

WASTE AVOIDANCE AND RESOURCE RECOVERY AMENDMENT BILL 2009

Committee

Resumed from 27 November. The Deputy Chairman of Committees (Hon Jon Ford) in the chair; Hon Donna Faragher (Minister for Environment) in charge of the bill.

Clause 5: Section 73 amended —

Progress was reported after Hon Robin Chapple had moved the following amendment —

Page 3, after line 20 — To insert —

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

Hon SALLY TALBOT: By the time we finished sitting late on Friday night, I had just about concluded my remarks indicating why Labor will support the amendment moved by Hon Robin Chapple. It has been very clear to us in the course of consulting all major stakeholders to understand some of the problems, and the nature of those problems, caused by this amendment bill that were the government to press ahead with its plan to set up a general account within the Department of Environment and Conservation into which it will deposit 75 per cent of the money from the waste account, we would need to put some measure in place to try to quarantine extra funds specifically for resource recovery facilities and waste management. I think that I have pretty much made the point that Hon Robin Chapple’s amendment, which I know from my discussions with the Forum of Regional Councils is pretty much in line with the forum’s thinking, covers the three major points that Labor looks for in an arrangement of this kind. The proposed amendment covers a whole or partial exemption for people genuinely engaged in resource recovery activities. That is crucially important. The regional councils managing these resource recovery facilities at the moment estimate that the measures this government is putting in place will cost councils approximately \$3.4 million extra a year. Why, Mr Deputy Chair, should that money go into the

government's consolidated revenue when it is clearly desperately needed to fund more of these resource recovery facilities?

The second point the amendment covers is the exercise of ministerial discretion; that is, the minister will undertake her or his own assessment of whether a full or partial exemption will be granted. I have an amendment standing in my name on the supplementary notice paper that canvasses some alternative options, including some options by which a provision of this kind could be extended to the private sector and not just local government enterprises. But I think that Hon Robin Chapple's amendment covers the situation very adequately for the regional local groupings of councils.

The third thing is that because the minister has discretion, we can be absolutely sure that any exemption granted will go not to backyard operators, if members like, but only to accredited facilities; that is, facilities with runs on the board as far as putting in place really effective and contemporary arrangements for resource recovery in line with world's best practice.

I mention one final matter. FORC proposes that the money saved by way of this exemption not go back to the regional councils, but instead be deposited into an account where it will be held specifically for research and development and capital works associated with the building of new facilities. As we have noted during the course of this debate, these facilities are very, very expensive. Members know that there has been some talk about the fact that the Waste Authority is currently sitting on a bank balance of around \$15 million or \$16 million; everybody says that is a lot of money for a government enterprise to sit on. These RRFs cost in the region of \$100 million to build. By putting the money raised by way of a full or partial exemption into a special account held for those particular purposes, this amendment is a good step back towards the fundamental principles that were enshrined in the original Waste Avoidance and Resource Recovery Act before the government started to butcher it. On that basis, I am happy to indicate that the opposition will support the amendment moved by Hon Robin Chapple.

Hon ROBIN CHAPPLE: I would like to understand from the minister whether she has met with the Forum of Regional Councils; and, if so, when, and what was her response to the forum on this proposed amendment and to FORC's position, very well articulated in the letters that they have sent out to all members of Parliament. If the minister has met with FORC representatives, what was her response to them; and, if she has not met with them, would it not be a good idea to do so?

Hon DONNA FARAGHER: I have met with a couple of representatives of FORC, and this suggestion was discussed along with a couple of other issues. The amendment that the member has moved is very similar to what they were considering at that point in time. I recall having on Friday night gone through the reasons why the government will oppose this amendment. I reiterate what I said on Friday. I appreciate and understand where FORC is coming from, but at the same time there are some clear problems with the wording of the amendment. It mentions resource recovery facilities, materials recovery facilities and residual waste, which are not defined in the act. Arguably, this could lead to any landfill operations at some point in time being eligible for an exemption. This matter of an exemption has, as I understand, been raised over many years—long before I became the minister—by FORC and others. I go back to the point that I made on Friday night: every time we grant an exemption, we will not be achieving what we seek to achieve. We want to increase the incentives, at every opportunity, for people to recycle, and every time an exemption is provided that is not being achieved. As I have said, this has been considered previously, most recently by the Waste Authority and the previous Waste Management Board, and they did not support it. It is a long-standing issue, and they are essentially the reasons the government will be opposing the amendment.

Hon KATE DOUST: I thank the minister for going back over her answer again, but I want to clarify a couple of things. Is the minister's key reason for objecting to this amendment—which I think is a very sensible amendment for dealing with waste issues—simply the fact that those definitions are not in the act or the bill? If that is the objection, are we in the position of being able to move amendments that would provide for definitions to be applied in this legislation to cover those particular facilities? These facilities are appearing in different parts of the state, and they will become a key element of the way in which we deal with waste in the community. As Hon Sally Talbot says, they are a very expensive solution. I know that the South Metropolitan Regional Council facility cost about \$90 million initially to set up, and there are ongoing costs involved in it. There is also the development of new technology, for which we only have to look at the new Mindarie or Nowergup site. If the minister's primary objection is simply that there are no definitions to cover these types of facilities, can we perhaps address that and place definitions into the legislation, or is the minister's primary objection purely the fact that she does not want to apply an exemption to these facilities?

Hon DONNA FARAGHER: There are a couple of reasons. Clearly, there are no definitions for "resource recovery facilities" or "materials recovery facilities". That is one issue, but one of the key definitions that is not

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there is the term “residual waste”. The issue with that is, obviously, what is residual waste? It is a very broad term, so it can encompass a lot more waste than we would like. I appreciate where FORC is coming from but the problem is that this amendment creates a loophole that, because of that broad definition, could encompass any landfill operation. We want to reduce the amount of waste going into landfill. With a broad statement such as “residual waste” the potential is that people will utilise such vague terms at any opportunity to reduce the amount of money they have to spend on the landfill levy, from a commercial operation point of view and the like. We want to discourage as much as possible waste going into landfill. The lack of definitions could cause a loophole that neither the member nor I would like to see.

Hon KATE DOUST: I thank the minister for that response, and I appreciate that sometimes definitions can be too broad. I know that in my past life as an occupational health and safety trainer, we used to talk about dust being a hazard in the workplace, and how broad the issue of dust was. I appreciate that in relation to the definition of “residual waste”. I am more interested now, however, in determining why, given the opportunity to amend this legislation, and given the rise of these types of facilities and the role that regional councils and FORC play in the management and ongoing development of these types of facilities, the government has not sought—putting aside residual waste, which is a separate issue—to provide some form of definition within the legislation that would cover those types of facilities.

Hon DONNA FARAGHER: I suppose I just come back to the purpose of the levy, which is, in part, to create incentives for people to recycle. If we have an exemption, that capacity is potentially removed. It is better to have no exemptions. We still want to have people take every opportunity to look at ways that they can reduce the amount of waste going to landfill. In terms of research and the like, there are opportunities for councils and others to participate in the SWIS—that is, Strategic Waste Initiatives Scheme—grants through which they can apply for funding, and through other partnerships with the Waste Authority. I go back to the fact that this matter has clearly been raised on a number of occasions long before I was the minister, and the advice that continued to come back from the previous Waste Management Board, the Waste Authority and the department on that matter is that exemptions do not discourage waste going to landfill. At the end of the day, as I have said, we want to increase the amount of recycling as much as possible.

