

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

*Consideration in Detail*

Resumed from 8 September.

**Clause 5: Section 73 amended —**

Debate was adjourned after the clause had been partly considered.

**Dr J.M. WOOLLARD:** Clause 5 deals with the levy; I will not go into the 25-75 per cent split. Section 5(1) of the Waste Avoidance and Resource Recovery Act, which deals with the objects of the act, states —

- (a) promoting the most efficient use of resources, including resource recovery and waste avoidance; and
- (b) reducing environmental harm, including pollution through waste; and
- (c) the consideration of resource management options against the following hierarchy —
  - (i) avoidance of unnecessary resource consumption;
  - (ii) resource recovery (including reuse, reprocessing, recycling and energy recovery);
  - (iii) disposal.

I appreciate that yesterday the minister talked about the additional funds. He knows that I am not opposed to additional funds being sought, but he said that those additional funds would be used to address issues such as recycling, and that with that additional money we might be able to attract interstate operators. But where do the recycling objectives of the Waste Authority, under the Waste Avoidance and Resource Recovery Act, come in as a line item? Where is the line item for the money that will now go to the Department of Environment and Conservation—the 75 per cent? One of the concerns that I have is that although the minister says that the additional money being collected will be used for recycling initiatives within the state, these recycling initiatives fall under money that is meant to go to the Waste Authority. Again, I do not want to see a decrease in the money that is going to the Waste Authority. That is the reason that in my contribution to the second reading debate I referred to proposed section 79(3B), which states —

The amount specified under subsection (3A) must not be less than 25% of the forecast levy amount for the financial year.

I suggested that that proposed section should be amended by adding that it must be consistent with the business plans prepared by the Waste Authority and approved by the minister. I accept that the minister is saying that currently there is so much money available that the authority has not used. However, one of its jobs is recycling.

I do not often agree with the member for Rockingham but I agree with the point he made yesterday that it takes so much money in the piggy bank to get new initiatives off the ground. I am still very concerned that the Waste Authority will miss out. Can the minister tell me where, under these new arrangements, the Department of Environment and Conservation formally has the responsibility for some of the initiatives that he said would be taken up under this increased revenue?

**Dr G.G. JACOBS:** I thank the member for Alfred Cove for her comments. It is important to refer to the member's point about how the money will be channelled into the recycling industry. The member will probably agree with me that the levy creates an incentive to stimulate the recycling industry.

**Dr J.M. Woollard:** That incentive would still be there if additional funds were put into the Waste Authority.

**Dr G.G. JACOBS:** An increase in the landfill levy will stimulate the industry, and I have previously referred to construction and demolition waste. The levy will stimulate the industry by recycling the waste carried in trucks and dumped in bins instead of using it for landfill.

**Dr J.M. Woollard:** I agree with the minister that those are the objectives of this legislation, but this money is not going to that authority for those objectives.

**Dr G.G. JACOBS:** If I were a builder, it would seem logical to me that instead of having the old bricks, half bricks and timber dumped into the local waste management landfill area, it would, because of the higher costs, albeit moderate, stimulate the industry if we were to pull that stuff out. It would create an incentive for people to take that waste out and do other things with it. Obviously, if people are recycling raw material, it will stimulate the recycling industry. We know how that has developed in New South Wales and other jurisdictions in Australia. In fact, those people might set up business in Western Australia and employ local people. These businesses would increase the availability of raw materials and decrease the demand on new materials.

**Dr J.M. Woollard:** It looks like that has to still come out of the 25 per cent.

**Dr G.G. JACOBS:** No. What we would be creating is an incentive mechanism to drive the industry. If we create a situation in which there is a commercial disincentive to put that material into landfill, that material would be taken out of waste. For example, the bricks and timber could be used for other sources of raw materials and that would stimulate an industry, albeit a private industry. As the member for Gosnells said, and I have said, we do very poorly in that respect. Construction and demolition waste contributes to more than 50 per cent of our waste, because it goes into landfill. Human nature being what it is, and commercial realities being what they are, that waste goes into landfill.

I refer now to the waste avoidance and resource recovery account. We have talked about the forecasted amount. The forecasted amount for this year is \$52 million, and 25 per cent of that will go into the waste management account. The account is the receipt point for the levy. The minister will allocate 25 per cent of the forecasted amount into the WARR account, in accordance with clause 7 of this bill. I know that the member has concerns about the embargoed 25 per cent, which is dealt with in clause 7.

**Mr D.A. TEMPLEMAN:** It is important that the minister continue his remarks.

**Dr G.G. JACOBS:** Thank you, member for Mandurah. If I am not addressing the points that the member for Alfred Cove would like addressed, I am happy to take an interjection.

**Dr J.M. Woollard:** My concern is that the objectives of the current act cover the initiatives—yes, they are good initiatives and yes, I am happy that the levy will go up, because the levy does not meet the current costs and does not encourage recycling. However, 75 per cent of that levy will go to DEC. Under this legislation, it is clear what the Waste Authority can do with the 25 per cent and how it will assist with waste management and recycling. The minister outlined the initiatives that this levy will help introduce. However, DEC does not have these objectives under its banner. That is the reason I said that I am happy to support additional funding for DEC, but there is no link between that additional funding for DEC and the objectives of this legislation. Therefore, the DEC funding is really a new tax. I am not objecting to a new tax for environmental issues, particularly given the current climate. I am happy regardless of whether it comes under this bill or another bill. It is very important that we do not forget the objectives of the initial legislation and when the funding decreases in a few years, as it might do, we do not allow these initial objectives, which were good objectives, to fall by the wayside. It is a new tax going to DEC, but where is the guarantee that it will help in this area and stimulate big businesses to set up in Western Australia so that we do not have problems with odour emissions from waste products in suburbs? I am happy to encourage people to come here, but there is no guarantee that that 75 per cent of the levy will be used to fulfil the objectives of this bill.

