOB:** We have not picked one up. We do not know what we do not know going forward, but retrospectively remaking it in this way should address any other technicalities that have arisen.

**Mr B.S. Wyatt:** Are there any other decisions that that Waste Authority could have made, and perhaps made, that had a revenue impact? Is this the only area in which the Waste Authority had the authority to make decisions concerning revenue?

**Mr A.P. JACOB:** That regime was changed relatively quickly under Hon Donna Faragher. Henceforth, the decision was made via the minister. From early 2008 to this point the Waste Authority did not exist under that regime.

**Mr B.S. WYATT:** I understand that. In that period of time did the Waste Authority also make decisions in other areas that affected state revenue that would also need to have their validity reconsidered? I think I have been as clear as I possibly can be on that question.

**Mr A.P. JACOB:** Only the making of levy regulations affected revenue and this bill addresses that.

**Ms M.M. QUIRK:** When did this litigation action commence?

**Mr A.P. JACOB:** October 2009.

**Ms M.M. QUIRK:** When was this ground of the validity of the regulations added to the statement of claim?

**Mr A.P. JACOB:** On 5 May this year.

**Clause put and passed.**

**Title put and passed.**

Leave granted to proceed forthwith to third reading.

*Third Reading*

**MR A.P. JACOB (Ocean Reef — Minister for Environment)** [3.40 pm]: I move —

That the bill be now read a third time.

**MR C.J. TALLENTIRE (Gosnells)** [3.40 pm]: This has been an enlightening debate. I regret, though, the rushed nature of it. I must admit that only after hearing the questions during consideration in detail and during odd free moments in question time was I able to study the detail of the minister's second reading speech. I say again that we have had to deal with this in a rather rushed manner. Some of the detail is very important. The minister reveals in his second reading speech that over the next five years the rate of expenditure on recycling projects will be \$130 million, roughly \$26 million a year. We touched on this in the second reading debate. I said how much we agreed with the idea of money that is raised being applied to all sorts of waste avoidance and resource recovery initiatives. But I think the minister has detailed the insufficiency of the money available. Given the complexity of

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the materials we want to avoid wasting and want to re-use or recycle, we can see that we need much more money than \$26 million a year.

I recall that I recommended to the minister an excellent film presented by actor Jeremy Irons called *Trashed*. He did an excellent job presenting the case for a progressive, modern society to move towards a world of waste avoidance. He highlighted the urgency with which we need to act. I certainly commend this film. I had the opportunity to see it when a consultancy here in Perth showed it at Cinema Paradiso a few months ago and members of the Waste Authority were also in attendance. It was really enlightening. As is the way with things these days, all good films seem to have their own website. I think it is possible to see the film in its entirety on the website. I will provide one quote about zero waste. It highlights that the government of Western Australia has adopted a zero waste goal. Along with jurisdictions in South Africa, the United States, the United Kingdom, the Philippines, New Zealand, Japan, Italy, India, Canada and Argentina, Western Australia is highlighted as a jurisdiction that has adopted a zero waste goal. I might add that in Australia a couple of local governments in New South Wales, Willoughby City Council and Eurobodalla Shire Council —

**Mr W.J. Johnston:** Eurobodalla—fabulous spot; you should go there.

**Mr C.J. TALLENTIRE:** I look forward to visiting one day.

The South Australian government; Canberra, ACT and the state of Victoria have also adopted a zero waste strategy. There we are, highlighting our commitment. We are in good company and we are being recognised for adopting a zero waste position. The website reads —

Zero waste recognises that waste is really resources in the wrong place.

I think that is the point we all agree on. We need to change our systems so that that is truly the case. We might call something “waste” today but it is actually a resource that is in the wrong place. We need to change our systems so that we can profit from those resources—not waste—that are in the wrong place. The website continues —

When we look at our rubbish it is plastic, metal, glass, cardboard, all reusable materials if sent to the right place. Only by mixing these together do we get this notion of ‘waste’.