Hon KATE DOUST: I appreciate the response the minister has given me but it did not actually answer the question I asked. I wanted to know why the government had not given consideration to applying a definition in the legislation for resource recovery centres or materials recovery facilities. It was a very simple question and I would appreciate a response to that simple question.

Hon DONNA FARAGHER: Sorry for the pause; I was getting some advice. The issue is essentially that we have a broad range of the types of facilities that could encompass a materials recovery facility or a resource recovery facility. If we defined it, as the member will appreciate, over time these facilities will become more technologically advanced and all those sorts of things. If the definition is too narrow, potentially we would have facilities in 10 years’ time or five years’ time that are not defined in the same way that they would be defined if we were to define them now, and we would not obviously want to continually change definitions in the legislation to keep up with changes in innovation. That is essentially the reason that it will not be in the act and that it has not been in the act previously.

Hon KATE DOUST: I understand what the minister is saying, but these facilities will become more and more important in how we deal with waste and we will find more and more of them spread around not only the metropolitan region, but also I know there is keen interest in putting some of them in rural areas as well. Therefore, I will ask a couple of questions. I do not have access to the information at the moment, but these places have been around for quite some time in New South Wales and Queensland in particular so I assume that there is some type of broad general definition that picks up on these types of facilities. I know, and would hope, that over time these types of facilities will advance in their use of technology in how they deal with the division of waste, the breakdown of waste and also the output, in fact, of the waste material once it has been processed. All those things will change over time because technology is already changing all the time. All I am saying is that we can have a broad definition to cover these facilities; otherwise the government will face the problem that all sorts of other arrangements will be put into place. I think that if we go back over any types of legislation that we deal with in this place, quite often definitions are intentionally broad so that they can encompass changes over time. I do not think we are asking for a tight definition or a definition that gets down to the nuts and bolts details; we are asking for a broad definition of what these types of facilities could be in this state. My first question is: what definitions exist in Queensland and New South Wales to cover these types of facilities? I know that particularly in New South Wales there are waste treatment facility plants, if we like, set up to manage waste in a variety of ways. Therefore, I imagine that there is simply a broad definition in the New South Wales legislation, regardless of the methodology employed to treat waste in a particular plant. That is the first question—does a definition exist in other places? What was my second question? I have forgotten now!

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Hon Ljiljanna Ravlich: I'm not a real mind reader.

Hon KATE DOUST: We will come back to that. We will see whether the minister can answer the first question.

Hon DONNA FARAGHER: I am sorry; I actually do not have, obviously, a copy of the New South Wales act in front of me and I am not aware of whether it has that definition. The current Western Australian act defines "waste facility", but, obviously, that is not the issue we are dealing with now. I am sorry; I honestly do not have a copy of the New South Wales act.

Hon KATE DOUST: I do not have a copy of the legislation; I might have to borrow it from one of my colleagues. However, if "waste facility" is already defined—the minister might want to look at that wording because I do not have it in front of me—is it not broad enough to pick up what is occurring in a resource recovery facility or a materials recovery facility? Is that not a broad enough sort of definition to deal with the nature of waste management in those types of places without specifically putting those words in?

Hon DONNA FARAGHER: Therein lies the problem with the issue that we are talking about now: the definition picks up everything. It picks up every type of landfill or other facility. I appreciate that members opposite are trying to be quite specific in terms of the facilities that we are talking about, but by virtue of the way that the amendment is written and the notion of an exemption, we would potentially create loopholes that would enable any landfill operator and others to access an exemption, which is not what we want to achieve in this regard. Therefore, the definition is simply too broad.

Hon ROBIN CHAPPLE: In relation to this matter, I am more than happy to put this clause aside for a few minutes to draft terms of some specificity in relation to those matters that the minister has been talking about. Quite clearly, the minister is concerned that the definition is too broad at the moment. We are more than happy to fix that, so I would seek to move this clause to one side and come back with some amendments to address the minister's concerns.

Hon DONNA FARAGHER: I appreciate what Hon Robin Chapple is trying to achieve, but the government will still oppose the amendment. The essential issue comes back to not only the definitions, but also the broader issue whereby we are dealing with matters surrounding residual waste and what the term "residual waste" actually means. The fact is that with changes in technology, hopefully, the amount of residual waste will reduce, but what is residual waste? Herein lies the problem that we face with an amendment or the inclusion of such words in the act. I appreciate the position that members opposite are coming from and, again, it is something that has been raised for many years, but this is an issue about not only definitions of the facilities themselves, but also what actually residual waste is.

Hon ROBIN CHAPPLE: Our amendment states —

- (a) specified Resource Recovery Facility or Materials Recovery Facility; or
- (b) specified class ...

So in fact, at one level, there is no need to amend this because it is completely up to the minister to determine by regulation what those classes are. The minister can make any exemptions she sees fit to make.

Hon DONNA FARAGHER: I have indicated that there are issues with the lack of definition of terms, but again, that is not the primary objection. At the end of the day, the levy acts as an incentive for people to recycle. As I have said, every time an exemption is created, it is potentially contrary to what members opposite and I are seeking to achieve. I understand that, in other states, an exemption such as the one Hon Robin Chapple is referring to is not currently applied. That is the advice I have.

Hon SALLY TALBOT: In light of the minister's response to Hon Robin Chapple, I rise to restate the plea to have this amendment set aside for as long as it takes for us to talk with the minister about how it might be defined in a way that addresses the concerns she has raised. I felt quite heartened, as I imagine did Hon Robin Chapple, when I heard the minister's initial response to our comments on this. The first thing I wrote down was: can we reword the amendment to take some of those concerns into account? I am not sure that we need to go beyond the material that has been provided by FORC. The minister has indicated that she has met with representatives of FORC, so presumably she is in possession of exactly the same material I am in possession of. FORC provides the following explanation for what the exemption would apply to —

The purpose of Resource Recovery Facilities (RRFs) is to extract the organics from the Municipal Solid Waste (MSW) stream, and create an organic soil supplement to improve the quality of Western Australian soils (which are deficient in organics). The non-organic material is recovered as a residual waste which is sent to landfill.

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That seems to me to move us well beyond the point the minister is making—that the definition of non-organic material is wide open. It seems to me that it would not be beyond our wit to come up with a definition.

Hon Donna Faragher: What would you classify as residual waste?

Hon SALLY TALBOT: I would classify it as the non-organic material recovered as residual waste from resource recovery facilities the purpose of which is to extract the organics from the MSW stream. The amendment quarantines it beautifully, surely. It simply provides for a decision to be made about what an RRF is doing. Is it creating an organic soil supplement to improve the quality of Western Australian soils? Is non-organic material covered as part of that process? Is that material sent to landfill? Then it is a matter of ticking all the boxes to determine whether full or partial exemption applies.