**Dr G.G. JACOBS:** That was a long interjection. The 75 per cent is actually not fulfilling the functions of the WARR account. One hundred per cent of the DEC moneys is apportioned, or hypothecated as we continue to say: 25 per cent into waste avoidance recovery and 75 per cent into the DEC account. Quite unashamedly, this is to be applied to other functions of the Department of Environment and Conservation related to the environmental scene. It is not specifically for waste management. It may be related to the management of dieback, threatened species or national parks. It is as natural a fit as we can get. As I said in my second reading speech, in New South Wales 50 per cent of the levy goes to consolidated revenue, and may be used for anything. At least this way the funds are being applied to an environment-related function within the Department of Environment and Conservation. That is the way it is structured. Perhaps later on we can address the issue of the 25 per cent raised by the member. It should be understood that as fewer people put waste into landfill, they will be paying less in levies, so the forecast revenue could decrease. That is the sort of effect we want; we want less waste going into landfill. As the forecast revenue goes down, and the minister believes that 25 per cent is not enough for waste management, the minister can allocate a larger proportion. I said that last night, but I suppose the member was not reassured. I suppose people believe that ministers come and go, and although this minister may take such an action, what about the next minister? I understand the arguments that the member has put. Essentially, we are amending section 73 of the act by adding proposed subsection (4). At present the section reads —

- (1) A levy is due and payable at such time or times, and in such manner, as is prescribed by the regulations.
- (2) A levy is payable to the Minister.
- (3) The regulations may provide for the refund or deduction of amounts overpaid by way of levy and the payment of rebates.

Proposed section 73(4) reads —

Any levy paid is to be credited to an operating account of the Department established under the *Financial Management Act 2006* section 16(1)(a).

**Dr J.M. WOOLLARD:** At the moment the levy is to be paid into the operating account of the department, and the minister is proposing that a minimum of 25 per cent of that levy be applied to waste management activities with the other 75 per cent going to the Department of Environment and Conservation. Under the current act, the way the levy operates is that the department prepares a business plan and that business plan goes out for public comment. Therefore, if the minister can make amendments to that business plan and does not support what is being put up by the Waste Authority, particularly if the authority is asking for additional funding for improved reprocessing, recycling and energy recovery because we are so far behind in those areas in Western Australia, there is no guarantee that those requests will be met. That is why I would like to ensure that the business plan put up by the Waste Authority, focused particularly on the objects of the act, gets a fair guernsey. That is why I want an amendment to this bill to ensure that if the Waste Authority puts up initiatives to address issues in recycling that have been sorely neglected in Western Australia for many years, a business case can be put to address those issues. This may mean that in two years' time, rather than 25 per cent of this levy going into the operating account, the minister may decide that the proportion needs to be 50 per cent. The other way of dealing with this is the way in which the member for Fremantle is looking at it. Her proposed amendment ensures that all the levy is used to further the objects of the act. The Waste Authority is already saying that it wants additional money for some of its initiatives. I come back to the fact that there is no guarantee that we will see an improvement in the fulfilment of the objectives of the current act through this increase in the levy. That is why I am happy to support an increase in the amount that goes to the Waste Authority, and I am also happy to support an increase in funding for the Department of Environment and Conservation, but not at the expense of the objectives of the Waste Avoidance and Resource Recovery Act.

**Dr G.G. JACOBS:** I thank the member for Alfred Cove for her comments. I reiterate that the amount allocated to waste avoidance and recovery will be at least 25 per cent of the levy. However, I need to correct the statement made by the member about the business plan. The business plan is not available for public comment. The statewide waste strategy that will be released very soon will be made available for public comment. It is important to state that the business plan of the Waste Authority must be consistent with that waste strategy. I think I know what the member is getting at. It is a common concern of many people, particularly opposition members, that there is no guarantee that the Department of Environment and Conservation, having raised this money, will not hive it off into other areas and not actually put it into waste management. This bill specifies that 25 per cent of the levy is to be directed into waste management. The waste strategy directs the business plan. I suggest that there is more than reasonable assurance that the proceeds of the levy paid into the Department of Environment and Conservation account will not be diverted to other areas. At least 25 per cent of the levy will be used for waste management. The business plan is not for public comment, but the waste strategy is, and the business plan must be consistent with the waste strategy. The possibility that the minister might divert the funds to chasing starlings in the south west is simply not the reality.

**Mr J.J.M. BOWLER:** My concern is that opening up this account sets a dangerous precedent, in that once one department sets up its own new tax, by budget time next year every director general, including the Commissioner of Police, will be finding new ways to introduce new taxes to make up for the three per cent efficiency dividend. I believe that that is all this exercise is about. I may not be perceived to be the greenest person in this house, but I want to see the resources of the Department of Environment and Conservation increased, because its lack of resources slows down the approvals process for my beloved mining industry. I want the department to have more resources, but I do not want it to have this very dangerous way of imposing a new tax, because every director general and every agency head will be thinking up schemes in the next 12 months to impose their tax to increase their budget and not go through consolidated revenue. There is a very good reason why we have consolidated revenue and why we have a cabinet process, and that is for the various ministers to put before the expenditure review committee reasons why their budget should be increased over other budgets, so that it is done in an organised and orderly process. Suddenly, here we have one department going out of consolidated revenue, and the department should not have to do it. It should get its money from consolidated revenue like every other government department and every other agency. If this amendment goes through and the government creates a separate fund under clause 5, "Section 73 amended", I believe that every director general and every agency head will be saying to their staff, "Okay; we have six or seven months to start dreaming up new taxes, and we're going to impose them so we can increase our budget."

