

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

*Introduction and First Reading*

Bill introduced, on motion by **Mr A.P. Jacob (Minister for Environment)**, and read a first time.

Explanatory memorandum presented by the minister.

*Second Reading*

**MR A.P. JACOB (Ocean Reef — Minister for Environment)** [12.17 pm]: I move —

That the bill be now read a second time.

The Waste Avoidance and Resource Recovery Levy Act 2007, which I shall refer to as the levy act, provides for a levy for waste landfilled in the metropolitan area or metropolitan waste landfilled anywhere in the state. The Waste Avoidance and Resource Recovery Act 2007, which I shall refer to as the WARR act, provides for the establishment of the Waste Authority and the conduct of its business, among other things. The levy provides an incentive to reduce waste disposed of in landfills and generates funds for a range of waste management purposes. In 2008 the levy act required the regulations under the WARR act to be made by the Governor on the recommendation of the Waste Authority. On 23 May 2008, members of the Waste Authority passed a resolution without meeting. That resolution recommended the making of the Waste Avoidance and Resource Recovery Levy Regulations 2008. On 20 June 2008, the Lieutenant-Governor and Deputy of the Governor made the regulations, which were to come into force on 1 July 2008. Legal proceedings are currently pending in the Supreme Court of Western Australia in which two companies dispute their liability to pay the levy. An argument raised recently by these companies contends that the 2008 regulations are invalid because only four of the five members of the Waste Authority assented to the resolution of 23 May 2008.

Clause 11 of schedule 1 of the WARR act provides that each member of the Waste Authority must assent to a resolution made without a meeting by letter, facsimile, email or other similar means. A search of the available material held by government has revealed records that four of the five members assented to the resolution recommending the making of the 2008 regulations. Although the argument advanced by the companies turns on a technicality, the government is concerned that the argument is likely to succeed when the matter is determined in court. The levy act and the WARR act give the relevant power to make a recommendation to five members of the Waste Authority acting together. They did not give that power to only four of the five members. The levy act authorised regulations to be made, but only on the recommendation of the Waste Authority. The government considers it likely that the Supreme Court will find that the conditions for the valid making of the 2008 regulations were not met. The WARR act also provides for the Waste Authority to make resolutions at a meeting attended by a quorum of three members. However, no such resolution was passed at any meeting before the 2008 regulations came into force. A resolution made without a meeting requires the assent of each member.

I have described the companies' argument as a technicality. It does not challenge the merits of the decision to impose the levy or the policy implemented by the 2008 regulations. Further, the issue I have referred to does not deny the capacity of the Waste Authority to make the recommendation at all. The issue is simply that the members of the Waste Authority adopted a procedure that was not contemplated by the WARR act. Despite the technical nature of the argument, it has the potential to have significant impacts on state revenue. The waste avoidance and resource recovery account was established in 2008 under section 79 of the WARR act. The account holds revenue allocated from the levy and funds programs and waste management initiatives outlined in the Waste Authority's business plan or as approved by the Minister for Environment.

Increases to the levy rate from 1 January 2015 were recently announced as part of this year's state budget. The increases will drive the recovery of millions of dollars' worth of valuable resources lost to landfill each year and significantly increase the recycling rate in Western Australia. The new rates will provide in excess of \$130 million over the next five years for recycling projects, which represents a significant boost for the recycling sector. Priorities are likely to include support for new recycling and recovery infrastructure and funding to encourage the flow of waste streams towards those facilities.

The state has received approximately \$187 million in levies and penalties since the commencement of the 2008 regulations in July 2008. Forward estimates forecast that the state will receive \$60 million in 2014–15, \$104 million in 2015–16, \$105 million in 2016–17 and \$108 million in 2017–18. In proceedings pending in the Supreme Court, the state is seeking to recover more than \$12 million plus penalties from two companies. Argument about the issue that I have identified has been listed for hearing in the Supreme Court on 17 June 2014.

The new argument raised in the pending legal proceedings regarding the invalidity of the 2008 regulations means that validating legislation is urgently required to be enacted to ratify the regulations, protect past and future revenue streams generated by the landfill levy and ensure that the incentive to reduce waste and funding for recycling is maintained.

The bill provides that the 2008 regulations and amendments to those regulations are to be taken to have been validly made and to have, and to have always had, full force and effect. It also provides that the rights and liabilities

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of all persons are to be taken to be, and to have always been, the same as if the 2008 regulations and amendments to those regulations had been validly made. The validity of legislation expressed in similar terms has previously been upheld by the courts. It will resolve all arguments that the making of the 2008 regulations was not authorised by the levy act and the WARR act. The bill will ensure that the levy can continue to operate as intended as an incentive to reduce waste disposed of in landfills and to generate funds for a range of environmental purposes. I commend the bill to the house.

*Declaration as Urgent*

**MR A.P. JACOB (Ocean Reef — Minister for Environment)** [12.22 pm] — without notice: Given that legal proceedings are imminent and in the interests of providing certainty, I move —

That the bill be declared an urgent bill.

**MRS M.H. ROBERTS (Midland)** [12.22 pm]: The opposition reluctantly agrees with the Waste Avoidance and Resource Recovery Amendment (Validation) Bill being declared urgent, but I want to make the point that this again points to a government that has a shambolic legislative process. Quite clearly, some determinations were made during the budget process and there has been the threat of legal action for some time. Although I am not across the detail of that, I know that the opposition was given a copy of this bill only last night. I expect draft copies were available over recent weeks, and there is certainly precedent for that. Indeed, former ministers in this house have given the opposition draft copies of bills in advance and provided some timely briefings. In this circumstance this legislation was unable to be put before the Labor caucus yesterday, which is not good procedurally. It may be the shambolic way in which this government operates. I do not see any reason that notice of this could not have been given when Parliament last sat three weeks ago. I think it is unforgivable not to contact the opposition and not to have provided us with a draft piece of legislation over those intervening three weeks. The government did not even give us a copy on Monday so that we could take it to caucus on Tuesday. The government comes in here and wants and expects our cooperation. I can understand why the government wants our cooperation on this, but treating the opposition and Parliament with disdain, as the government has done in this instance, is not the right way to embark upon getting the cooperation of the opposition.

Last week, I received a letter from the Leader of the House advising me of what business the government intended to put before the house this week. I was advised that it would be the Revenue Laws Amendment Bill and the two appropriation bills. The letter also mentioned that we would move the condolence motion for Tom Jones and we may sit late on Wednesday night. No advice was given to me as manager of opposition business about bringing forward this legislation to this week. Am I to believe that suddenly on Tuesday this week the government had a rush of blood to its head, got all this work done and suddenly decided to consult the opposition? I do not think so. I think that this has been in train for some time. Maybe it is not the Leader of the House's fault. Maybe it is the Minister for Environment's fault because he did not properly communicate with the Leader of the House. Frankly, that does not interest me. I want to put on the record that this has been very badly handled. However, yet again the opposition will help out the government because it has managed to convince our spokesperson and the Leader of the Opposition of the merits of the bill and the necessity for it to be dealt with now.