I think also that there might be a window of opportunity to include an amendment that will address FORC's concerns. I would not be wasting my breath at this stage if the minister had not already clearly indicated that she thinks FORC's concerns are well founded and wants to take them seriously. I draw her attention again to Hon Robin Chapple's new clause 5, which states in part —

... the Minister may grant a full or partial exemption to the levy imposed under this section for residual waste from either a

- (a) specified Resource Recovery Facility or Materials Recovery Facility; or
- (b) specified class of Resource Recovery Facility or Materials Recovery Facility,

It seems to me that we have given ourselves not only belts and braces, but suspenders, ropes, pulleys and cranes—all the safety devices that we could ever want—to make sure that this does not provide a loophole. Of course loopholes are something we want to avoid creating as legislators. Of course they lead to paperwork and blind alleys. Nobody here would say that a loophole is a good thing. However, with this amendment, and given the points the minister has made, the minister would have direct responsibility for closing the loophole when the application for the full or partial exemption was not one that met the guidelines set out in this amendment. I think this is one of those perhaps rare cases when the loophole argument is not one that in any way detracts from the validity of the amendment and from the soundness of the scheme that would be put in place by this amendment. The minister has referred a couple of times during this debate to the fact that, if we grant exemptions, we then remove sticks and carrots. The whole point is that the levy is set up to provide an incentive to make people think twice about taking stuff to landfill. I can understand exactly why we want to make sure we keep sticks and carrots in place.

At another point in this debate I am sure we will have a chance to pursue the questions I raised at an earlier stage about the price elasticity. Where is the evidence that the minister is working on about price elasticity? Where are the business plans that show this measure will work by providing sticks and carrots? Where is the explanation that the revenue in the out years will stay the same as that in 2009-10, despite the narrative in the budget that consumer behaviour will be changed as a result of the increase? We can come back to that. However, that is clearly not what this amendment seeks to set up. We are not saying that anyone carting away non-organic material from, let us say, the SMRC in Canning Vale should get to the landfill tip, wave the green card and get in for nothing. We are saying that the money would still be paid by the SMRC, but into an account that would continue the basic philosophical point about the waste account as it is set up now. It would put back in place an essential part of that hypothecation, which every single contributor to this discussion, apart from the government, has endorsed as a good thing.

I repeat Hon Robin Chapple's plea to the minister to set this amendment aside and give us some time, if she likes, to work with her and her advisers to see whether we can come out of this with a form of wording that will give probably the best thing we have going for us in Western Australia at the moment—a chance to give a decent hearing to what the minister herself has said is a very good case.

Hon DONNA FARAGHER: I will not reiterate all I have said before, but on the definitions Hon Sally Talbot referred to in the documentation I make the point that, potentially, such things as glass, metal and plastics that are not screened out of the waste she particularly referred to could be captured by an exemption. We need incentives to improve technology to separate out the waste. If exemptions are in place, potentially, that incentive will go. If they do not have that primary screening and as a result glass, metal and other materials are not taken out of the very waste that the member has referred to, we will not achieve what we are seeking to achieve. I reiterate—I think I have gone through this a bit now—that the government will not support this amendment.

Hon SALLY TALBOT: Perhaps I should have quoted the document a little further. Before I do that, I make the point that surely it is not beyond our wit to come up with these definitions. The minister asked me by interjection what I would put forward. Why could the government not include, exactly as the minister has just expressed it,

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that further clause; that is, unless a resource recovery facility has programs in place to sort those materials that the minister spoke about—glass, metal and plastic—from the waste stream, it will not be eligible to apply for an exemption?

I have just read one definition from the material provided to us by the Forum of Regional Councils, which states —

The purpose of Resource Recovery Facilities (RRFs) is to extract the organics from the Municipal Solid Waste (MSW) stream, and create an organic soil supplement to improve the quality of Western Australian soils (which are deficient in organics). The non-organic material is recovered as a residual waste which is sent to landfill.

The next sentence states —

The purpose of Material Recovery Facilities ... is to sort material from the household recyclable collections ready for marketing.

Other honourable members will be more familiar with specific facilities around the state, but I must confess that I have been to only about half of them thus far. Certainly, none of the facilities that I have seen is set up in a way that allows glass, plastic and metal to go to landfill. I think these facilities would consider that they were being extraordinarily derelict in their duties were that to be the case. In fact, they put an enormous amount of effort into doing just that. If the minister or members of the government are familiar with the way these facilities operate—certainly the one that I am most familiar with is the SMRC—they will know that there is an enormous 50-metre barrel that rotates with all this stuff in it. If glass, metal or plastic gets into that drum—which, as I say, is as long as this chamber, if not longer, and maybe half as high and the whole thing rotates—it breaks it; it gums it up. There is hundreds of millions of dollars worth of investment in these facilities. The operator of the SMRC facility, who looks after it as though it were his favourite child, told me that he tells the people on duty who have to rake through the material when it comes out of the dump trucks—the dump trucks drive in and tip this muck all over the floor, and it is then hand raked to take out the stuff that would break the tumbler were it to go in—that if the tumbler breaks down because it has this waste material in it, they have to crawl in and take it out by hand. That would be an extremely unpleasant experience, if my sense of smell is any indication of the material that is in there. It is just extraordinary for the minister to suggest, even by implication, that any of these resource recovery facilities are operating without programs in place to recover the glass, plastic and metal. That is my case for the minister to please try to negotiate something behind the Chair.

Hon ROBIN CHAPPLE: Taking on board the comments of the minister, I propose that I move a new amendment to clause 5. The way I seek to do that is to replace the word “specified” in all instances in my current amendment with the word “prescribed”. That would give the minister the ability to deal with the matter in any way she feels fit.

The DEPUTY CHAIRMAN (Hon Jon Ford): Is the member seeking to alter his amendment?

Hon ROBIN CHAPPLE: I am more than happy to withdraw the current amendment and move a new amendment that inserts the word “prescribed” instead of “specified”.

The DEPUTY CHAIRMAN: The member can just seek the leave of the chamber to alter his amendment. Is that what the member wants to do?

Hon ROBIN CHAPPLE: Yes.

Amendment, by leave, altered.

Hon ROBIN CHAPPLE: By way of explanation, this amendment means that the minister would have the ability to prescribe the matter by way of regulation at any stage.

Hon LJILJANNA RAVLICH: I have had a quick look at the amendment and I think that, in essence, it is a good amendment. I know that we will support this amendment, but I will make a couple of points about the bill. Certainly, the minister had difficulty with Hon Robin Chapple’s previous amendment, and I think that the minister is more than likely going to have some difficulty with this amendment. The reason I say that is that this bill is really about everything other than what it purports to be about—that is, waste avoidance and resource recovery. At the heart of the amendment that Hon Robin Chapple has moved is the question of resource recovery facilities and/or material recovery facilities and the minister having the power to grant a full or partial exemption to the levy imposed under section 73 of the act. This legislation is really about generating an enormous amount of revenue, and it is about setting up a separate account in which to put at least 75 per cent of that revenue for the purpose of operating a government agency, with only 25 per cent of that revenue being reserved for waste avoidance and resource recovery initiatives.