I say to the minister: what is to stop the minister himself, the Minister for Water, imposing a new tax, or a new form of levy, that does not go to consolidated revenue but goes directly into his department so that the minister can bypass the normal expenditure review committee process? I believe this is dangerous. I will oppose the amendment. I do not want the Department of Environment and Conservation to lose one dollar out of this. The member for Alfred Cove, the member for Fremantle and I all have our concerns. I think we all want to achieve the same thing in the same way at the same end.

**Dr J.M. Woollard:** I'd like more money to go to DEC.

**Mr J.J.M. BOWLER:** So would I. If DEC gets more money, people may say, “Why are you opposing this?” I say that DEC should put its case like every other department and every other agency under the normal cabinet process; it should not have this new tax and bypass those tried and true processes. What is to stop the minister, and what is to stop the minister’s colleague the Minister for Police, who is sitting behind him, from contacting their various directors general straightaway and saying, “The floodgates have been opened. Let’s get our ideas in when we start the budget process in next February or March”?

**Dr G.G. JACOBS:** I thank the member for Kalgoorlie for his question. At the outset, I think it is important to say that this is not a new tax or a new levy. The levy already exists; it has been there since 1998. The member mentioned that, as Minister for Water, I could think up a way of levying someone or a product, and be able to raise moneys in that way. That would be resisted, because it would in fact be a new program, a new structure, a new levy or a new tax, if one likes. This levy already exists. It is not new; it has been around since 1998.

I think the other thing to put in perspective is that this levy raises a very, very small component of the total money picture. We are talking about a figure in excess of \$300 million, from which we are raising \$39 million for DEC under the forecasted arrangements. Of that, of course, \$13 million —

**Mr J.J.M. Bowler:** Which is a far greater percentage than every other department was asked to forgo.

**Dr G.G. JACOBS:** Twenty-five per cent goes to waste management. As I said before, the argument that this is better than what happens in New South Wales is because New South Wales has a levy of about \$58.50 compared with what we are talking about with our levy of \$28. Essentially, half that New South Wales money goes into consolidated revenue. With this program, what I can stand here and defend very reasonably is that at least that money goes to environmental-related causes, if one likes. I take on board what the member is saying. However, we must do better in the recycling area. I do not think the member has any argument with that. I understand what he is saying. However, firstly, it is not a new tax. It is a very small component. Other jurisdictions put money into consolidated revenue. That is not as good as what we are doing, which is at least putting it into environmental-related controls, management and monitoring.

**Mr J.J.M. BOWLER:** The minister is disingenuous to say that it is not a new tax. Sure, it is not a new levy, but this aspect is new. The government is setting up a new account as a tax off the levy. Therefore, to say that it is not a new levy is technically correct, but to say that the government is not imposing a new tax on Western Australians is disingenuous. Secondly, when the minister says that the government is being open and honest and that it will not go into consolidated revenue, I say that that is the problem. Once again I will use the example of the Minister for Police. We might suddenly end up going down the American path of sheriffs running around imposing fines and concocting offences because the money goes into their pockets, or into the local office. If we start doing that, I am sure that the police will find some very good reasons to impose some new fines—let us call them once again “taxes”. If that money goes to police, there is an incentive for police to start imposing a stronger regime than they would do if it went to consolidated revenue and their budget was unaffected by their efforts. Therefore, to say that this is not a new tax is wrong. Sure, it is not a new levy, but the minister knows and I know that it is a new tax that is coming off an old levy. Is it the case that it is a tax off an old levy?

**Dr G.G. JACOBS:** It is a levy that has existed since 1998. In the cause of stimulating recycling and waste management in the community, the levy is going up. The member for Kalgoorlie said that this will set a precedent and that it is a sinister way for a department to get moneys. In the budget, we have described other methods by which DEC can source retained revenues. An amount of \$16.8 million was raised from regulatory fees, and that is in the budget papers. There are lots of ways of raising retained revenues within departments, and DEC already does that. I do not know how else to say it. I reiterate the point that if we have a scenario in which 50 per cent is put into consolidated revenue, who knows where it will go? If it is put into our scheme, at least we know it will go to environmental-related causes and programs in Western Australia.

**Dr J.M. WOOLLARD:** I wonder whether I could get the minister to clarify something for me, again bearing in mind that it may be 25 per cent, 75 per cent or 100 per cent, dependent upon whether the member for Fremantle’s amendment gets up. Proposed subsection (4) states —

Any levy paid is to be credited to an operating account of the Department ...

Can the minister explain how the Waste Authority currently links with DEC? Which department would it be, and what would happen under those different funding arrangements, whether it is 25 per cent, 75 per cent or 100 per cent that goes to the Waste Authority?

**Dr G.G. JACOBS:** I will take some advice on that. I thank you for your patience, Mr Deputy Speaker. I have been advised that all the moneys go into the WARR account.

**Dr J.M. Woollard** interjected.

**Dr G.G. JACOBS:** I am just using the acronym. Under the new arrangements that this amendment touches on, it will go to the Department of Environment and Conservation. The \$30 million—the 25 per cent—will be apportioned to the waste avoidance resource recovery account.

**Dr J.M. Woollard:** Tell me again.

**Dr G.G. JACOBS:** Under the current arrangements, all the moneys go into the waste account. Under the new arrangements, the moneys will go into a DEC account and then 25 per cent of that DEC account will be apportioned to the WARR account.

