ENVIRONMENTAL PROTECTION AMENDMENT BILL 2010

Committee

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

Clause 1: Short title —

Committee was interrupted after the clause had been partly considered.

Hon ROBIN CHAPPLE: I am just trying to remember whether the minister had responded to my question. I think she had.

The DEPUTY CHAIRMAN (Hon Helen Morton): I am advised that the minister was about to respond.

Hon ROBIN CHAPPLE: Therefore, I shall clarify my concerns. Given that we are dealing with the dumping of waste, and "waste" is defined in the Environmental Protection Act 1986, is the minister suggesting that these regulations, notes or advice will prescribe something other than waste as defined in the Environmental Protection Act 1986? If that is the case, may that not be ultra vires the principal act?

Hon DONNA FARAGHER: We are not proposing to change of the definition of "waste". One might argue that it is a very broad description already. In fact, according to the act —

> **waste** includes matter —
>
> (a) whether liquid, solid, gaseous or radioactive and whether useful or useless, which is discharged into the environment; or
>
> (b) prescribed to be waste;

Yes, Hon Liz Behjat, it covers all bases.

Hon ROBIN CHAPPLE: I am not arguing that point at all. If the regulations or advice determine what may be the quantity of that waste or its method of deposition or placement, that will have an impact on the description of waste. We cannot suddenly say that waste, whether it be liquid, solid or gas, that is handled in this manner is not waste, but waste that is handled in this manner is waste under the interpretation of the act. That is my concern.

Hon DONNA FARAGHER: Essentially, I have already referred to issues surrounding volume, the environmental impact, the type of waste and the like. That will be a guideline. As I have indicated, the department will have a guideline on littering and dumping, and that guideline will be a tool to provide an objective and consistent method of determining the severity of the potential offence—that is, whether it would come under the Litter Act or the Environmental Protection Act in terms of dumping waste—the level of investigation and those sorts of issues. It will be a tool to assist in determining what is appropriate. As an example, personal litter would come under the Litter Act and commercial industrial waste would come under the dumping of waste provisions in the Environmental Protection Act.

Hon SALLY TALBOT: This is a very serious problem. We clearly have two acts dealing with one definition. Is this correct? We are working with only one definition of "waste", and that is the definition of "waste" in the EP act.

Hon Donna Faragher: The one that I referred to is in the Environmental Protection Act, yes.

Hon SALLY TALBOT: Yes, and the one that Hon Robin Chapple has read out. Indeed, I think I read it out last week. Two acts refer to the same definition of "waste". The minister has introduced the concept of the seriousness or the severity of the offence. It is not clear to me. Has it become clear to Hon Robin Chapple? No; he is shaking his head. In that case, it is not clear to us. I go back to the question I asked the minister earlier in the debate. What is supposed to go through the mind of the officer who is investigating—is it volume, environmental impact, type of waste, reason and mode of deposition?

Hon DONNA FARAGHER: Yes.

Hon SALLY TALBOT: In that case, how can the inspector know about the reason or about the environmental impact? The inspector may not know what is being dumped, yet he is supposed to be prosecuting under one act or the other.

Hon DONNA FARAGHER: It would obviously be part of seeing first whether the material that had been dumped—as I have said, and I will say it again—is personal litter as opposed to commercial or industrial waste. Then of course, as part of the investigation, a number of questions will be asked. There will have to be a full investigation into actions if DEC intended to prosecute and take the matter to court. The same processes will

have to apply. As I have said, the department will have a guideline for monitoring littering and dumping of waste, which will be a tool for authorised officers to utilise. The department also has a policy on enforcement and the like, which is already in operation. That is a policy document that is in operation for a range of other offences that officers deal with under the act.

Hon ROBIN CHAPPLE: As the minister may know, I serve on the Joint Standing Committee on Delegated Legislation and we see lots of amendments that local governments seek to introduce for waste dumping laws. Clearly, in some areas grass cuttings are considered to be waste and are not allowed to be dumped. Where do they come in? Is that waste or is it litter?

Hon DONNA FARAGHER: To use that as an example, it would depend on the volume and it would depend on the environmental impact. Some noxious weeds may be amongst all of it, and, obviously if they are present, that would have to be a consideration. Whether it was deposited by hand or whether a truckload was the mode of deposition would have to be considered. They are the sorts of things that would be considered by the authorised person in that particular circumstance.

Hon SALLY TALBOT: I want to briefly go back to my scenario about the household waste that is put out on verges for council rubbish collections. I understand the point the minister made that it is an authorised activity if it is put there in compliance with advice received from council. What if the same material were put in a place other than on the verge or the ground in front of the house of the person disposing of the waste? It seems to me that there is something in the definition of litter in the Litter Act that specifically captures material of that kind —

> ***litter*** includes —
>
> (a) all kinds of rubbish, refuse, junk, garbage or scrap; and
>
> (b) any articles or material abandoned or unwanted by the owner or the person in possession thereof,

Hon DONNA FARAGHER: Is the member asking about it being not on the verge where it is lawful to leave it, but being dumped in state forest?

Hon Sally Talbot: Let us say the person lived next door to a state forest.

Hon DONNA FARAGHER: Essentially, the member is talking about where the people should not be dumping it. Again, the standards I have identified, such as the volume, type of waste and mode of deposition, would be considered. If they were dumping a significant volume, including fridges and those sorts of things, that would obviously be considered in terms of whether it was littering or dumping waste. These provisions could well apply depending on what the waste is and whether it is not being left in a lawful way.

Hon SALLY TALBOT: Is the minister confirming that such dumping could be prosecuted as illegal dumping under the new provisions of the EPA act?

Hon DONNA FARAGHER: Yes. In the example of a local government having its clean-up day once every six months, it would be lawful and that would be fine. If the person dumps a trailer load of junk and whatever else in the state forest, that would be considered under this legislation.