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The WARR account was set up in July 2008. It currently has \$15.9 million in it. Quite clearly, given the financial position of this government, there is a need to generate additional revenues. With this legislation the government will have a mechanism by which to generate an increased amount of revenue. I think that the amendment moved by Hon Robin Chapple is a very good amendment. If the government were really committed to waste management, waste avoidance and resource recovery, the minister would have jumped at this amendment. I ask the minister: given her stated commitment to resource recovery and waste avoidance, has any costing analysis been done of the opportunity cost of granting a full or partial exemption to the levy—that is, the revenues of the prescribed resource recovery or materials recovery facilities that would be forgone by the state? In other words, has any analysis been done of what it would cost the state to provide either a full or a partial exemption; and, if not, why not?

Hon DONNA FARAGHER: As I have indicated on a number of occasions, both the Waste Authority and the previous Waste Management Board have looked at this specific issue. As I understand it, they do not support an exemption as has been suggested. The central concern is that an exemption will potentially remove the incentive to do better with respect to recycling. That, essentially, is why the government will not be supporting either the original amendment or the amendment as altered.

Hon LJILJANNA RAVLICH: Apart from a global statement from the minister, what I really want to know is: how much revenue would be forgone if a partial exemption were granted, and how much revenue would be forgone if a full exemption were granted? I assume the department has done some modelling, because the minister indicated that that is the case. Can the minister provide us with some global figures in relation to the opportunity cost to the state if a full or a partial exemption were granted?

Hon DONNA FARAGHER: We do not have those figures. However, as I have said, and I continue to say, an exemption will potentially remove the incentive to do better. That is the potential consequence of this amendment. For that reason, the government will not be supporting the amendment.

Hon LJILJANNA RAVLICH: My curiosity grows by the minute. We have heard the minister say that some modelling has been done.

Hon Donna Faragher: I do not have those figures.

Hon LJILJANNA RAVLICH: So no modelling has been done?

Hon Donna Faragher: As I have said, the Waste Authority and the former Waste Management Board have examined this very issue previously, and they have come back and said they do not support an exemption.

Hon LJILJANNA RAVLICH: Can the minister provide some written documentation in relation to the work that has been done by those bodies? Is it possible to provide that information?

Hon Donna Faragher: No. We would need to go back and have a look and find that, and obviously we are sitting here, so, no.

Hon LJILJANNA RAVLICH: With all due respect, the minister might think that this is of no relevance at all —

Hon Donna Faragher: I am not saying that at all.

Hon LJILJANNA RAVLICH: We are dealing with a very important piece of legislation. This legislation should be about resource recovery. However, the government is seeking in this legislation to set up a slush fund. The moneys that will be raised by this levy will be used not for the purpose for which they were intended, but for general purposes. We have a very comprehensive amendment before us that will give the minister the power to grant a full or partial exemption, under certain circumstances. I have asked a simple question. I would have thought that, rather than being arrogant about it, the minister would be willing to provide us with some information.

Hon Donna Faragher: I am not being arrogant about it.

Hon LJILJANNA RAVLICH: I have just asked the minister —

The DEPUTY CHAIRMAN (Hon Jon Ford): Order! This is getting into a question and answer session. I was tolerant at the start, but, for the benefit of Hansard and everybody else, if members ask a question, they need to sit down and give the minister the opportunity to respond. The minister can then choose to respond or not respond, and members can then get up and ask another question. We need to stick to that, because as soon as it gets into a dialogue, it is impossible.

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Hon LJILJANNA RAVLICH: Thank you, Mr Deputy Chairman. The simple question I am asking is: has any modelling been done on this matter? The minister has advised that this matter has been looked at. One would assume that if this matter has been looked at, some modelling would have been done of what would be the opportunity cost for a full exemption and what would be the opportunity cost for a partial exemption—that is, what would be the opportunity cost in revenue forgone across a wide range of scenarios. I have asked the minister to provide the information that has been collated in respect of this matter, and, rather than just shrugging her shoulders and saying it is not important, I am awaiting her response. This goes to the very heart of what we are dealing with today.

Hon SALLY TALBOT: I support the amendment moved by Hon Robin Chapple. As has been indicated by Hon Ljiljanna Ravlich, this amendment encompasses many of the concerns that the minister has expressed. I want to make a couple of other points as well. It seems to me that the Department of Environment and Conservation and the Minister for Environment in a sense have to wear two hats. There is obviously an important role within the department—this is something that the minister and I would agree on—for regulation. Obviously there is an arm of the department that acts as a regulator. The department plays a very important role—a bit like a traffic warden, or a cop on point duty—in keeping an eye open for breaches of regulations, for transgressions of rules, and obviously for overt law-breaking activity. That role is terribly important. During my time as a parliamentary secretary, I put in some work—not as much as my predecessor, Hon Louise Pratt—into the problem of the black cockatoos in the hills that were eating the fruit in the orchards. In that case, the regulators in DEC bent over backwards to try to get the right outcome. On that occasion, the regulatory arm of DEC functioned pretty well. But surely there is another role for the people who work in the area of environment and conservation. I include the minister in that. That role is to set policy agendas, and to collect good ideas and be receptive to creativity and innovation within the sector. I am not talking about being receptive in an abstract way and just ticking off good ideas. I am talking about doing an evaluation of those ideas. This is the uniqueness of bodies like the Conservation Council of WA and the WWF, and also of my great environment policy committee within the Australian Labor Party. We all know what good ideas are. However, the unique capacity that falls only to the minister and the senior people in DEC is to facilitate those good ideas. That is something that only those people can do, because only those people have not only the financial resources but also the administrative and technical resources that they can call upon to put those good ideas into effect.

It is of some concern to me, and I am sure to members not just on this side of the house but perhaps also on the back bench in government, that the minister is saying today—I am paraphrasing—“This is probably a good idea. I know these people need help. I know that what you are suggesting arises from sound grounds for concern. But I am not going to do anything about it.” We are saying to the minister, “Why not try this?” or “Why not try that?”, and all the minister will say is, “No; I am not going to do anything about it.” The minister has closed her mind to what is happening. We cannot come into this place with a closed mind. We have got lots of time today to talk about these things. That luxury is seldom afforded to an opposition. We have been afforded that chance today. We want to take advantage of it to come up with a better bill. We want to fix some of the problems that the minister has created. We are offering to do that, I think in a good spirit of cooperation. I again add my comments to those of others on this side of the house, pleading with the minister to please put this amendment aside. We will do it over lunchtime, if she likes, to get this right, if we have not finished by then; which, of course, we may well have done.

The second point I make relates to one of the things that impresses me. I have just told members what I think of the two hats that the Department of Environment and Conservation wears and the Minister for Environment wears, in the sense that they are not only the regulators but also the innovators. We all know that when we are dealing with constituents and stakeholder groups it gets very difficult for us as parliamentarians when we have a stakeholder or an individual who is stuck in a way of thinking. That is the case whether we are talking about an individual in the community who has some intractable family problem that he or she wants us to solve, or it is big business asking us whether we can help it facilitate something. I would name as one of the hardest parts of my job trying to persuade people, whose arguments have dug in and who have got themselves into an intractable situation, to loosen up a bit, move along and listen to what we are advising them, and help their case that way.