I am not arguing about whether it needs to be dealt with now. I am arguing about the process that led up to this. Even though it may need to be dealt with now, the government could have raised this with us at some time over the past three intervening weeks. At the very latest the government could have provided us with a copy of the bill or a draft bill on Monday this week so that we could have had an opportunity to discuss it at our caucus meeting. Rushed legislation is often not good legislation and in this case I can assume only that this is very rushed legislation. I hope that the minister has it right and that he is across the detail because we will proceed and debate this bill today, but it is not good practice and it is a further indication of how poorly this cabinet operates.

**MR J.H.D. DAY (Kalamunda — Minister for Planning)** [12.25 pm]: I will make some brief comments on the motion to declare urgent the Waste Avoidance and Resource Recovery Amendment (Validation) Bill. I appreciate the support of the opposition, albeit, as the member for Midland said, it has somewhat reluctantly agreed to this bill being debated as an urgent bill. It is a somewhat unusual situation. The matter is time-critical, as explained by the minister in his second reading speech, and it relates to a case that is underway in the Supreme Court. That is why it is important for the house to deal with the bill this week. I agree that it is not best practice for the opposition not to have been given a copy of the bill as a whole prior to yesterday, but certainly the minister provided a briefing to the Leader of the Opposition, the member for Gosnells and the member for Mandurah a couple of weeks or so ago. The government attempted to ensure that the Leader of the Opposition, the former Minister for Environment and the current spokesperson for the environment were aware of what was being contemplated. We did not have absolute certainty that the bill would be debated or introduced this week until, of course, it was considered by the government in the Liberal Party parliamentary party room. That is why it was not referred to in the letter. My understanding is that there was communication with the opposition that this was likely to occur. I regret that it was

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not communicated to the member for Midland, as would have been preferable. That is a brief explanation of what has happened with this bill in the past couple of weeks. There has certainly not been any desire or even attempt to surprise the opposition with this legislation. I have been very keen to make sure that information and a briefing was provided to at least the key people in the opposition who have to deal with this bill.

Question put and passed.

*Second Reading*

Resumed from an earlier stage of the sitting.

**MR C.J. TALLENTIRE (Gosnells)** [12.28 pm]: I rise to speak to the Waste Avoidance and Resource Recovery Amendment (Validation) Bill 2014. I begin by saying that the opposition supports this amendment bill. We consider it to be necessary because of the implications for state revenues. However, it is of concern that the bill has been made urgent in this way, and the member for Midland has previously expressed our concern on that point. Nevertheless, this debate gives us an important opportunity to review our approach to waste management in Western Australia and to consider the Supreme Court case. I do not want to go into that in any detail, but it raises the question: what is recycling? It is my understanding that some people believe that if they put landfill into a quarry site and that land is turned into light industrial land, in some way they are engaging in a form of recycling. I, personally, think that is stretching the definition of recycling. Recycling is a term that is much more understood in the context of reusing something. That is an important issue in itself.

We need to highlight that the act this bill seeks to amend is first and foremost about waste avoidance. If, in our society we are to move towards a truly sustainable society, wherever possible, we need to avoid the creation of waste. That often means looking at material in a different way—finding a commercial, viable use for that material that had previously been considered waste material, and therefore should no longer be considered waste. The priority should be put on waste avoidance. I believe that is the reasoning behind the creation of the levies. They are there to drive us away from creating waste, and that is a very worthy objective. It was the whole point of the Waste Avoidance and Resource Recovery Bill when it was first passed through this Parliament. It was to engender the idea of extended producer responsibility, and I will come back to that idea.

It is worth contemplating also how in nature there is no such thing as waste. Natural systems are always designed around everything being of some use; there is no such thing as waste. Quite often we use nature as a model for our own human systems. I note that many of us talk about the survival of the fittest, the Darwinist view of competition, and how we like to see our business community operate and that competition gets us the most cost-effective, best quality of service delivery. We can say that the use of the natural world as a model applies to waste. We should not consider a by-product to be waste material. That is why a bill that helps to avoid the creation of waste—seeks to drive us away from creating waste—is a very worthy piece of legislation.

There is another area in which we have a view of the natural world. I talked about Darwinism and the competition theory. The other view is that the natural world shows us the merits of a cooperative approach. The Russian evolutionary biologist Peter Kropotkin talked about the collaborative theory. On the one hand Darwin talks about the competitive theory and survival of the fittest. Kropotkin pointed out that our human systems should mimic, to some extent, the natural world where the most successful species are those that cooperate. There are many examples in the natural world of how cooperation leads to the success of a species. I think that is important because often we take the Darwinist view that competition is all that matters, when a collaborative approach is the key. Certainly in the invertebrate world, we see many examples of the benefits that come from cooperation.

We are talking about waste and the need to avoid waste wherever possible. The Gallop and Carpenter governments brought into this place and enacted legislation that had at its very heart waste avoidance and resource recovery. If we are talking about avoiding the creation of waste, surely we have to have in place things such as price signals. I find this a very interesting topic because so often a price signal is the way of costing in an externality—bringing into play the market forces that will enable something to be avoided. It is one of the reasons I so wholeheartedly supported carbon pricing and enabling the market to make the necessary decisions around cleaner energy options. We did not want any sort of dictatorial approach whereby government decides that a particular form of renewable energy is worthy of huge subsidies or assistance to a particular industry to enable it to avoid carbon pollution. We wanted to let the market decide by ensuring that there was a price signal. That is what a levy does. A levy on waste sends a price signal to those who produce waste that they can pay the levy and then suffer the consequences in terms of their commercial viability, their cost competitiveness. It is better, of course, to find a market for a product that had previously been deemed to be a waste product. That is what we are driving at when it comes to waste and landfill levies. They are very worthy objectives.

The landfill levy has been raising a significant amount of money for government. The application of that levy is something the opposition can challenge the government on because it is a problem I think when the original intent of some legislation is to raise money to be used to assist people to develop alternative industries that can use waste products. That was the real motivation behind the original legislation—a very worthy objective. Instead, in recent

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times we have seen the government say that a landfill levy raises a lot of money, let us leave some of it for the original purpose to assist industries to develop around those previously thought of waste products, but let us take the lion's share of it—75 per cent—and bring that into consolidated revenue as a cash cow. That is a betrayal of the original intent of the legislation, and that is extremely unfortunate. Those opposite may feel that in light of the amount of money being raised there would not be enough waste avoidance, recycling and reduction of projects to justify the use of that money. I challenge that. Just this week, I think in the member for Maylands' electorate, a fire led to the burning of many thousands of tyres. That is one example of the sort of waste problem we have—waste that accumulates on sites because people are trying to find alternative uses. They do not really know what to do, they feel we are too far away from an international market that might actually be able to use the product, and they say there is not enough critical mass here to generate our own local industry to use, for example, old tyres. We then end up with this stockpiling, and then we see some event like a fire. I do not know the circumstances behind that fire, and I imagine an investigation is underway, but these sorts of events seem to be rather frequent, and involve waste materials that are either stockpiled or, even worse, transported to places where people lose track of them and they are disposed of in the natural environment, hidden away from view—basically, dumped. This government is proud of increasing penalties for littering and illegal dumping, but I am concerned by the fairly minimalist application of those penalties. I think in reality it is very hard to keep track of all sorts of waste.