**Dr J.M. Woollard:** As a result of the member for Fremantle's amendment, the amount of the forecast levy for the financial year under proposed section 79(2)(3A) takes out the 25 per cent and means that any additional levy that is raised still goes to that department. How is that money then managed?

**Dr G.G. JACOBS:** I do not want to talk about a clause that we will deal with later. I am sure that the member for Fremantle will explain what her amendment means. I understand that it is not practical for me to concede that all the moneys raised will go into the WARR account. As I have said, we are proposing to raise \$52 million, and 25 per cent of that will go into the WARR account. We can talk about how that money will be embargoed when we get to clause 7. We are now talking about the collection and application of the levy and we are inserting proposed subsection 73(4) to allow funds raised by the levy to be credited into the operating account of DEC.

**Dr J.M. WOOLLARD:** This clause very much impacts on clause 7 because the levy under proposed section 79(2)(3B) is going to go to the department, or will it? Whether it is 25 per cent or 100 per cent, will the money go to the department? If it is 100 per cent, will it be used for waste recovery, or if it is 25 per cent, will it go to waste? I am not sure about that. If a division were called now, I would find it difficult to decide how I would vote on this clause because the minister has not clarified it for me. I am sorry if I am taking a while to understand what the minister is saying. However, he has not clarified what will happen whether it is 25 per cent or 100 per cent. At the moment, I know that it goes to waste. If the numbers are such that the current amendment on the table of 25 per cent and 75 per cent is lost and 100 per cent would go to the appropriate department that deals with waste avoidance and resource recovery, would the authority still go through the Financial Management Act to DEC and be forwarded to the Waste Authority?

**Dr G.G. JACOBS:** The member for Alfred Cove wants to talk about the member for Fremantle's proposition that all the moneys from the levy go into the WARR account.

**Dr J.M. Woollard** interjected.

**Dr G.G. JACOBS:** That is not the proposal. The member for Alfred Cove wants to talk about the member for Fremantle's amendment. I am sure that when the member for Fremantle gets to it, she will explain what the 100 per cent means and where she wants the money to go. Forgive me if I am wrong, member for Fremantle, but I believe that the tenor of her amendment is that all the moneys that are collected from the levy should go into the WARR account. That is not the object of this bill and members know that that has not been the object of the bill from the very start. We can debate that all day, but that is the proposal. It can be argued that all the moneys raised from the levy should go to waste management. I am proposing to members that of all the moneys raised, 25 per cent will be guaranteed to go to that fund and that the other 75 per cent will go to environment-related programs and causes. The levy raises about \$11 million or \$11.5 million.

**Dr J.M. Woollard:** Which department will it go to?

**Dr G.G. JACOBS:** I am advised that it will go to the WARR account, which is, principally, the public service assisting in the administration of the act—that is, DEC.

**Mr C.J. Tallentire:** That is the present arrangement.

**Dr G.G. JACOBS:** That is the future arrangement.

**Dr J.M. WOOLLARD:** Does this not change the current arrangement? The current arrangement for the levy that was introduced in the 2007 Waste Avoidance and Resource Recovery Bill provides that the funds raised by that levy will go to DEC. Does this amendment to section 73(3) maintain the status quo because the money will still go to DEC? That is all I want to ascertain from the minister.

**Dr G.G. JACOBS:** I am advised that it goes into the WARR account, which is administered by the Waste Authority.

**Dr J.M. WOOLLARD:** By which department? Is it done through DEC?

**Dr G.G. JACOBS:** It is just as I have said. It goes into the WARR account and is administered by the Waste Authority. This bill proposes that the moneys go into DEC and that 25 per cent of that amount be apportioned to the WARR account.

**Dr J.M. WOOLLARD:** I very much appreciate the minister's patience today. I am still meeting with the Minister for Environment to discuss this bill and I hope to have further discussions with her over the weekend. I wonder whether the Leader of the House might consider postponing this clause so that when it is debated again and a division is called, I will fully understand how it works. Without knowing what is going to happen with the other clause, I am not sure how this clause will work.

**Dr G.G. JACOBS:** I do not agree with the member for Alfred Cove. This amendment to section 73 puts in place the structure to allow the funds to go to DEC. I believe—I may be wrong—that one of the major concerns of the member for Alfred Cove is that if the forecast is for \$52 million, and 25 per cent of the forecast is \$13 million, the \$13 million will decrease as the forecasted revenue decreases, as less waste goes into landfill. The member for Alfred Cove wants to embargo the 25 per cent to equal \$13 million, to make sure that the government holds to that amount. Is that right?

**Dr J.M. Woollard:** Yes.

**Dr G.G. JACOBS:** I believe we can have a discussion about clause 7, but passing this clause will not negate or go across what the member is trying to do. This clause will provide a structure for the payment of the levy. Proposed subsection (4) provides for the levy to be paid into an operating account of the department established under the Financial Management Act. There it is; if the member wants to have argy-bargy about trying to embargo the 25 per cent to equal \$13 million, we can have that debate later. I do not think that anything to do with this particular clause will prejudice any negotiation that the member might want to have with the Minister for Environment on clause 7.

**Dr J.M. WOOLLARD:** It will not embargo any conversation, but it means that I am unable to get a guarantee through our discussions that the money that is currently going to the objectives of the Waste Avoidance Resources and Recovery Act, which include resource recovery, recycling, reducing environmental harm and pollution through waste management, promoting efficient use of resources and all the other things I listed earlier. It would be better to remove the 25 per cent when we get to clause 7, so that any additional moneys going into this area will go to the objectives of the original act. We could then come back with a separate bill that acknowledges that the three per cent cut to DEC was a bad thing, and the sum of money that would have been created through this tax—which I think is really 10 per cent—would go to DEC through another mechanism. I will not oppose this clause if a division is called, but I will abstain from voting because my conversations with the Minister for Environment are ongoing and I am not sure how this clause will operate in light of clause 7. I think that that is as clear as I can make it for the minister.