One of the things that impresses me about the Forum of Regional Councils is that it has never been intractable on this. I checked this over the weekend to make sure that I had not misremembered it. The first lot of documentation FORC provided me asked for an exemption. It was only some weeks, or even maybe a couple of months later, that FORC went back, revisited its position and came back to us and said that rather than an exemption it wanted to explore the idea of setting up the special account. That is Hon Robin Chapple’s amendment, even as he has amended it now, to try to take into account the minister’s concerns. Proposed subsection (7) of the amendment specifies that where a full or partial exemption was granted —

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- (a) an operator of a waste facility the subject of the exemption pays an amount, equal to the levy that would otherwise have been payable on the exempted residual waste, into an account specifically created for that purpose by that operator;
- (b) an account referred to in paragraph (a) must be named “Landfill Levy Exemption Waste Research and Infrastructure Investment Account”;
- (c) an operator of a waste facility the subject of the exemption must only spend the money in the account referred to in paragraph (a) on research and infrastructure designed to reduce the amount of residual waste sent to landfill from that particular facility.

Hon Robin Chapple, Hon Ljiljanna Ravlich, Hon Kate Doust and I—all of us on this side of the house who have contributed to this debate—have said to the minister that if she thinks that is even halfway reasonable, can we talk about it. It may be that the minister wants some Financial Management Act provisions in the bill, or some reference to particular parts of the Waste Avoidance and Resource Recovery Act or the Environmental Protection Act, just to make it absolutely watertight if she does not consider that it is watertight already. I put it to the minister, through you, Mr Deputy Chairman, that although I believe she is absolutely sound in her belief that all the experts in this field whom she has cared to consult and who have said that they are uneasy, if not categorically ruling out an exemption or partial exemption, have not ruled out an arrangement such as this, whereby there would be an exemption or partial exemption in place, but the money would not go back to the operators of a facility for anything other than increasing the amount of residual waste that was reprocessed or, to put it the other way, decreasing the amount of residual waste going to landfill.

I would be, frankly, absolutely astonished if any of the experts in the field said that this was not the proper way to go. I will tell members why I say that. It is because if that were the case, then we, when in government, would have heard precisely those arguments when we brought the bill in and set up the waste account. This is hypothecation by another name. If there was unease about this provision, for goodness sake, would we not have heard about it over the past six months since the budget was brought down? Of course, we would. I cannot prove that conclusively, but it beggars belief that stakeholders and experts could have serious reservations about the whole principle of hypothecation in relation to waste and recycling and not have brought it to the attention of at least one or two of us. I have certainly heard nothing. I believe that other honourable members on this side of the house have heard nothing. When the minister says that she has already run this argument past her experts and her advisers, and they are still not supportive of it, can I have her absolute, unequivocal assurance that what she ran past them included this arrangement whereby the money would be essentially hypothecated for the purpose of reducing waste going to landfill?

Hon Donna Faragher: I have answered all these questions. I have been answering this question for an hour, and I do not know how much clearer I can be.

Hon ROBIN CHAPPLE: The minister has said that she has been answering the question. I think it is important that we need to understand that this amendment is supported by local government and, indeed, FORC. Is the minister saying that whatever happens, notwithstanding that we might be able to fix this amendment up, and we have already tried to do so, she will not accept any amendment to resolve the impasse that she has? It is not the case that the minister is saying that she does not agree with the amendment, but the minister is saying that she will not accept any amendment to this amendment that might resolve her concerns. Can I get that clearly defined?

Hon DONNA FARAGHER: The government will oppose this amendment. As I have said, it goes back to the principle that it potentially removes the incentive to do better with recycling. Hon Robin Chapple and I want to make sure that more and more waste does not end up in landfill but is recycled. As I have said on and off for the past hour, the amendment the member is seeking will potentially achieve the opposite. I, and I am sure the member, do not want that to occur. For those reasons the government will not be supporting the amendment.

Hon ROBIN CHAPPLE: The minister has indicated that there are parts of the amendment that need amending to alleviate her concerns with material not being recycled or, indeed, to stop waste going to landfill. I am saying that we are more than happy to facilitate a process whereby we can resolve the minister’s concerns. What I need to get from the minister is, notwithstanding the fact that we can facilitate a process that will alleviate the minister’s concerns, if we were able to do that, would the minister still oppose this or any future amendment that might resolve those issues? We need to know if the minister is going to say no irrespective of what we come up with that addresses the concerns of FORC and, indeed, local government. If that is the case, we really need to know that. Is the minister going to say no to any amendment that would facilitate a process that would enable this amendment to go forward, which would inhibit further waste going to landfill?

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Hon LJILJANNA RAVLICH: On a number of occasions the minister has said that by giving an exemption the incentive to some operators is removed. Why is the minister looking at this through a prism of removing incentive rather than a prism of reward for effort? In other words, a partial exemption could be calculated according to the proportion of material that is recycled; therefore, the levy could be reduced by the same amount. It is using a carrot rather than a stick. Why has the minister adopted such a negative attitude to this, given that it can be done in a very positive way?

Hon DONNA FARAGHER: I am not being negative; I am stating a fact. It potentially removes the incentive to do better. I have said that now at least five times. I have said previously that there are already opportunities for regional councils to access research and development grants through the strategic waste initiatives scheme. That is already available and we are not proposing to change that. I reiterate that the government will not support the amendment.

Hon LJILJANNA RAVLICH: Is the minister not supporting the amendment because she is not allowed to support it, because this is really about generating some \$50 million of revenue?

The DEPUTY CHAIRMAN (Hon Michael Mischin): I believe that question has already been posed and dealt with.

Hon LJILJANNA RAVLICH: I must have been out of the chamber.

Hon SALLY TALBOT: Mr Deputy Chairman, I ask for some clarification. Are we voting on only the replacement of the words “specified” with the words “prescribed” or on Hon Robin Chapple’s whole amendment?

The DEPUTY CHAIRMAN: We are dealing with the amendment in the name of Hon Robin Chapple—12/5 on the supplementary notice paper—but with the words “specified” substituted with the words “prescribed. The question is that the amendment, as altered, be inserted in clause 5 as it currently stands.

Hon SALLY TALBOT: Does that include proposed subsections (5), (6), (7) and (8) in Hon Robin Chapple’s amendment, including the word “specified” substituted with the word “prescribed”?

The DEPUTY CHAIRMAN: That is so. The question is that those words proposed to be inserted—namely, that amendment 12/5, as altered, be inserted.

Hon SALLY TALBOT: Before we finally consider clause 5, I will suggest one more way to amend it. Hon Robin Chapple has indicated that he is happy for me to move this amendment to his amendment.

I have listened very carefully to the different considerations that the minister has raised in expressing her objection to this amendment. I thought it was worth enumerating the points that she made and making specific reference to each of them in a further amendment to the amendment. I move —

Proposed subsection (5) — To insert after the words “class of facility” the words —

including providing the Minister with a precise and detailed definition of “non-organic material” and an account of programs planned or in place for the recovery of plastic, glass, paper and other recoverable waste in line with contemporary best practice.

This further amendment will do a couple of things. Earlier this morning the minister was talking specifically about problems caused by lack of a definition. We have made various suggestions about how that could be tightened. This amendment really puts it back into the minister’s court. For example, when the Minister for Environment is sitting at her desk considering an application for a full or partial exemption, it would be her call to say that it is not a precise or detailed definition. That would be an argument she would have with the applicant, which surely is a fairer way to do it. I do not want to be standing here speaking on behalf of, for example, the folk at the SMRC and telling the minister what I think would be an adequate definition of “non-organic waste”. The minister has indicated to the chamber that she is not happy to leave that matter undefined. It is defined to my satisfaction but not to hers, and I accept that.