Last weekend, quite early on Sunday, I was cycling along Brookton Highway when I was overtaken by a waste truck that was emitting the foulest of stench. I wondered where that truck was headed to. I am not aware of any landfill site or any waste treatment plant that would have corresponded with where that truck was going to on Brookton Highway. My worst fear is that it was probably headed for some bushland somewhere, and there would have been some illegal dumping there. How that sort of thing can be tracked, I really do not know. I know there are tracking systems for trucking and waste companies that are in the business of disposing of all sorts of waste, but inevitably there will be some cowboy operators who will be able to undercut the honest providers of an important service. They will undercut them and dispose of the product wherever they possibly can, with all sorts of consequences that we might not be aware of immediately, but in time our community will feel the consequences such as when we find that a creek is polluted or we find a whole area of dead vegetation or we find that somebody goes to purchase some land and it is actually contaminated and they cannot grow a crop on it. All sorts of things can go wrong. Quite often it might be that somebody thinks that the material could be helpful as a fertiliser, but then if it has not been through the proper assessment process, it may be found that the balance of nitrogen and phosphorus in the material is not correct and that there are other contaminants, such as heavy metals, and the grower would end up with a polluted crop with a toxic residue. That would only be harmful, and I hope that we would have the detection services in place, perhaps through the Department of Agriculture and Food or the Department of Health, to detect whether someone has grown a vegetable crop using waste material that might have prompted a growth spurt but contaminated the crop. That is a real fear, and I am not sure that we have those detection services in place.

The whole issue of waste avoidance is absolutely critical to our society. I think it is fair to say that the hallmark of a sustainable society is that it produces, just as the natural environment does, no waste. We should be heading towards no waste. I can well imagine people thinking that that is a goal that we are a long way from achieving, and we have set ourselves a more immediate target of achieving things like no landfill. The idea of no waste perhaps seems a long way off, but we have to work towards that. If that means that manufacturers of products have to redesign their products and their packaging, so be it; that is what they will really have to do, and that will be achieved by having in place price signals. A price signal, such as a landfill levy, can help get us there.

We do have a quibble with the government, though, around the calibration of things like the landfill levy. The last state budget saw a dramatic increase in the landfill levy. I am unconvinced by the amount of research, the preparation or the analysis that was done into where the price elasticities were in the setting of a new landfill levy. I think the government should present that sort of information to us, to explain why it has gone up to well over \$50 a tonne for material going to landfill. How does that correspond with our objective of getting to no waste to landfill? That should be explained. Instead, though, we are just left with the general impression that the aim is to raise revenue. That is something the government seems hell-bent on, especially when we look at the percentage of the landfill levy that will go to consolidated revenue.

The levy could well be applied to the development of new technologies that use different products—I will go through some of those—but it could also be applied to the greater detection of illegal dumping. I think that should have been worked on as well. After this government first came to office, in 2009 some amendments were made to the Waste Avoidance and Resource Recovery Act, and they were about taking money out of the waste avoidance and resource recovery account, which was solely for the purpose of assisting the development of new technologies and solely for the purpose of reducing and avoiding waste. In 2009, the government made a decision to use the landfill levy to prop up the funds of the then Department of Environment and Conservation. We have now gone a whole step further and waste is seen as a means of making a major contribution to state revenue by way of the

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consolidated revenue fund. We are moving further and further away from the original intent of the Waste Avoidance and Resource Recovery Act.

Why would we not be doing things like, for example, supplying householders with an innovative means of treating their putrescible waste? There is a Japanese system known as the bokashi composting system, although it is actually a system of fermentation. People have in their kitchen a small container, somewhat bigger than a large ice-cream container, and they put their peelings and other putrescible items, including meat leftovers, into the bokashi container, after which a fermentation process takes place. At the end of it, a very good, nutrient-rich material is produced that can be applied to a garden.

**Ms J.M. Freeman:** You have to bury it.

**Mr C.J. TALLENTIRE:** I thank the member from Mirrabooka; I was just looking at the details of bokashi and, indeed, it says how important the burial of the residue is. It also results in a very nutrient-rich liquid that can be applied, and it seems like a very clever way of doing things.

If we had applied the funds raised through the landfill levy to the original intent of the Waste Avoidance and Resource Recovery Act of assisting people to reduce their waste, this is exactly the sort of scheme that could have been subsidised. I know the government is very proud of things such as the trial of the introduction of a third wheelie bin in certain areas for all sorts of green waste, and perhaps that will work very well in some areas. I must say that in the City of Gosnells, I personally find that the twice-yearly green waste collection is a pretty efficient way of dealing with green waste. In common with all my neighbours, I look out for that time, and it seems to correspond reasonably well with times of the year when gardens have had a growth spurt and people have done a bit of trimming; in my case, I recently pulled out a palm tree as I slowly get rid of the palm trees in my garden. We then have the waste collected in a very timely fashion and it is mulched up by a professional mulching machine. No doubt that mulch material has a certain market value when it is sold, hopefully free of contaminants, because there is always the risk in a communal mulching program that certain weed species will find their way in there, and if they are then applied to public gardens, there is the risk that those weeds will come up. But on the whole, the people who are subcontracted to local government to run those mulching services will be aware of what they have in their mulch and will look out for it.

That system seems to work well, but innovation is what this fund was originally all about, whether it is bokashi systems or the development of new means of treating e-waste, given all the IT equipment we have and our propensity to want to turn over those things. Some phone companies encourage people to change their phones with slogans about getting “that new phone feeling”, when the phone they already have is probably perfectly adequate. Even with smart phone technology advancing as rapidly as it is, I do not think people need to change their phones over every six months or whatever is being suggested by some companies. But that changeover, when it does happen, means that we have a product that has some very useful materials in it, and those materials should be recovered. We need to have in place a system to do that, and that was just the sort of thing that was to be organised through the money accumulated in the waste avoidance and resource recovery account. There was an opportunity for people to develop projects and apply money to that sort of thing.