I think that is a very, very true summary of the situation. With this legislation we are about making sure we not just have a commitment to a zero waste position, but also are enabling ourselves to get there through the very best legislative arrangements. Clearly, the amendments presented in the Waste Avoidance and Resource Recovery Amendment (Validation) Bill are necessary to help us get there.

Before going any further, I would like to say how I appreciate the minister’s commitment in this direction. I also want to acknowledge the assistance from his advisers, the State Solicitor and his team and the briefing we had a few weeks ago. However, I say again that it was unfortunate that we were not able to study his second reading speech until he had read it today and we were not able to see the explanatory memorandum until today. I thank him for giving me the bill late last night. It means that we have had to perhaps dwell on aspects of the bill a little longer than we would have had we had time to discuss it in our own party room. I understand that the minister was able to discuss it in the Liberal Party room, but he felt he had to discuss it in his party room before he was able to share it with us. Unfortunately, our party room times clashed and that has caused delays and that is unfortunate.

Another point this debate highlighted, Madam Acting Speaker (Ms J.M. Freeman) that was raised by you as member for Mirrabooka, is the serious need for the state government to work more closely with local government on all matters relating to waste. It is not good enough for us to say, “Oh, well that’s local government; hands off, we’ll leave them to do it.” If it turns out that for some reason all their waste material is ending up in landfill, that is simply not good enough. We need the power to direct things from our state government position. After all, we are the one that is getting the accolade for making the commitment to zero waste. If, within our state there are areas that are not making progress on that journey—I accept that it is a journey—we need, as a state government, to be able to intervene. The problems highlighted in the City of Stirling mean that, as minister, the member for Ocean Reef needs to intervene. Now that it is clearly on his radar, I hope the minister will take whatever action is necessary to make sure there is some progress there, otherwise we will be let down badly. Although we can make claims at our state level, we will find that people will expose the truth. It is all very well to be congratulated on a website and have it internationally recognised that we are making commitments, but if somebody exposes us for making commitments officially while in reality much of the rubbish from the ratepayers in the City of Stirling is ending up in landfill, we could be exposed as environmental hypocrites. That would be damaging to our reputation and a blight on our good name. It could lead to all sorts of other credibility issues, so the minister must be able to intervene when those cases arise.

I want to say also that through the course of this debate we touched on the administrative error. I think this sort of thing highlights the need for bodies such as the Waste Authority to receive good support. I worry when we talk

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about a slimmed down public service that is constantly facing organisational change, more particularly cuts in staff numbers, and we see erosion in the number of staff who have extended years of experience. We find that many staff in the agencies—those that have staff—are often fairly junior and mistakes are made. We need to recognise the importance of having good administrators who can make sure that things such as the requisite number of signatures appearing on important documents are complied with. That seems essential to me. There is a need for good support of our state government bodies, especially when we are talking about a board such as that of the Waste Authority, the chairmanship of which, I believe, is not a full-time position; certainly, the other members are not full time. We cannot really expect people like that to necessarily be across things; there has to be a strong secretariat —

**Mr A.P. Jacob:** They are; they are good. Don't talk them down.

**Mr C.J. TALLENTIRE:** I regret, though, that they slipped up perhaps on this occasion. We need to make sure that there is the experience and the capacity, that they are not under-resourced, that they are not rushing from finishing off the minutes that go with one meeting of the Waste Authority and moving on to all their other tasks, perhaps dealing with ministerial correspondence and preparing drafts of responses to questions on notice. We need to make sure that they are not so pressured that they cannot provide quality work. How important a well-resourced public service is to the delivery of quality results is often underestimated. It is not just about having a puffed up bureaucracy; it is about having a bureaucracy that is able to deliver quality of service.