Surely a much better way to do this would be to make it a discussion between the minister and the individual applicant. We all know about the power that ministers have. Ministers can simply say, “No”, and they do not have to give reasons other than to refer to the terms of the relevant act. It is quite within the minister’s authority to write to an applicant and say, “I am sorry, I do not think your definition of ‘non-organic material’ is precise or detailed enough for me to make the decision to grant an exemption.” It is more about ministerial discretion—that is, if anything, loaded in the minister’s favour by not specifying in the act what the definition will be.

More importantly, these words take into account the very point that the minister made; that is, that definitions might change over time. What I was endeavouring to point out in my contribution to the second reading debate

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on this bill was how far we have come since 1905 when the Health Act was the only legislation in place in this state that dealt with waste. Of course, definitions change.

My amendment would enable the minister to sit down on 1 January and make her decisions based on best practice. However, the same provision would be equally as valid and provide the minister with an equally rigorous yardstick of assessment in 10, 20 or 30 years. We will always talk about what constitutes a precise and detailed definition at the appropriate time.

Those same considerations apply to the second part of my amendment, which states —

... and an account of programs planned or in place for the recovery of plastic, glass, paper and other recoverable waste ...

The minister mentioned those three substances. It may be that at some time in the future we will need to expand on that. I am sure that already there are substances that would slip through that net that might be recoverable. One of the things I have learnt from talking to people in the Boomerang Alliance is that the tetra packs that parents put in lunches for kids are a terrible problem for recyclers, because they have layers of metal between the layers of cardboard. I understand that a technology is now available to recycle tetra packs, but it is very expensive. That technology was not available five years ago. I have been told that, five years ago, if the yellow-top bins that were picked up from the kerb had in them empty tetra packs, the entire contents of that bin went to landfill because the technology was not available to reprocess the tetra packs, but it is now available.

I referred earlier to flock that is recovered from old cars. People who collect the scrap metal from old vehicles to reprocess take out the flock; that is, the padding in the seats. Currently flock is not recyclable. Who can say that that will be the case in 12 months, let alone 10 years? My point is that in both sections of my proposed amendment, we have a mechanism for keeping the minister's decision making absolutely up to the mark in terms of being contemporaneous with world's best practice. That is a lever that would surely address the concerns that have been expressed by the minister in this place. I go so far as to say that it gives her a better mechanism for assessment than she possesses under the existing act.

Hon LJILJANNA RAVLICH: I commend my honourable colleague for this outstanding piece of drafting. I do not know whether the honourable member drafted this herself, but it is certainly another way of dealing with some of the complexities that the minister may be faced with without this amendment before her. It provides a framework for the minister to make a decision whether to grant a full or a partial exemption from the levy, depending on the priorities that are set in place for the different types of waste. I commend my colleague for coming up with this framework. I believe it is an excellent framework and it really will be of enormous assistance to the minister.

Given that the amendment before us is designed to provide the minister with greater clarity, and given that it provides a framework within which to operate, I am very, very interested to know on what basis the minister could now not accept what is a very comprehensive and enabling amendment. It will enable any minister to make the sorts of choices that need to be made in terms of granting a full or a partial exemption from the levy. I am very interested to hear the minister's response as to why she now could not accept this amendment before us.

Hon ROBIN CHAPPLE: The Greens (WA) will be supporting the amendment moved by Hon Sally Talbot to my original amendment. Although we sought to add the word "prescribed" in the original amendment, we have also added the word "prescribed" in relation to residual waste. This would give the minister a greater ability to be in charge of the whole process. I hope that the minister will accept this amendment and indeed the principal amendment to enable local government and the Forum of Regional Councils to move forward with waste avoidance and recycling in this state.

Hon KATE DOUST: I have not been here for the whole of the debate on this amendment proposed by Hon Sally Talbot, but I think it goes a long way towards addressing one of the two concerns the minister had about the original amendment moved by Hon Robin Chapple—that is, the lack of definition, and the exemption. If this type of definition were put in place, it would perhaps make the minister a leader by putting her ahead of the other states. Whilst the other states do not have specific legislation that deals with this, the minister in this state would actually be clarifying for all players in the waste industry exactly what sort of thing would be required.

I have trawled through a number of resource recovery facilities. Hon Wendy Duncan was with me when I went through the Cairns facility, the Jacks Gully facility and the Port Stephens facility. I forget the name of the one at Badgerys Creek. They were all different types of facilities. The work that is being done in those places to separate items is quite amazing. When one goes from the very beginning of the process when material is taken in by these facilities—which is outrageously noxious and quite revolting—to the end product, with all the other items screened out, the one thing that stands out is the capacity of these facilities to remove all of those items.

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If one of the minister's objections is purely about definition, and if she wants to do the right thing to assist this industry to move forward and to provide clarification in the legislation, she should support the addition of these words. The minister can say whatever she likes, but at the end of the day if the amendment is not accepted, the outcome will be that this bill will only be about providing an additional source of revenue to the state government to fill its financial black hole. That is one of the reasons she will not support moves to tidy up this bill. That is the honest answer, is it not? The minister can talk about sending money away, 25 per cent or whatever it is, but at the end of the day the minister wants to get this bill through so that the government can tap into some extra dollars. That is why she will not support improving this legislation.

Hon SALLY TALBOT: We are faced with the extraordinary situation at this moment that a quite substantial amendment has been moved and the minister is not even prepared to speak to it.

Hon Donna Faragher: I have spoken on it for the last hour and a half!

Hon SALLY TALBOT: Honourable members on both sides will recognise that the amendment I moved uses specific turns of phrase that the minister used in expressing her original objections to the amendment moved by Hon Robin Chapple. Three or four speakers on this side of the house have spoken in support of the amendment. The minister has not once got to her feet. I remind the minister, through you, Mr Deputy Chairman, that the people we are dealing with here are major stakeholders in the industry. Surely she will at least do them the courtesy of putting on record why she will not contemplate an amendment that, frankly, anybody in their right mind can see will not only improve the outcome for the recycling and waste management industry, but also increase the minister's capacity to have very close control over exactly how the money raised by the waste levy is spent and the way that the whole issue of the waste levy is managed in this state. I find it incomprehensible and insulting—not to members; we do not need to be insulted or otherwise—to the people who have put so much work into making their points of view to us and convincing us of the merits of their argument. One of the problems that the minister has, right across the board, is that she has stopped listening to people. We have concrete, cast-iron proof that the minister will not even do us the courtesy of putting her objections to this amendment on the record. I find that absolutely extraordinary.

Hon DONNA FARAGHER: I have been responding to this matter for the last hour and a half!

Hon Ljiljanna Ravlich: Not to this one.

Hon DONNA FARAGHER: I apologise with respect to Hon Sally Talbot's amendment on the amendment. The principle remains that it potentially removes—and I will say it again for about the seventh time —

Hon Norman Moore: You need to make it about 15 times to give Hon Ljiljanna Ravlich some time to understand it!