There are other things in addition to e-waste; I am thinking especially of construction and demolition waste. This is our biggest waste stream, as I understand it—the amount of waste that is generated through construction and demolition is absolutely amazing. There are some good efforts being made in recycling that material. One of the earliest projects was run by Main Roads when Forrest Highway was under construction. Construction and demolition waste was sourced, as a trial, for the road base on part of that highway. That was a very worthy and sensible trial and has been extended. I know that there have been problems with contamination, especially asbestos material contamination, and naturally workers are very concerned because they could easily be put at risk by, for example, driving compacting machines and inhaling an asbestos fibre that has somehow made it through the construction and demolition waste recycling process. I visited in the member for Maylands’ electorate a business that specialises in construction and demolition waste recycling, and the operator of the plant told us that that business did everything it possibly could to avoid having any asbestos enter its system, but it strikes me that a lot of it comes down to the ability of a skip operator to go to a site, assess whether or not any asbestos has been put into the skip, and make a decision about whether or not that skip should come back to the plant for further crushing and sorting. I think that is a very big responsibility to put on the shoulders of a skip truck operator who is probably already under all kinds of time pressures and pressure to accept a load, because otherwise where will the load go?

I would like to have a higher degree of confidence about the rigour of the checking process, because we seem to be entering a new phase of asbestos-related diseases. For a long time we had people suffering from exposure to asbestos because they had worked in the asbestos mine at Wittenoom; then there were people who had had direct contact with asbestos used in certain industrial or military applications; and now, the next phase of asbestos victims are those working on DIY projects—doing renovations at home and unwittingly exposing themselves to asbestos fibres and suffering the consequences. We still have large quantities of asbestos scattered throughout our built

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environment and it is going to take a long time to replace that material in housing, commercial and retail premises, so this is a problem that is going to be with us for many years. In the meantime, we have to deal with the disposal of this material. I am enthusiastic about the recycling of construction and demolition waste; I see it as being an excellent initiative, because it can help us avoid what is sometimes described as a basic raw materials crisis. I have heard some in the construction sector talk about the dire problems they face in sourcing basic raw materials for construction in the housing sector and things like road base construction. They have to go further afield to truck in materials that they describe as basic raw materials—things like blue metal, limestone and all sorts of other elements essential to the construction industry. If we could instead source material from construction and demolition, that would be fantastic, because we could then reduce or perhaps almost eliminate our reliance on the sourcing of virgin materials and take that pressure off. That would be a fantastic thing to be able to do, but we have this slight problem of the contamination of a lot of construction and demolition waste, and that has to be sorted through. Again, I would have thought that that would have been a very worthy application of funds raised through the landfill levy. If someone were able to develop a program and put the technologies in place to sift out all the asbestos and guarantee that asbestos was not present in construction and demolition waste, it would be a very useful application of funds raised through the landfill levy. It may be possible to justify the increasing of the landfill levy. But there does not seem to be a rigorous basis for the extent to which the government has made the decision to increase the levy. My scepticism is only heightened by the fact that that money is going to consolidated revenue rather than being applied to things such as an asbestos detection program, because that was the original intent of the legislation.

As the minister mentioned in his second reading speech, a legal challenge is underway. I respect those who are making this challenge and can understand that, from their point of view, getting some legal certainty around the definition of recycling makes perfect sense to them. Their argument is that if they have a quarry and they are able to take a waste material, they are providing a recycling service, because the land then becomes available for light industrial activity. I hear their argument. However, as I have said, the real intent of this legislation is waste avoidance, and that is where the money needs to be applied. The reason we have this landfill levy is so that we can develop the programs and schemes that will enable us to avoid creating waste in the first place. That is where the money and the investment needs to be applied, not letting 75 per cent of it drift off into consolidated revenue. The bulk of the money should be put towards developing waste avoidance programs, because that is the intent of the legislation. Even more importantly, that is what we need if we are to have a truly sustainable society and not one that produces vast volumes of waste, often through lazy thinking and a lack of preparedness on the part of manufacturers to look at alternative ways of distributing and packaging products and dealing with leftover containers.

When I mention the word “container”, one naturally thinks of container deposit schemes. I note that the minister attended a Council of Australian Governments’ conference in April. I think the consensus at that conference was that there would not be a national container deposit scheme.

**Mr A.P. Jacob:** It will be discussed at the next meeting. It is coming to a head, but there is no decision yet.

**Mr C.J. TALLENTIRE:** I am pleased to hear that it is still open. I have been hearing for many years about how it will be discussed at the next meeting. However, I am sure that at the next meeting there will be talk about how we have just had the Victorian election, and Victoria has this and New South Wales has this. The fact is that South Australia has been doing this on its own for many years, and now there is also a container deposit scheme in the Northern Territory, although I believe the beverage industry is doing its very best to sabotage the Northern Territory’s efforts. I know that the minister’s political colleagues are in power in the Northern Territory and that they are keen to continue with the container deposit scheme there. But it is amazing that we seem to always find a reason to not implement a national container scheme. Why can we not go it alone and have our own container deposit scheme in Western Australia? That is eminently feasible and there is community support for it. This is an area in which public opinion has been very well surveyed and the surveys all show overwhelming public support for a container deposit scheme. People love the idea. People recall how in their youth they collected bottles, and that gave them pocket money that they could use to go to the local deli and buy some Fruit Tingles or aniseed balls or something like that. That is not just a nostalgic whim for fruit tingles and aniseed balls; it is the practice that was in place at that time and people enjoyed it. That is something that we could build on with a much more substantial scheme where no-one would be out of pocket.

**Ms S.F. McGurk:** A Fruit Tingle–led recovery!

**Mr C.J. TALLENTIRE:** Yes, a Fruit Tingle–led recovery! The only people who would be out of pocket would be those people who were foolish enough to smash their bottle on the side of the road on a Friday or Saturday night. However, frankly, if it cost them 10c in not being able to reclaim the deposit on their bottle, that would not go anywhere towards helping to pay for the cost of cleaning up their damage to our community.

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We could be applying the funds from our landfill levy towards helping establish a container deposit scheme. Hon Sally Talbot in the other place, and Eric Ripper, the former Leader of the Opposition and Treasurer, developed a piece of legislation that laid out beautifully how this could work. If members are getting difficult questions from industry on how this could work, they need only look at that very neat piece of legislation that Hon Sally Talbot and Eric Ripper developed and they will see that this is a scheme that could work with great community support and with great efficiency. Any ideological opposition presented to the minister by the beverage industry should be seen as just that—ideological opposition. It is my understanding that Coca-Cola Amatil in Atlanta, Georgia—I believe that is its international headquarters—takes the view that once it sells a product, it should no longer be responsible for any of the entrails.

**Ms J.M. Freeman:** That is James Hardie's view as well with asbestos.

**Mr C.J. TALLENTIRE:** Yes—make money, and run. That is a sad reflection on the ethics of those companies.

One of the main objectives of the Waste Avoidance and Resource Recovery Act is the entrenching of extended producer responsibility. Of course companies are entitled to produce a product that people want and make a profit. But they should also take responsibility for the consequences of that product in the community. Companies should be willing to work with the community so that we will get to the situation that we all want to get to; namely, avoiding creating the waste in the first place. That can be done by using clever design and technologies so that bottles can be recovered and cans melted down so that they can be reused. That will mean that we will save money and energy and we will not have to raid virgin resources any more than we have to. Surely that is a good point for us to get to. Sometimes it costs a bit of money to develop the technologies and the systems that are needed. It also costs money to educate the community. I acknowledge that the Waste Authority is doing a lot of work in educating the community. However, we need to be much more open to encouraging the Waste Authority to invest in innovation. That is where the money really needs to be applied.