**Dr G.G. JACOBS:** I ask the member for Alfred Cove how the passing of this clause, including the proposed subsection providing for the creation of an operating account for the Department of Environment and Conservation, will prejudice any further negotiations the member might want to have with the Minister for Environment about sureties on moneys to the waste management account? We are talking about the total amounts of money raised that will go into the account that is to be established. The member's issue is the apportionment of moneys to waste management. If the member is to take the view that she does not want to deal with this clause at the moment because it might threaten negotiations that she might have —

**Dr J.M. Woollard:** Wouldn't it mean that the moneys, rather than going to the department, would go to the Waste Authority? If it is not to be a 25-75 per cent division, the money would go to the Waste Authority rather than to the department. All we would be doing by passing this clause would be to add another layer of bureaucracy, if the money is going to stay with the Waste Authority. If this bill is passed as it is now, with the guarantee for waste management, we will need that level of bureaucracy; but I don't think we would need an additional level of bureaucracy if the money were to stay with the Waste Authority. Forgive me if I'm wrong, but that's my understanding.

**Dr G.G. JACOBS:** The member for Alfred Cove talks about bureaucracy. We are creating an operating account for the Department of Environment and Conservation. What is particularly bureaucratic about creating an account through which moneys can come in? The member for Alfred Cove wants to raise issues about the sureties of moneys going into waste management. It is an argument about hypothecation and apportionment, and about sustaining that apportionment into the future. Why do we have to stall the creation of the account if the member's issue is hypothecation?

**Dr J.M. WOOLLARD:** I do not think it is. The minister explained earlier that levies are currently being paid automatically to the Waste Authority. This is an arrangement for the government's new 25-75 per cent funding structure. We already have someone responsible for the management of these funds, but we are moving responsibility away from the Waste Authority to the Department of Environment and Conservation.

**Dr G.G. JACOBS:** I do not know whether I can add anything to what I have already said. The new arrangements essentially mirror the existing administrative arrangements. This is not another layer of

Dr Janet Woollard; Dr Graham Jacobs; Mr John Bowler; Mr John Kobelke; Mr Chris Tallentire

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bureaucracy; this clause will not create another empire. It is creating an account into which this levy can be paid under the Financial Management Act. I believe that the member's issues are about surety of hypothecation, what the hypothecation will be into the future, and how it will be sustained. I do not think that the member's issues are about creating an account for DEC.

**Dr J.M. Woollard:** So you're saying that this clause is not going to create an extra 0.5 FTE or 0.7 FTE position within DEC? You're saying that there is already an FTE within the Waste Authority. If that is what the minister is saying, I'm happy to accept it, but if this clause leads to the employment of a new FTE position, I'd rather abstain from voting.

**Dr G.G. JACOBS:** The answer is essentially no; it does not create an administrative structural arrangement that will soak up funds. The member is talking about bureaucracy. The DEC currently collects funds on behalf of the Waste Authority. We are not creating a new bureaucratic administrative arrangement.

**Dr J.M. Woollard:** Then in good faith, I will support you on this motion if a division is called.

Clause put and a division taken with the following result —

Ayes (27)

Mr P. Abetz	Dr E. Constable	Dr G.G. Jacobs	Mr C.C. Porter
Mr F.A. Alban	Mr M.J. Cowper	Mr R.F. Johnson	Mr D.T. Redman
Mr I.C. Blayney	Mr J.H.D. Day	Mr A. Krsticevic	Mr M.W. Sutherland
Mr I.M. Britza	Mr J.M. Francis	Mr W.R. Marmion	Mr T.K. Waldron
Mr T.R. Buswell	Dr K.D. Hames	Mr P.T. Miles	Dr J.M. Woollard
Mr G.M. Castrilli	Mrs L.M. Harvey	Ms A.R. Mitchell	Mr A.J. Simpson ( <i>Teller</i> )
Mr V.A. Catania	Mr A.P. Jacob	Dr M.D. Nahan	

Noes (24)

Ms L.L. Baker	Mr J.N. Hyde	Mr A.P. O'Gorman	Mr T.G. Stephens
Mr J.J.M. Bowler	Mr W.J. Johnston	Mr P. Papalia	Mr C.J. Tallentire
Ms A.S. Carles	Mr J.C. Kobelke	Ms M.M. Quirk	Mr A.J. Waddell
Mr A.J. Carpenter	Mr F.M. Logan	Mr E.S. Ripper	Mr P.B. Watson
Mr R.H. Cook	Mr M. McGowan	Mrs M.H. Roberts	Mr M.P. Whitley
Ms J.M. Freeman	Mr M.P. Murray	Ms R. Saffioti	Mr D.A. Templeman ( <i>Teller</i> )

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Pairs

Mr C.J. Barnett	Mr J.R. Quigley
Mr B.J. Grylls	Ms A.J.G. MacTiernan
Mr J.E. McGrath	Mr B.S. Wyatt

**Clause thus passed.**

**Clause 6: Section 76 amended —**

**MR J.C. KOBELKE:** Clause 6 changes the arrangement in which moneys are raised by way of penalty. The act as it stands allows—in a section that we will seek later to amend—for amounts paid by way of penalty to be deposited in the waste avoidance and resource recovery account. This amendment will change that arrangement such that the money raised by way of penalties will now be deposited in a department account—and for the moment that is likely to be a Department of Environment and Conservation account. I would like the minister to advise the house about the total amount of money raised by way of penalties in recent years; that is, could the minister provide the figures for the past two or three years for the amount of money, if any, that has been paid by way of penalty?