Hon DONNA FARAGHER: That is exactly right, Hon Norman Moore.

Hon Norman Moore: You wouldn't want to be accused of tedious repetition.

Hon DONNA FARAGHER: I do not want to be charged with indulging in tedious repetition.

The amendment potentially removes the incentive to do better, and it is for those reasons that the government will not support it. As I have said, I will ignore the patronising comments that Hon Sally Talbot continues to make.

Hon Sally Talbot: They are not patronising.

Hon DONNA FARAGHER: They are. The member knows that as well as I do.

Hon Sally Talbot interjected.

Hon DONNA FARAGHER: We should turn on a tape recorder and play it back to the member so that she can listen to how patronising she is.

The DEPUTY CHAIRMAN: Order, members!

Hon DONNA FARAGHER: That is the way the member carries on, which is fine because it is her problem, not mine. I have carefully gone through the reasons why the government will not support the amendment. As I have said, I recognise where it is coming from, but the argument comes back to the principle that we want less waste going to landfill, and exemptions such as this potentially do not achieve what we are seeking to achieve.

Amendment on the altered amendment put and a division taken, the Deputy Chairman (Hon Michael Mischin) casting his vote with the noes, with the following result —

Extract from *Hansard*
[COUNCIL - Tuesday, 1 December 2009]
p10155c-10170a

Hon Dr Sally Talbot; Hon Robin Chapple; Hon Donna Faragher; Hon Kate Doust; Hon Ljiljanna Ravlich;
Deputy Chairman

Ayes (12)

Hon Matt Benson-Lidholm
Hon Robin Chapple
Hon Kate Doust

Hon Sue Ellery
Hon Jock Ferguson
Hon Jon Ford

Hon Lynn MacLaren
Hon Ljiljanna Ravlich
Hon Sally Talbot

Hon Giz Watson
Hon Alison Xamon
Hon Ed Dermer (*Teller*)

Noes (17)

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

Hon Brian Ellis
Hon Donna Faragher
Hon Philip Gardiner
Hon Nick Goiran
Hon Alyssa Hayden

Hon Col Holt
Hon Robyn McSweeney
Hon Michael Mischin
Hon Norman Moore
Hon Helen Morton

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

Pairs

Hon Adele Farina
Hon Helen Bullock
Hon Ken Travers

Hon Peter Collier
Hon Nigel Hallett
Hon Max Trenorden

Amendment on the altered amendment thus negated.

Amendment, as altered, put and a division, the Deputy Chairman (Hon Michael Mischin) casting his vote with the noes, taken with the following result —

Ayes (12)

Hon Matt Benson-Lidholm
Hon Robin Chapple
Hon Kate Doust

Hon Sue Ellery
Hon Jock Ferguson
Hon Jon Ford

Hon Lynn MacLaren
Hon Ljiljanna Ravlich
Hon Sally Talbot

Hon Giz Watson
Hon Alison Xamon
Hon Ed Dermer (*Teller*)

Noes (17)

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

Hon Brian Ellis
Hon Donna Faragher
Hon Philip Gardiner
Hon Nick Goiran
Hon Alyssa Hayden

Hon Col Holt
Hon Robyn McSweeney
Hon Michael Mischin
Hon Norman Moore
Hon Helen Morton

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

Pairs

Hon Adele Farina
Hon Helen Bullock
Hon Ken Travers

Hon Peter Collier
Hon Nigel Hallett
Hon Max Trenorden

Amendment, as altered, thus negated.

Hon SALLY TALBOT: I move —

Page 3, after line 20 — To insert —

- (5) Any monies paid to the operating account pursuant to paragraph (4) must only be applied for purposes that adhere to the Objects of this Act specified in section 5.
- (6) The Minister may grant a partial exemption to recycling enterprises (both public and private sector) which have demonstrated either an ability or a credible commitment to reduce the amount of residual waste sent to landfill. The partial exemption is to be calculated according to the proportion of material which is recycled, so that the levy is reduced by the same proportion as the amount of material which is recycled.

I will briefly outline to the chamber the reason for moving the amendment to insert these two proposed new subsections into section 73 of the act. I and several other members on this side of the house have referred to the absolutely unprecedented situation in which an act has been amended in such a way that it no longer complies with the objects as stated in the act. The question has been asked in this chamber and in the other place—and, indeed, in the community and amongst the stakeholders—about the potential legal challenge of putting in place the arrangement that is proposed in this bill. What we have heard from the minister so far has done nothing to allay those concerns. I and members on this side of the house toyed with many different ways to reassert in this bill the objects of the act. The objects of the act are not lengthy; they are very concise. For those members who are interested, they can be found in section 5 of the substantive act. They state —

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

Those objects are clear and unequivocal in that they relate to the topic—waste avoidance and resource recovery. We have a series of measures in this bill that will take the money collected by the levy away from the waste account. They do not take the money away from the waste account and put it into an account where it can still be used specifically for waste avoidance and resource recovery purposes. That would have been the effect of the amendment moved by Hon Robin Chapple that was just defeated by this chamber. Indeed, that would have set up another account, and that would have seen money not being held in the waste account but being held in that other account to be used for waste avoidance and resource recovery projects.

Nowhere in the minister's argument about why Hon Robin Chapple's amendment should be rejected did she refer to any difficulty with money being held in accounts other than the waste account and not being directed to purposes that are directly connected with waste avoidance and resource recovery. Nevertheless, that is the effect of this bill. As far as I can ascertain, this is unprecedented. I would like the minister to tell us why she thinks this is a workable arrangement and what steps she has taken to assure herself that there will not be a welter of legal objections as soon as this act is proclaimed when people realise that the money that they are paying to the waste levy will fund other programs run by the Department of Environment and Conservation. That is exactly the problem referred to by Hon Kate Doust during her last contribution to this debate. Money will be taken away from the waste account to fund the black hole in DEC's budget. That means that the money that we raise through payment of the waste levy will go into programs such as protection of threatened species and elimination of threatening species; hence my comment in the second reading debate that we will be either knee-deep in rubbish or knee-deep in cane toads. We have that cross-funding within the department. We have pointed out as precisely and as directly as we know how that this is a direct conflict of interest. So far the government has shown us not that it has no way of addressing the problem about whether it is a conflict of interest, but that it has no understanding of the extent to which this is a clear conflict of interest.

The other problem is that although the uses to which the waste levy will be put might be highly commendable in themselves, they bear absolutely no relation to the objects of the Waste Avoidance and Resource Recovery Act, the very act that facilitates the collection of this money. I simply fail to see—I will wait to hear the minister's response—how what the government is putting in place in this bill will be a workable situation. I suggest that the government does not have a response to this. But the situation would be alleviated to some extent if some direct reference were made to the fact that all the money paid into the new slush fund account that the government is setting up has to be applied for purposes that adhere to the objects of the act. That is why I am seeking to insert a new proposed subsection (5) into section 73 of the act, under clause 5.

Before I read the second part of my amendment, I ask the minister to respond to the points I have made about proposed subsection (5) and then I will talk about proposed subsection (6).