The minister in his second reading speech discussed why we need this legislation. He said that there was an issue with the Waste Authority because it had only four out of five signatories on a particular document when it should have five out of five and, as a consequence, we need to move quickly to get this legislation through. I refer to *Parliamentary Practice in New Zealand* and note that other Parliaments sometimes regard a taxation issue being at stake as justification for legislation to be dealt with urgently. I will refer to the *Parliamentary Practice in New Zealand* document as, unfortunately, I was unable to consult an Australian equivalent. No doubt there are similar cases by practitioners of the Westminster system in other Australian states and jurisdictions. The point made in the New Zealand document reads —

Extraordinary urgency is particularly designed for use in connection with legislation for a tax change with immediate effect.

I believe that is the situation in which we find ourselves in this place. Extraordinary urgency has been applied to bills on a number of occasions and always in association with tax measures. I note the member for Midland's previous comments that perhaps the government could have assisted us a little further by providing the draft bill so that we could have presented it to our caucus yesterday morning. That would have been helpful. I would have been able to save colleagues the complication of having to interrupt their Wednesday morning to give them little briefings on why this bill was coming into Parliament on this urgent basis. Nevertheless, we got around that and I thank colleagues on my side of the house for their cooperation and understanding as well as their interest in the matter.

I believe we have some bipartisanship for this legislation in a time when the Australian public so often complains about parliamentary practice being one of constant conflict. Sometimes members of the public express their disappointment that there is not more cooperation. In this case people can see that we are not necessarily happy with the way things have been rushed through, but at the same time we are very keen to work with the government to make sure that the integrity of our landfill levy system is maintained. However, that does not detract from those concerns I expressed earlier about how the funds raised are applied and whether the extent of the funds is justified. We will be looking to go to the consideration in detail stage to analyse a few clauses of the bill. I look forward to the minister's explanation, bearing in mind that we have had very limited time to go into the detail of the bill. It is a very short bill and I can understand entirely the intent of it, but there is detail in its application that I would like to check with the minister through consideration in detail.

I will conclude my remarks there and I look forward to further discussion with the minister.

**MS J.M. FREEMAN (Mirrabooka)** [1.13 pm]: I also rise to contribute to the Waste Avoidance and Resource Recovery Amendment (Validation) Bill 2014. It will be no surprise to the minister that I take this opportunity to talk about the situation in the City of Stirling. I will talk about the levy and how I believe the levy's use and purpose need to be actualised and used in this very serious and concerning period of transition by necessity for the City of Stirling away from a one-bin system to a multiple-bin system. I note from the minister's second reading speech that the levy provides an incentive to reduce waste disposed in landfills and generates funds for a range of waste

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management purposes. I note the concern in the contribution by the member for Gosnells that the funds generated do not go fully towards waste management purposes and in fact go only partially towards those purposes. The member for Gosnells outlined that some 75 per cent of the waste levy is going off to consolidated revenue funding.

In this house some years ago, when the waste levy was increased in the first instance to fund the department, vigorous debate took place against taking away any money from the waste levy fund and putting it into operational budgets that had not been created for reducing the disposal of waste into landfills, and that reducing funds for waste management purposes would be detrimental to waste management in Western Australia. The government's capacity to take any leadership role and have any influence on the City of Stirling, which has now for a year been without any recycling, has been lacking. The government has been unable to use the tools at hand through the waste management levy. This is a really good example in which the government could have used funds from the waste management levy to prevent the long-term failure of the City of Stirling's recycling system.

**Mrs G.J. Godfrey:** That's the council's fault.

**Ms J.M. FREEMAN:** It may be, but the minister was aware of it.

**Mr A.P. Jacob:** I was not.

**Ms J.M. FREEMAN:** It is not that the minister is not across the details of waste and waste management in councils. He himself, I understand, was on the Mindarie Regional Council.

**Mr A.P. Jacob:** No.

**Ms J.M. FREEMAN:** That is not the case? I apologise to the minister for that. I understood that he was involved in waste management when he was on council.

**Mr A.P. Jacob:** No.

**Ms J.M. FREEMAN:** Maybe that excuses him for being asleep on the job on this particular issue in the City of Stirling but, frankly, he had knowledge of it. He has had knowledge of it for some period and has had a hands-off approach to waste management.

*Point of Order*

**Mr A.P. JACOB:** Madam Acting Speaker, given that I am being verballed, I ask that we come back to the bill in particular.

**The ACTING SPEAKER (Ms L.L. Baker):** Is the minister calling a point of order?

**Mr A.P. JACOB:** I am calling a point of order on relevance.

**The ACTING SPEAKER:** Thank you. Carry on, member. You are on track as far as I can see in relation to this bill. You are talking about waste avoidance.

*Debate Resumed*

**Ms J.M. FREEMAN:** I am talking about the Waste Avoidance and Resource Recovery Amendment (Validation) Bill and the second reading speech, which refers to the levy providing an incentive to reduce waste disposal in landfills and generating funds for a range of waste management purposes. I am talking about generating funds for waste management purposes being a global goal of government to ensure through its waste management strategy and targets that it diverts municipal solid waste from landfill; and that by doing that, through the mechanism of policy, validating the taking of funds through local governments in legislation that this bill is amending today. In that process, the state government taxes householders through local government, with local government becoming the tax collector, so that the state government can set goals and priorities for recycling and waste management. In my view this government has not pursued those management goals with the City of Stirling.

It is not enough to say that it is the City of Stirling's fault. We use the City of Stirling to collect this money from ratepayers. The government has then taken a hands-off approach and said it has nothing to do with what the City of Stirling is doing. This bill relates directly to this issue. I understand that this company is trying to say that the collection of that levy is not valid. We are trying to validate the collection of that levy. I am trying to talk about that process and the waste management strategy. That levy has been collected over a significant period. From the minister's speech, I understand that the forward estimates forecast that the state will receive \$60 million in 2014–15, \$104 million in 2015–16, \$105 million in 2016–17 and \$108 million in 2017–18. That is a significant amount of money collected through the mechanisms of local governments to manage waste in our community. It is very pertinent to this debate. I do not think the minister had a point of order. Every time I have raised this issue with the minister, he has arrogantly brushed me off, saying it has nothing to do with him. He has regaled me with his brilliance over his three-bin system. That all makes me very frustrated.

**Mr A.P. Jacob:** Stirling's signing up for it now.



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**Ms J.M. FREEMAN:** Absolutely. The City of Stirling had no choice. It will take a total of two years before City of Stirling residents have a waste management project that meets their needs. The minister knew this beforehand. He knew when it stopped at the end of the year. I have asked the minister that question. He was fully aware that it had stopped.