**Dr G.G. JACOBS:** I thank the member for Balcatta for his question. Clause 6 inserts new section 76(3), which will allow for money paid by way of penalty for non-payment of the levy to be paid directly into an operating account. DEC has just created an operating account to provide for the levy money that will come in—25 per cent of which will be apportioned to the WARR account. I would have thought it reasonable that, having created that account, those levy and penalty payments be deposited into that account. Prior to this clause 6 amendment, we have created the account and it seems very reasonable, having created that account, to deposit the levy and the fines and penalties into that account. The member may have some issue with that.

**Mr J.C. Kobelke:** That was not my question.

**Dr G.G. JACOBS:** Then ask the question again.

**Mr J.C. KOBELKE:** Sorry, minister; I realise that there was a bit of commotion at the commencement of the debate on this clause.

**Dr G.G. Jacobs:** There was a bit happening!

**Mr J.C. KOBELKE:** My question was quite specific and at this stage is not about the change to the account that the penalties will be deposited in. That was not my question. My question was: can the minister inform the house as to what penalties have been paid in the last two or three years?

**Dr G.G. JACOBS:** The advice that I have is nil.

**Mr J.C. KOBELKE:** I thank the minister for his answer.

My second question is one about which the minister must have had some intuition because he was seeking to answer it before I had asked it! Under the current arrangement, money paid by way of a penalty is deposited in the WARR account. Proposed section 76(3) before the house will allow for any such penalties to be paid into a special departmental account and not into the WARR account. As the minister indicated, the allocation of money to the WARR account will be out of the departmental account established by the clause 5 vote that inserted new section 73(4). The issue then is: how are the penalties taken into account when the 25 per cent is calculated? Are they part of it or are they not?

**Dr G.G. JACOBS:** I thank the member for Balcatta for the question. I am advised that the levy paid, plus penalties for non-payment, constitute the forecast levy amount. The forecast levy amount, as we have talked about in this place many times, is \$52 million, and that consists of the levies paid plus the penalties for non-payment; and, of course, of that \$52 million, 25 per cent is apportioned to the WARR account.

**Mr J.C. KOBELKE:** I would now like to see whether the minister can elucidate a matter that was touched on in the previous clause, but does sit here as well, as it relates to the new operating account that will be established and into which the penalties will go. The member for Alfred Cove a little while ago made a very good point, but I want to take it in a slightly different way to ensure that we do not leave open to legal challenge the amendments that are being made here. Under the current arrangements, money is collected in the WARR account, and the WARR account has quite clear objectives. We will come to another clause later that will change those objectives but I will leave that debate until then. However, it allows for the expenditure to relate to the objective of this clause or to section 4A of the Environmental Protection Act 1986. The question I would like the minister to clarify for me, if he can, is: when money is paid out of this new operating account, does it actually have to comply with the objectives of the Waste Avoidance and Resource Recovery Act; or is the minister saying that once the money goes off into that operating account to the department, it is no longer caught by the objectives of the act that actually raised the money?

**Dr G.G. JACOBS:** I thank the member for Balcatta for the question. My advice is that the answer is no. However, the amendment to section 79 of the act in clause 7 refers to the 25 per cent portion.

**Mr J.C. KOBELKE:** I thank the minister but I will follow up to make sure we have absolute clarity here. I take the minister to be saying that we will have in place on the statute book of this state the Waste Avoidance and Resource Recovery Act, as amended, which will allow money to be used for things that are not the purpose of the act. In fact, then, we are making a bit of a travesty of the established practice of law in this state. We have established an act with very clearly stated objectives, and now we will use that act for something totally different. It surprises me that the minister or his advisers drafting the bill have not found that it would be smarter to put in a little amendment to the objectives of the act so that we do not ultimately use the act to achieve an aim that is not allowed by the act.

**Dr G.G. JACOBS:** I am advised, and I have said this before, that the minister is obligated under clause 7 to allocate a percentage, 25 per cent, to the WARR account for the purposes of the WARR act.

**Mr J.C. Kobelke:** That's not the point I am making.

**Dr G.G. JACOBS:** The other concerns that the member for Balcatta described are covered, I believe, under section 79 of the act, as it will be amended.

**Mr J.C. Kobelke:** Section 79 of the act or the bill?

**Dr G.G. JACOBS:** Clause 7, "Section 79 amended". The argument put by the member for Balcatta is about consistency, I suppose. Clause 7 reads —

- (1) In section 79(1) delete the passage that begins with "kept —" and ends with "that Act," and insert:

kept as an agency special purpose account established under the *Financial Management Act 2006* section 16

**Mr J.C. KOBELKE:** The minister is saying things that I think are relevant to some of the changes to the legislation, but I press the minister because I do not think he is facing up to the issue I am raising, or perhaps I am not raising it as clearly as I need to. We are dealing in this clause with a special account that we established under clause 5; that is, a special account under the department into which the money is to go from both the

penalties and the money raised through the levy. We know then that the minister of the day can allocate at least 25 per cent of that into the WARR account. However, this is not what I am arguing about; that is the background to it. The issue is that the act that we are seeking to amend will still have the same objectives that are outlined in section 5 if the amendment is agreed to. I understand that the answer the minister gave goes to some of the administrative arrangements in place—I am not arguing at this stage about those administrative arrangements. For the purpose of a challenge that may be made to the act at some later stage, the principles on which we are basing these things must be as clear as possible. That is why I have come back, as the member for Alfred Cove did, to the objects of the act, which are in section 5 of the act. The objects of the act quite specifically relate to matters regarding avoidance of unnecessary resource consumption, resource recovery, disposal, reducing environmental harm, promoting efficient use of resources—all matters to do with waste, not to do with wider environmental issues. There is also a statement in section 5(2) of the act, which reads —