Hon DONNA FARAGHER: We had this discussion during the second reading debate. The government has a clear policy position that at least 25 per cent of the levy funds will go into waste management. Clause 8, "Section 80 amended", refers to how those funds will be applied. We have had the debate on the government's policy position. The policy position is that at least 25 per cent will go into waste management through the WARR account and will be delivered through the Waste Authority. The remainder will go towards broader environmental purposes. Hon Sally Talbot mentioned the issues surrounding the legality of the bill and the like. We had that debate at clause 1. The advice that I have—I will reiterate it again because today is Tuesday, not Friday—is that the bill is valid.

Hon SALLY TALBOT: With respect, the minister has just demonstrated to me that she has not read the amendment and she has no idea what section 80 of the substantive act refers to. The amendment states in part —

- (5) Any monies paid to the operating account pursuant to paragraph (4) ...

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That is the new account that the government is proposing to set up. This is the account that will siphon off 75 per cent of the funds collected by the waste levy. Section 80 of the substantive act, unless I have misunderstood it, refers to the waste avoidance and resource recovery account. What the minister has just outlined by way of a so-called response to my proposed new subsection (5) is actually in relation not to the new slush fund account, but to the existing waste avoidance and resource recovery account. Of course I am familiar with section 80 and the purposes for which the WARR account may be used, but that is not what this amendment applies to.

The DEPUTY CHAIRMAN (Hon Michael Mischin): Is the member proposing to speak further on the motion before the chamber?

Hon SALLY TALBOT: Yes.

The DEPUTY CHAIRMAN: Are you seeking some response on this part of the amendment, or are you going to continue to speak to the motion?

Hon SALLY TALBOT: I was indeed seeking some response. I was seeking a detailed explanation of why the minister has confused not just the two accounts—she will have a lot of bank accounts to look after, so I do understand that—but also the two different sections of the act that relate to the provisions about the use to which each account can be put. I find that extremely troubling.

However, the minister has just indicated that she does not wish to respond to that, so, on that basis, I will move right along and talk about the second part of the amendment before us, which is to insert a proposed new subsection (6). This amendment, in a sense, covers the private sector, as opposed to Hon Robin Chapple's motion that was just defeated, which covered the public sector. The purpose of that amendment was to put in place some full or partial exemptions for people operating resource recovery facilities which, as we know, relates by and large to regional councils. Hon Robin Chapple's amendment covered local government.

Proposed new subsection (6) makes specific reference to both public and private sector, and I will read the amendment for the benefit of honourable members who have not had a chance to see the supplementary notice paper. It states —

- (6) The Minister may grant a partial exemption to recycling enterprises (both public and private sector) which have demonstrated either an ability or a credible commitment to reduce the amount of residual waste sent to landfill. The partial exemption is to be calculated according to the proportion of material which is recycled, so that the levy is reduced by the same proportion as the amount of material which is recycled.

If I may say so myself, I think this is quite a good amendment. I am particularly heartened by the fact that it appears to pick up on the specific point made by the minister this morning—which she has reiterated to the point whereby she no longer feels it necessary to do so—about the fact that full or partial exemptions remove the incentive to stop sending stuff to landfill.

My amendment states that the partial exemption—it will only ever be a partial exemption, unless a point is reached whereby everything is recycled and nothing is going to landfill, in which case having nothing going to landfill would mean a total exemption. I will explain that in a more complete fashion. The amendment states —

The partial exemption is to be calculated according to the proportion of material which is recycled, so that the levy is reduced by the same proportion as the amount of material which is recycled.

This amendment occurred to me when I read the material provided by some of the private sector industry players in the waste industry, particularly Sims Metal; I will not go into who the others are because I have already put that on record in my contribution to the second reading debate. Sims Metal is, no doubt, a very reputable firm that is making a very, very substantive contribution to the reduction of waste going to landfill in Western Australia. It deals with a very difficult area of waste—that is, scrap metal; largely car bodies.

Sims Metal put to me that its rate of recycling has gone up quite significantly over recent years as technology has improved. The stuff it sends to landfill is the material I referred to earlier today—namely, flock—being the padding from the seats and bits and pieces from the car that are not scrap metal. There would be some plastic and some glass included in that, and I know that it does its best to send plastic and glass to recycling, too, but fundamentally Sims Metal is interested in scrap metal.

Companies such as Sims Metal are facing an astronomical increase in costs because of the government's hiking of landfill levy rates. It seemed to me, after my conversations with those types of firms, that we can absolutely enshrine the principle that we all endorse in this place, and which the minister articulated at some length this morning about the fear that giving exemptions removes the carrot and stick incentive from the whole process, by saying to people that if they have a material—for example, a car body—and they can demonstrate to the

Hon Dr Sally Talbot; Hon Robin Chapple; Hon Donna Faragher; Hon Kate Doust; Hon Ljiljanna Ravlich;
Deputy Chairman

minister's satisfaction that they are effectively recycling 70 per cent of that material, then they will be given a 70 per cent reduction on their landfill levy. It could be phrased the other way around, by saying that a 70 per cent recycling rate would lead to them paying only 30 per cent of the landfill levy. Surely the beauty of that is apparent to all honourable members. Sims Metal would then do a calculation in dollar terms that would demonstrate that if it is able to increase its recycling rate to 71 per cent, then it would receive a 71 per cent reduction and have to pay only 29 per cent of the landfill levy. Every time it increases the amount of raw material it recycles, even by a small incremental amount, its landfill levy will reduce commensurately and its costs will decrease. The more it recycles, the more cost effective it is.

It is my belief that that would apply certainly in the case of scrap metal recyclers such as Sims Metal, but also in the case of tyre recyclers and those who recycle other substances that we know cause an immense amount of environmental harm if not recycled. Surely these are areas where we should be taking a very, very proactive stance and putting these very sensitive measures in place.

I am not in the minister's position, in that I do not have command of the resources and expert and technical advice, but certainly on the basis of the meetings I have had and the responses I have received to questions I have asked, the industry tells me that this mechanism would put in place a very, very sensitive trigger in terms of price, and research and development towards improving its technology. On that basis, I move this amendment to insert a new subsection (6), which I think would take the minister a very, very significant distance down those paths of alleviating the concerns that she has articulated, and I look forward to hearing her response to that measure.

Hon ROBIN CHAPPLE: The Greens (WA) support this amendment. In supporting it, we note that it actually specifically deals with material recycling facilities and resource recovery facilities, and it has a slightly narrower definition than our amendment, but I still think it is a really good amendment because it provides some surety to local government, and indeed to the members of the Forum of Regional Councils in terms of their desires to move forward with recycling and waste avoidance in this state.

Hon DONNA FARAGHER: The government will oppose this amendment, and I have outlined the reasons for doing so in respect of proposed new subsection (5). In respect of proposed new subsection (6), we oppose it for the same reasons stated in relation to Hon Robin Chapple's previous amendment.

Hon LJILJANNA RAVLICH: I rise to support the insertion of proposed new subsections (5) and (6). Proposed new subsection (5) will restore the integrity of the intent of the original waste avoidance and resource recovery legislation. It will also go a long way to restoring public confidence in this whole matter, because I think the minister's arguments are hardly compelling to people who genuinely do believe that there is a real need to deal with the whole issue.

Committee interrupted, pursuant to standing orders.

[Continued on page 10180.]

Sitting suspended from 1.00 to 2.00 pm