**Mr A.P. Jacob:** So you got the correct answer and you continue to verbal me. The residents were let down by their council.

**Ms J.M. FREEMAN:** They were also let down by the state government. They were let down by the minister. I am sorry but the minister has not taken leadership in this. He needs to take leadership to assist the City of Stirling to meet the demands of its residents in a shorter time frame. The government is taking money from them for this waste levy. I have asked the minister about this in a letter and he has responded to me by basically saying that it has nothing to do with him but he will have a look at it in the management program. If it is valid that the government is collecting this money from the City of Stirling residents for a waste levy, it should be actively used so they do not have to wait yet another year before there is a recycling and waste management scheme in the City of Stirling. As the minister well knows, the City of Stirling stopped recycling in July–August last year. It came to the fore, and the minister knows that as well as I do.

**Mr A.P. Jacob:** You keep saying that but that's not true.

**Ms J.M. FREEMAN:** When did it stop recycling?

**Mr A.P. Jacob:** They stopped recycling but it was not brought to my attention until March this year.

**Ms J.M. FREEMAN:** It must have been brought to the minister's attention before that because it was reported in the media before that.

**Mr A.P. Jacob:** It's a local council. It wasn't brought to my attention until it was in the media. Local councils have a right to manage their own waste and their own waste streams.

**Ms J.M. FREEMAN:** Perhaps that is a question that we need to debate in this house. If that is the case, we should not be collecting waste management levies in this house; we should be letting local governments do that. If that is to become policy, we need to take waste management seriously.

**Mr A.P. Jacob:** Member, if you want a briefing on this, and you have never asked, we are only too happy to provide that. Doing it right now in the chamber is not really the way to do it.

**Ms J.M. FREEMAN:** I have asked the minister these questions in letters and I have emailed him. He is frustrated because I am questioning him on the floor of the house. He sits over there and offers a briefing now. He has never offered that before. I have had questions asked in estimates, I have asked questions on notice, we have had questions asked in the other house and I have written to him. At no stage has the minister told me what his department is doing, other than standing up and answering a couple of questions to promote his own capacity as a minister to introduce a three-bin system. Under his watch as the minister who has carriage of this bill and who has carriage of the waste avoidance and resource recovery levy, the residents of one of the biggest councils, if not the biggest council—the City of Stirling—have stopped recycling and the recycling service will not commence again until June next year. That is an absolute failing of the minister. He has not taken control of the situation to assist using the tools he has. If he said to me that he did not have any tools to do this and he does not have any control over this altogether, it would be wrong because he has those tools. He has the waste avoidance and resource recovery levy. He has the financial capacity to work with the City of Stirling and to deliver to the community, one of the largest communities in Western Australia. It is currently sending all its kerbside collection waste to landfill.

**Mrs G.J. Godfrey:** That's because the one-bin system didn't work.

**Ms J.M. FREEMAN:** The City of Stirling's one-bin system worked for a long period. It is interesting to discuss the one-bin system. It is actually being introduced in some parts of the world. When the contract was coming to an end in August 2013—I have put this on record—I would have thought that the City of Stirling would have been ready and looked at various options. The fact is that it did not. On or around or even before that time, the process failed. When the minister became aware of it, he did nothing.

**Mrs G.J. Godfrey:** It was council's operation.

**Ms J.M. FREEMAN:** This government collects a waste levy from the community. The community does not want an argument about it being one person's problem or another person's problem. The ratepayers are paying a levy, a tax, to ensure that waste is properly managed in their community. They are paying it to the government. The Western Australian government is paying it to Waste Authority WA. It is not enough for the government to then turn around and say that that it is not its problem if the council stops recycling. It is our problem. We are supposed to be the leaders. We are supposed to be setting the goals and the targets for waste management. Therefore, at that level, the state government should be asking the councils what assistance they need to meet these goals and targets.

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The one-bin recycling system was in place for a long period. I understand that it was in place for around 10 or 15 years. The City of Stirling has indicated that 65 per cent of rubbish was recycled. In fact, when driving around the City of Stirling, we can see that all the rubbish trucks have signage indicating that they are recycling trucks. When I was elected, I was a little sceptical so I went to the Atlas recycling facility because I wanted to see what it did. I saw how the rubbish was put on the conveyer belts and how it was sorted. It had a big cage which used centrifugal force to separate the recyclables. Green waste was taken to a farm.

**Mrs G.J. Godfrey:** The green waste was contaminated.

**Ms J.M. FREEMAN:** Atlas argued that it was not contaminated. Frankly, like the member for Belmont, I was a little sceptical about it but the City of Stirling was willing to sign another 10-year contract. The City of Stirling is not a bad council because it did this. Most of the residents we speak to really like the one-bin system because the recycling was done for them. The City of Stirling was getting recycling rates of about 65 per cent. The minister might correct me if I am wrong but I understand that the current recycling rates in Western Australia are only around 50 per cent.

**Mrs G.J. Godfrey:** It's contaminated.

**Ms J.M. FREEMAN:** This is an argument about what recycling is and the point of this bill, which is to validate the levy in any event. However, as I understand, that is the issue around recycling. Member, that is not what the council said. There have been no findings from the Department of Environment Regulation that that green waste was contaminated. It met the recycling provisions of government. Again, if, globally, we thought that was a problem from the point of view of waste management, the state government should have taken control of the matter. It should have said that that was not recycling. The state government is probably arguing in the Supreme Court now about what is recycling. It cannot be said that the council was doing recycling and it was at 65 per cent, but now it is the council's fault. If the government wants to take that global perspective of waste management in our community, it has to take leadership, and that is what I am saying. That was the failure. When the minister became aware of the situation—I accept that it may have been in March, minister—why was it not until June that there was any action by the City of Stirling to take it to council? Why was the government's waste management authority not working with the City of Stirling to make sure the residents could have their waste recycled? Why was the minister's department not on the front foot and why did it not go out there? Instead of blame, why could the government not have taken action that would gain something for the community? Instead of saying, "It's not my fault, but I'm happy to take the money, thank you very much, for the consolidated account", why was the minister not out there doing something? I am in this chamber and I am saying to the minister that I think he failed to take a leadership role on that. It is not enough to answer a few questions and get excited about the three-bin policy when the whole purpose, point and goal of the agency that the minister has carriage of is to ensure that we have good waste management in Western Australia.

[Member's time extended.]

**Ms J.M. FREEMAN:** On the minister's watch, we have had one of the most major failings in waste management in the state in years. On the minister's watch, a council out there is now putting every bit of its kerbside rubbish into landfill. The Minister for Environment is seeing a council do that. I do not think the council has done it with any ill intent; it has done it because of the circumstances. I am saying that had the minister shown some leadership and got his department to work with the council, perhaps we would not have a time line under which, currently, we will not see a three-bin system introduced into the City of Stirling until June next year. I think I have made the point pretty clear.