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

Again, I am not a lawyer and I am not really familiar with that provision, but, on my reading, section 4A of the Environmental Protection Act is about the principles, which is different from the objects. Therefore, what we are now dealing with in this suite of clauses that will amend the WARR act is the diversion of money to a purpose that is not covered by the objects of the act. To my earlier question the minister answered yes—that is, we now find that money collected by the levy will go to purposes that are not covered by the same things in the WARR account; the money is therefore going wider. It seems to me that money will be applied in a manner that will not in any way meet the objects of the act. The question I want the minister to try to address, if he can, is: is there any concern that it could be open to legal challenge? Secondly, in terms of good drafting of legislation, what is involved in allowing an act to be used for a purpose that is totally outside the stated objects of the act? Thirdly, would it not be more appropriate to make an amendment to the objects of the act in section 5 so that we do not find ourselves in the situation of using a statute for a purpose for which it was not intended and which is not in keeping with the objects of that statute?

**Dr G.G. JACOBS:** I thank the member for Balcatta for that explanation. I am not a lawyer either. Although the member maintains that there is an issue between the primary objects of the act and the principles set out in the Environmental Protection Act, I am assured from the advice I have that this has been gone through very thoroughly. We are not opening ourselves up for a challenge. Essentially, the work has been done on this and all I can advise is that definitely, no, we are not opening ourselves up for a legal challenge in this regard.

**Mr C.J. TALLENTIRE:** I think the member for Balcatta and indeed the member for Alfred Cove have really hit on some extremely valid points. The issue of the objects of the act, as I explained when we were discussing clause 5, is really something of great concern. I think throughout this debate we have seen that the minister is struggling to understand what the issue of waste avoidance is about. To put it in medical terms, given that is the minister's background, we are dealing with the fact that the Waste Avoidance and Resource Recovery Act set up a fund for a Waste Authority to deliver preventative measures—just as we put a lot of money in medicine towards preventative measures so that we do not have problems later—so that we would not have a huge amount of waste material that must go to landfill or be recycled. We will not have to make that choice if we can take preventative action so that right from the beginning we have the products and the whole supply chain designed so that we do not create waste in the first place. However, we are seeing some sort of entrenchment of the idea that we must have waste, which will then attract a levy that will enable the funding of our environmental agency, as has been proposed and debated. That is simply the wrong approach altogether.

Getting to the specific point of clause 6, which deals with the penalties that will arise if the levies are not paid, we heard earlier that in fact to date there has not been a case in which an entity has been charged with failing to pay its levy. However, it remains to be asked: where should the money from the penalties go? Given that the money is raised in connection with failure to pay that levy, I think it is only reasonable that that money go not to the department for general dispersal throughout the entire environmental agency, but specifically to the waste avoidance and resource recovery account.

Therefore, I would really appreciate it if the minister would address two points. Firstly, can the minister clarify that he now understands that the legislation's intention is all about providing preventative measures and not about taking action after waste has been created so that we have to recycle it or send it to landfill? Secondly, can the minister explain why, in the event that someone does not pay the existing levy, that money should not go into the WARR account? Why should it be somehow separated into the department's account?

**Dr G.G. JACOBS:** I thank the member for Gosnells for using an analogy, if we like, that I could understand. However, I reiterate that, yes, the levy is a pre-emptive measure and increasing the levy will very much strengthen that measure. I believe, and I said last night, that what we are doing will create a situation whereby we promote in a pre-emptive way a change in the culture of just sticking waste in the bin and putting it in a big hole in landfill.

As to the other matter about why the penalties should go into the account that we have created, we have just been through the issue of creating an account for moneys to come in from the levy. As I said to the member for Balcatta, I would have thought that it was more than reasonable that moneys for non-payment of fees and whatever would go into that account as well. That will contribute to the forecast revenue, and a recommended 25 per cent of that revenue will go to the waste account. It probably touches on some of the things that the member for Balcatta was saying—and this is one of the member for Gosnells' points too—that the levy is imposed by the Waste Avoidance and Resource Recovery Levy Act. The levy act does not specify the purposes for which the levy can be used; that is specified only for funds in the WARR account. The act does specify that the WARR account moneys can be used only for the purposes of the WARR act, which is about waste management. Clause 7 of the bill will deal with the allocation of the funds in the account for those purposes.

**Dr J.M. WOOLLARD:** I was very pleased to hear that the current levy has not attracted any penalties, so hopefully there will be no changes to that with the increased levy. I know it has been done because of the changes made to clause 7, but I wonder whether it would be possible for the minister to provide details of the expected revenue that will be collected from this levy over the forward estimates for the next four years, please.

**Dr G.G. JACOBS:** The best I can do is reiterate what I have said; that is, the forecasted moneys from the levy will be \$52 million.

**Dr J.M. Woollard:** Does the minister expect it to be the same for the next four years?

**Dr G.G. JACOBS:** Obviously there are some variables in that, but that is the expectation.

**Dr J.M. WOOLLARD:** I simply want to ascertain whether the minister anticipates that those amounts will go up or down.

**Dr G.G. JACOBS:** As I probably said before, the forecast revenue from this landfill levy is \$52 million. There might be some behavioural changes, if we like, or a cultural change—I refer to some of those things that we have talked to the member for Gosnells about, such as getting people to recycle more material and therefore decreasing the need for new materials in society, which is all good; that is what we are about and what we need to do. We have heard about how badly we do that; about how low recycling rates are and about how high landfill use is in the jurisdiction of Western Australia. However, as for me trying to predict what those levels will be, it depends on how quickly those changes are adopted by people. We have created a situation that will allow for increased recycling rates and decreased landfill use, so it is possible that the total revenue over time will go down as landfill is used less and recycling is used more.