During the course of debate we touched on a range of things, but I do not think we really looked enough at the interplay between this legislation and the potential for the contamination of areas. After all, we are talking about what the process should be for waste and what the response in terms of levies should be, but we have to recognise that the response of people who may be operating without a good community spirit may be to just try to dispose of a material without actually caring about where it goes. For those people, I think we have to make sure that our contaminated sites legislation is ready to act and sufficiently resourced, and especially responsive to complaints. It needs to be there, ready and waiting to go when the community makes complaint. I think I am right in saying that a review of the Contaminated Sites Act is underway, and I hope there is no weakening of the provisions in that act. From the state budget figures, there seems to have been quite a fluctuation in the money being set aside for investigations and the amount anticipated to come in for the clean-up of certain sites where the state government is having to do the clean-up. We should not be getting into that situation. When there is a contaminated site, somebody out there has created that nasty contaminated area, and they are obviously the body, person or entity that should be required to clean it up. That is why we need very good tracking mechanisms in place for any vehicle that is capable of transporting these contaminated materials that, unfortunately, our current processes produce. I and the minister know, after having been in discussion quite a bit about the problem with bio-organics, that the material they are taking, I think, is a derivative of the brewing industry. It sounds fairly benign, but unfortunately the material actually produces a horrible toxic odour and is capable of polluting groundwater. That is probably just one of the things that bio-organics is taking, but that is to say that there can be problems from all kinds of human activity, industrial activity, agribusiness activity and food industry activity; they generate this waste and we need to have in place the right tracking mechanisms to follow those trucks that pull up and take the oils or fats away. We need to make sure that any oils that come from the automotive industry—from the servicing of a vehicle—are fully accounted for and that we are doing our best to minimise, indeed, avoid, the creation of that waste in the first place.

[Quorum formed.]

**Mr C.J. TALLENTIRE:** We need to have the best tracking mechanisms in place for those vehicles that are equipped to carry those materials such as toxic liquids, quite often, that come out of our industrial processes. We have to be sure that they are transported to the right places.

But more importantly—here we get to the heart of what the waste avoidance and resource recovery program should be about—we need to be finding ways in which those materials can be used for some useful purpose. It is interesting in contemplating bio-organics that I think there was an intention to use some of that material to fertilise paddocks and enhance the growth of pasture that was then grazed by beef cattle. Maybe in some circumstances that would work, but in the bio-organics case it clearly went wrong and has caused enormous problems as a result.

We talked about other issues as well, but one that we did not really touch on —

**The ACTING SPEAKER (Mr N.W. Morton):** Members, there is lot of chatter in the chamber. I am trying hard, and so is Hansard, to hear the member for Gosnells.

**Mr C.J. TALLENTIRE:** I wanted to raise with the minister the future of other waste plans across Western Australia. I know the minister has received a report into waste infrastructure for the Perth metropolitan area—I think it is called the strategic waste infrastructure planning report. I look forward to seeing that report, as it outlines

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where we should have things like landfills and resource recovery centres, and I imagine that it will also refer to waste-to-energy plants. Waste to energy is being contemplated, I know, by the government, and I know the government is under some very heavy lobbying about it. We hear of members of the other place who have been to Japan, I think on multiple occasions, to investigate and observe how waste-to-energy plants operate in Japan. It is an important issue for us to be contemplating. I am concerned that we have set ourselves this zero waste objective, but is waste to energy a feasible and sensible way of helping us get to zero waste? I am concerned that we could lock ourselves into a situation with waste-to-energy plants demanding a certain calorific value intake to be able to generate the electricity they have committed to producing and selling. I hope that is something that the strategic waste infrastructure planning report looks at as well; indeed, there is the question about whether there is the demand for that electricity. The Minister for Energy would be able to confirm this; he is not in the chamber, but we actually have declining demand for electricity, so that may mean that the electricity produced by a waste-to-energy plant would not actually have a customer. That would pose all kinds of problems for the bankability of a waste-to-energy plant. People prefer to call these plants incinerators, and effectively that is what they are. Do they have a role in our move towards a zero waste society?

Debate interrupted, pursuant to standing orders.

[Continued on page 3721.]