The Premier is in the chamber. I have never found this on transcript because I probably have not looked, but at one point the Premier made a comment that we needed to take more of a statewide perspective of waste management and how waste management occurs. For me, this situation in the City of Stirling demonstrates that point. The member for Belmont, who also sat on a council, said, through interjection—I will not put words into her mouth—that the recycling material that went to the farm was contaminated. There were always lots of questions about the City of Stirling's system. From my perspective, I interpreted that to mean that the member did not have faith in that system. We allowed that system to continue for 10 years or more, and the council was about to sign on to that for another 10 years or more. The fact of the matter is that waste, and how we deal with it, is going to be one of the major issues that faces us in Western Australia as we grow as a community.

The member for Gosnells quite rightly pointed out that with the waste management levy funds we have an opportunity. A lot of money is being collected from residents and ratepayers. We have an opportunity to change the way in which we deal with waste. Part of the problem in our community is that we just throw it away and forget about it. We do not want to worry or think about it; we just leave it to someone else to deal with. The reality is that that has been one of the failings of the one-bin system for the City of Stirling. People just threw their waste away and did not have to think about it. It is going to be quite hard for the City of Stirling to change to a three-bin system. The city acknowledges that it will have to go through quite a large education process. However, through

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this process I have also discovered—I admit my failings because I did not know this—that if there is a two-bin system or a three-bin system anywhere in the state and someone in the street contaminates their recycling bin by throwing general household waste into it, it contaminates the whole truckload. It is not just the contaminated waste from that recycling bin that is thrown away; the whole truckload of waste gets thrown away. The waste does not get sorted because there is no capacity to do anything once the waste is taken to the recycling facility. Therefore, the whole truckload goes.

I am not sure that people in the community are aware of that. I do not think that we do enough education about how we recycle. Sometimes I am in a quandary about what I can and cannot throw into the recycling bin. Part of the other problem in the City of Stirling is that the city changed all our bins to yellow-top bins because the city said that all of the waste was recycled. Now the city will have to go to the red-top and green-top bins. I think the education about that is quite unique. Again, it would be a good thing for the minister to be involved in that education process and to use it as a case study of how we educate people. The minister can look at me and say that he knows all of this already, but does he not think that he has a perfect opportunity now for his department to get much more involved and to work with the City of Stirling on education and those sorts of issues so that people can learn something about how these things happen?

I am looking at the minutes of the ordinary meeting of the City of Stirling council on 3 June 2014, which contain a resolution that the city would go to a three-bin system. I think that is the outcome. Interestingly, in some cases the city will not be able to go to a three-bin system because the three-bin system will be limited by the housing infill. The area has to be over 400 square metres to be able to fit more than two bins. We are now going to 300 square metre blocks, so again that is a waste management issue that needs to be taken into account in our planning and how we do it, so that when we do some planning, there are places to put bins. We can introduce recycling and have the capacity to recycle.

In terms of education, one of the things that I found really interesting and that I wanted to put on record and make the minister aware of is that the city is talking about doing education through monitoring of compliance to reduce contamination of recyclable materials. That will mean that contractors will mark contaminated bins of repeat offenders, so someone can go out and do some one-to-one training about that. That is quite resource intensive, but obviously quite necessary, because if the contents of one bin can contaminate the whole truckload, that is a pretty important thing to do. I wanted to make people aware of that. The city will introduce that system in June 2015, but for it to be successful, the city will have to provide an education program for quite an extensive period. It will be interesting to see whether the council can reach the rates that it had previously with the one-bin system.

It was interesting to me that the city did a survey of the community, and it referred to the reasons for the single-bin preference. Really, it all came down to two major factors for why people wanted to maintain the single-bin system. I think that quite a number of people wanted to maintain that system. However, a large percentage of the community—72 per cent—agreed to changing to the multiple-bin system. Of the 28 per cent of respondents who wanted to stay with the single-bin system, which, if one thinks about it, is still a large number, 19 per cent said they wanted to stay with that system because it was more convenient and 18 per cent said it was because they did not want to pay more. And they will pay more—probably about \$40 extra a year—and that concerns me.

I wrote to the minister and he said in reply, “Well, we have the three-bin system, and that is a great thing.” I understand that \$7.5 million has been allocated to the Better Bins program, yet it will cost the City of Stirling around \$12 million to change its three-bin system, so that money will be insufficient. That is exactly what the waste levy should be used for. It is not about bailing out a council; the council has had a one-bin system that the state government, which manages the waste, has been happy to accept and has never questioned. The recycling rate in that council was 65 per cent. No-one has ever questioned that. The council has not brought about the need for this bill. That came about because of the case in the Supreme Court concerning someone burying waste in a quarry and saying that they were reusing it for something else and, therefore, that is considered to be recycling, and that was accepted and has never been questioned. That is absolutely the reason to help this local council transition to a new system. This is an opportunity for leadership and not jingoism and arrogance. It is an opportunity to drive something so that the state has a better understanding of how to manage waste across other councils. It raises questions about whether we are better off managing waste at the state government level and not at the individual local government level. Has local government moved on from being the bin collectors? We have to start recognising that rubbish collection is a serious and ongoing issue for the future of the whole state and we need to take responsibility for and control of it at the state level. Those are the opportunities that are presented.

The response of the Minister for Environment to my letter on 3 June 2014 stated —

The recently announced increase to the landfill levy is expected to generate additional revenue for waste —

It is also for additional revenue for the consolidated account; I understand that 75 per cent is going to that —

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— and recycling programs and incentivise investment in alternative waste treatment infrastructure. Accordingly, I have asked the Waste Authority to prepare an updated Business Plan with revised investment priorities, including the allocation of additional funds to developing infrastructure and supporting local governments' waste and recycling efforts.

I am asking the minister under this business plan to provide part of that additional funding for the City of Stirling to transition and deliver quickly for the residents of the City of Stirling. They are our constituents as much as they are residents of the City of Stirling. The City of Stirling has always complied with waste management. It is not its fault that the Atlas facility is no longer continuing. Atlas closed down its site and told the City of Stirling earlier this year that it would no longer operate. Up to that point, the City of Stirling was in negotiations with Atlas and was going to continue the one-bin policy. The City of Stirling was not negligent; it was continuing the recycling program that everyone had accepted, the government included, and it faced a situation beyond its control because the private contractor it was dealing with had gone and it now has to move to a three-bin system because there is no other alternative. If there is no other alternative—this is exactly what the waste levy is for—the government should provide additional funds to the City of Stirling so that its residents do not have to wait until June 2015 for the commencement of a new service and that that new service can occur in a timely and financially secure way for the whole of the City of Stirling. To do anything else shows a lack of leadership by this government.

**MR A.P. JACOB (Ocean Reef — Minister for Environment)** [1.45 pm] — in reply: I will pick up on some closing comments from the member for Gosnells who talked about a bipartisan position on the importance of the waste avoidance levy as a market lever. The member for Gosnells' contribution points to two clear points of bipartisanship on this matter. One is the end goal. I think all members in this place agree with where we want to be on waste avoidance in the first instance and the recycling outcomes as a part of that. It is good to hear that we also agree on the fundamental starting point for that journey—that is, a clear market price mechanism in a waste levy.