**Dr J.M. WOOLLARD:** Is the minister saying that the forward estimates have not factored in a decrease in this levy and that over the next four years it will be \$52 million for each year?

**Dr G.G. JACOBS:** All I can do is refer the member to page 888 of the *Budget Statements* and under the heading “Economic Audit” she will find a subheading “Waste Management Landfill Levy”. It shows that an amount of \$39 million has been allocated in 2009-10; \$39 million in 2010-11; \$39 million in 2011-12; and \$39 million in 2012-13.

**Mr J.C. KOBELKE:** I will pursue what the minister was saying to try to gain an understanding about why they have flat-lined the revenue. The expectation that this minister has created in this debate is that by increasing the levy so substantially, less waste will go into landfill. Therefore, one would expect that there should be a reduction. Western Australia is an expanding state; therefore, more waste will be created. If the minister's argument for increasing the levy is that it will deter people from taking waste to landfill, he would have factored in a decline. What is the factor that has led the Department of Environment and Conservation, the Waste Authority or Treasury to allocate \$39 million each year across four years? It is totally contrary to the minister's argument that he is increasing the levy to reduce the amount that went to waste.

Are there two factors working here? Am I to accept that the minister is right in that the increase in the levy per tonne, or per cubic metre, will lead to a reduction, but there is another factor working that will cause the levy to go up, which is that the government has fundamentally changed what the levy is about and the levy is now predominantly about funding the Department of Environment and Conservation? If so, the bureaucracy will take over and drive it to get more money. In that case, more waste would be to its benefit. We have counter forces working here; firstly, the increased costs that the minister argued will reduce the amount of waste and, secondly, an agency with an incentive to create more waste because it will get more money for its important programs. What will be the balance? Is there another explanation for why the minister has suggested that there will not be a reduction in the money collected from the levy as we move into the out years?

**Dr G.G. JACOBS:** The member for Balcatta would understand that there are variables here. I often say in my capacity as Minister for Water—and the member would be able to identify with this—that there is not an exact science for that area. We have some science in this area, but the member is asking us to predict into the future.

There are variables; for example, increased economic activity, increased building rates, decreased building rates, how much waste there will be, depending on economic activity and how development occurs. There are all sorts of variables to consider in how the culture change takes place—will people adopt it or will new industries adopt the attitude that they will take the waste to landfill because they do not have the time to sort the material and it is not the commercial driver they thought it would be? I cannot give the member an answer. We have not factored in a decrease. If there is a decrease, the necessary adjustments would have to be made by Treasury, both in the midyear and annual reviews. We cannot say that it will be \$52 million this year, but it will be this amount next year, that amount the following year and \$40 million by 2012-13. There are variables to be factored in and it is not a perfect science. We are setting up a new system and we have to consider many factors, including how many people will adopt the landfill solution and how much economic activity there will be in the construction industry.

**Mr C.J. TALLENTIRE:** The time has come for the minister to reveal the economic analysis that has been used to establish what the price elasticity of waste to landfill actually is. The proposal is that the levy go to \$28 per tonne for inert landfill. Yesterday, in debating another clause, I pointed out to the minister the best expert advice available; and it comes from an inquiry by the Legislative Council. Councillor Doug Thompson, who is the chair of the Forum of Regional Councils, pointed out that at current prices it would be easier for us to just stick it into landfill. I acknowledge that that is based on the current rate, but he said in his evidence that even if we were to put the price up to \$120 per tonne for inert landfill, there would not be the actual price elasticity and we would not have reached the point where it becomes viable for people to look at alternative measures other than landfill for the treatment of their inert waste. The time has come for the minister to clarify that.

On another point, I have yet to hear a good answer as to why we are proud that the number of people who have had to pay penalties for not paying the levy is low. While it would be very nice to assume that nobody has fallen into that category, because nobody has offended, it could also be that there has not been any investigation of people who have been defaulting. We need some information that demonstrates that the current arrangement gives, firstly, the relevant agency the capacity to pursue those who are defaulters and, secondly, an assurance that into the future the agency would have the capacity to pursue those who neglect to pay the actual rate.

**Dr G.G. JACOBS:** For the information of the member for Gosnells, I am advised that there is a compliance program for people who default. We have an existing levy system and we have a compliance program for that. In suggesting that we will not follow these up, or cannot follow these up, it is important to recognise that the levy is paid by landfill operators and they pass on the cost to users. The levy is the only part of the disposal fee. Currently, there is little incentive for the operators not to pay.

It is important that we come back to this clause, which refers essentially to the amount paid by way of that penalty going into an operating account that will be created by DEC under clause 5 of this bill. The member referred to evidence given by Mr Don —

**Mr C.J. Tallentire:** It was Councillor Doug Thompson, the chair of the Forum of Regional Councils.

**Dr G.G. JACOBS:** He referred to the lack of incentive to promote recycling waste instead of sticking it into landfill. I think he is talking about putrescible waste and not construction and demolition waste. The New South Wales experience is that waste to landfill has significantly decreased from something like 65 per cent to about 20 per cent. The levy has created an environment in which there is a bit of carrot and a bit of stick. The carrot is providing incentives for people not to send waste to landfill and to create a recycling scenario; the stick takes the form of penalties for non-payment. This is all about, in a moderate way, trying to create an environment in which, as the member said in his second reading contribution, we need to do better.

Debate interrupted, pursuant to standing orders.

[Continued on page 6647.]