I note with interest a range of comments made by the member for Gosnells concerning construction and demolition waste, which has admittedly had some of the lowest levels of recycling and which is rich in opportunities. The government will be increasingly bringing forward programs in that space in the coming weeks and months. I look forward to updating the house and, indeed, providing briefings for the member for Gosnells given that we have those two clear points of bipartisanship as the bookends in this issue and I think he will find a range of agreements along the middle of this matter as well.

The member for Mirrabooka made an unfortunate contribution. I do not think there is much point in going into too much depth into the particular issues she raised about the City of Stirling, other than to say that we are working with the council and that after it initially criticised the three-bin program, on the day that program was announced, the council has come to us, which we certainly welcome, and the government is looking at ways of working with it so that its ratepayers benefit. Our focus is absolutely on benefitting the ratepayers of the City of Stirling and making sure that they have access to the same opportunities as all other ratepayers in the state and across the metropolitan area. The member for Mirrabooka should remember that although she threw around wild accusations, this bill fixes an error of a former Labor government, so she can make all the accusations she likes.

I thank the opposition for its support of the Waste Avoidance and Resource Recovery Amendment (Validation) Bill 2014. A briefing was provided some weeks ago to the Leader of the Opposition, the opposition Whip and the member for Gosnells. I know there has been an element of urgency to this bill, and the reasons for that were laid out. Although a briefing was provided, the bill has also had to go through some of our processes along the way. I understand that it has been an unusual process to get to this point and I thank the opposition for supporting the bill. It is very important that, as a Parliament, we make it clear that we share in common not only the same goal, but also, as the starting point, the state's right to retain and implement a landfill levy as a price, or market mechanism, to drive waste avoidance and recycling activity in Western Australia.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

*Consideration in Detail*

**Clauses 1 to 3 put and passed.**

**Clause 4: Section 102 inserted —**

**MR C.J. TALLENTIRE:** This clause seeks to insert at the very end of the act proposed new section 102, which straightaway goes to the content of the Waste Avoidance and Resource Recovery Levy Regulations 2008. The regulations contain not only details on the dollar figure of the landfill levy, but also some of the procedures that must be adhered to in terms of, particularly, review and the potential for aggrieved persons to go to the State

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Administrative Tribunal should they be unhappy with any aspect of the levy. Without getting into the details of the case before the Supreme Court, I wonder whether that process has already been gone through or where we are at and why things were not able to be resolved at the State Administrative Tribunal?

**Mr A.P. JACOB:** My understanding is that that appeal right is only in the case of a refusal for an exemption, as opposed to this case, which is about non-payments.

**Mr C.J. TALLENTIRE:** So the State Administrative Tribunal is not there for matters of non-payment. Is the minister saying that a non-payment case is automatically escalated to the Supreme Court?

**Mr A.P. JACOB:** My advice is that we will typically sue for the amount of levy depending on the amount. Given the amount in this case, it has been undertaken in the Supreme Court.

**Mr C.J. TALLENTIRE:** Why are things immediately escalated to the Supreme Court and what provision, either in the act or the regulations, directs us that way, bearing in mind that the case before the Supreme Court is about the definition of recycling? Why does something as fundamental as that need to go to the Supreme Court? Which piece of regulation or section in the act directs the matter straightaway to the Supreme Court?

**Mr A.P. JACOB:** Section 77 of the Waste Avoidance and Resource Recovery Act 2007 deals with recovery of the levy. The decision to undertake that in the Supreme Court in this instance is simply determined by the dollar quantum. We are talking about multiple millions of dollars, hence the decision to undertake this case at the Supreme Court level.

**Ms J.M. FREEMAN:** I assume that that is the case because matters are taken to either the Magistrates Court, the District Court or the Supreme Court depending on the level of outstanding payment. I want to know—and I assume this is what the member for Gosnells wants to know—why did the matter go to the Supreme Court and why was the company not taken to a court of lesser jurisdiction when a lesser amount was involved?

**Mr A.P. JACOB:** In the first instance, the company commenced action against us in the Supreme Court, and therefore our counter claim for repayment of levy moneys was also made in that jurisdiction.

**Mr C.J. TALLENTIRE:** The next provision in this clause refers to the rights, obligations and liabilities of all persons. It states in proposed section 102(2) that they 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.

I guess this is where we have a degree of retrospectivity about this legislation. I want to be absolutely sure that we are on a solid legal base in acting in this retrospective way. Can the minister please explain what precedent there is for this kind of retrospective legislation?

**Mr A.P. JACOB:** It might be easier if I list a couple of other cases where validating legislation has been pursued in this way. Some Western Australia examples of validating legislation are the State Energy Commission (Validation) Act 1978, the State Energy Commission of Western Australia by-laws; the Miscellaneous Regulations (Validation) Act 1985, various regulations; the Mining (Validation and Amendment) Act 1986, mining leases; Land Drainage (Validation) Act 1996, which was based around rating notices; Family Court (Orders of Registrars) Act 1997, orders of registrars of the Family Court of WA made without jurisdiction; and the Federal Courts (State Jurisdiction) Act 1999, and there are also other examples.

**Mr C.J. TALLENTIRE:** Thank you minister for rattling off a list of acts where that has happened, but I want to be sure that we are talking about similar cases. We need to get to the guts of it I suppose in that we had a situation where an administrative procedure had not been adhered to—it was four-fifths correct but one-fifth incorrect—so how is it that this retrospectivity can resolve the problem? I do not know the intricacies in the other pieces of legislation to which the minister referred, but can the minister give me an example of an administrative procedure that has not been correctly adhered to in the past and how we have been able to create a validation bill to go back in time and make what was perhaps a mistake in the past become right into the future? I would be keen to hear about a particular example that is comparable to what we are experiencing here.

**Mr A.P. JACOB:** The best example is probably the case *re Macks*; *Ex parte Saint* (2000)—I acknowledge that does not mean much—in which the state had vested its jurisdiction in the federal courts. However, it was found that validating legislation was required in that instance and then the Federal Courts (State Jurisdiction) Act 1999 was a purported exercise of state jurisdiction by the federal court. That is probably the best example of this having been done previously.

**Mr C.J. TALLENTIRE:** Is the minister saying that there are situations directly comparable to this one? Was that case about things like the number of signatures on documents, or what was the real nature of the problem?

**Mr A.P. JACOB:** I guess the reasons around the case have varied dramatically. The key that we are applying is the formula that has been used in instances when validating legislation has been required. It has been a relatively

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well established formula, which obviously this bill forms a part of. The Humby formula has been applied to retrospectively validate at least three cases—one in 1973, one in 2000 and one in 2011.

Debate interrupted, pursuant to standing orders.

[Continued on page 3690.]