Hon SALLY TALBOT: I am sorry to be somewhat pedantic about this but in her reply to the second reading debate the minister referred to the distinction between something carted by hand or by vehicle. Specifically, I am asking: if someone lives next door to an unauthorised place, and rather than putting the rubbish in a place that would be authorised, the person walks a few hundred metres up the road and dumps it, could the person then be prosecuted even though it is carted by hand? The volume might be commensurate with the council pick-up requirements and it might be the type of material that would be collected by the council. In all those respects it would seem to fit what would come under a legal activity if it is left at the right time, but is put in an illegal place, albeit by hand, and it is personal in that it fits the definition of litter — "any articles or material abandoned or unwanted by the owner".

Hon DONNA FARAGHER: I suppose there are two elements. If a person had a trailer load or was carting stuff by hand but did not have the lawful authority to dump the waste at another premises, obviously that is within this bill. That person would need the authority of the person who owned that parcel of land. If it is simply a cardboard box, for example—I am using the range of examples here—obviously that could be considered under the Litter Act. If, however, it was a fridge, an old stove and various other bits and pieces and it was not done with lawful authority, those key points—volume; the environmental impact, whether it is hazardous or not; and the mode by which it is carted—are all the things that would be considered. If it was just next door and the person with the rubbish had lawful authority from the owner next door because the local government pick-up was to happen the next day when the person who owned the rubbish was not around, or something like that, it

could be identified that the person with the rubbish had agreement from the other landholder to place the rubbish lawfully in front of his place.

Hon SALLY TALBOT: It is my recollection, from reading these notices that people get from their council, that hazardous material is specifically excluded from these waste pick-ups. Tins of paint, for example, are not allowed to be left out for these council rubbish collections. I think green waste is also prohibited under these council rubbish collections. Councils will do hazardous waste and green waste collections, but that is not usually part of their general waste collections. Can the minister envisage a situation in which a person leaves out general household rubbish for one of these collections—I cannot remember what they are called, but councils have a name for them —

Hon Ken Travers: Bring out your dead!

Hon SALLY TALBOT: Bring out your dead! Let us call it that. It is not the weekly garbage and things like that. It is things like broken chairs. Let us universally agree that these collections are called "bring out your dead". I am not talking about a person getting permission from his next door neighbour to put it on their lawn. I am talking about waste that a person has placed on the property next door, which happens to be state forest. Can the minister envisage a situation in which that would be prosecuted under the new offence of illegal dumping?

Hon DONNA FARAGHER: I think I have followed the full logic; if not, we will go back on it again. If it is on the person's property, and the person has put it out on collection day —

Hon Sally Talbot: It is not on the person's property. It is next door, which happens to be a council park. I am sorry. I should have waited for the call.

The DEPUTY CHAIRMAN: Yes. Minister, complete your answer.

Hon DONNA FARAGHER: Thank you. If it is on the person's property—I know this is not what the member is asking, but I am going to say it again—and if it is authorised and the like, because it is the normal pick-up day that has been identified by the local government, it is not a problem. If, however, it has been placed in a local park, as the member mentioned, the person would need to have lawful authority to do that. If the person did not have lawful authority, it would then be litter and would come under the Litter Act, or it would be the dumping of waste, depending on what the waste was, and the issue would then be looked at in terms of volume, environmental impact and those sorts of things. So, the person would first need to have lawful authority; and, if the person did not have lawful authority, the officers would assess it against those key criteria.

Hon SALLY TALBOT: I turn now to another scenario. This is my second question. My first question was supposed to deal with the geographical location of the dumped stuff. I am sure we have all experienced the occasion when we have driven home at night and we have seen a lot of rubbish placed on the verge, and we have thought, "Goodness; this must the week for the bring out your dead collection", but it then turns out that our next door neighbour has misread the notice, and six people who live down the street have all put out their stuff, and they then have to take it back in again. If a person puts out their rubbish on the wrong day, or in the wrong week, more precisely, because I think people are given a few days' leeway, could that person be prosecuted under these provisions and be charged with the new offence of illegal dumping?

Hon DONNA FARAGHER: If a person puts out their rubbish in the wrong week, and an officer knocks on their door and says, "Why have you put your rubbish out on your verge?", and the person says, "I thought it was this week, not next week", that would obviously be considered by the officer. In terms of the department's enforcement policy, it would obviously not be in the public interest to prosecute if the owner has simply made a mistake. That would obviously be determined through discussion with the owner.

Hon ROBIN CHAPPLE: Just to move on from that, councils can currently prosecute people for leaving a disabled vehicle on the verge, or they can have it moved away and have the costs appropriated. Would a vehicle that had been left on the verge also fall into the category of illegal waste under this bill?

Hon DONNA FARAGHER: As the member outlined earlier with respect to the definition of "waste", it essentially encompasses everything. In the case of a car that has been left on a verge, it would be a question of whether it could be more appropriately dealt with under other laws, such as a traffic law or whatever the case might be. So, technically, it could be seen as waste. Certainly, a car that has been left in state forest is a clear example of dumping. But if a person has left a car on a verge, obviously that would need to be assessed according to what other rules might be appropriate in that circumstance.

Hon SALLY TALBOT: I want to change the subject. I want to clarify something that the minister said in her summary of the second reading debate about the number of people who are currently either inspectors or authorised persons. I think the minister said that there are 200 DEC inspectors —

Hon Donna Faragher: Around 200.

Hon SALLY TALBOT: And 209 local government officers —

Hon Donna Faragher: Are already authorised, as I understand it.

Hon SALLY TALBOT: Are already authorised.

Hon DONNA FARAGHER: For clarification, there are already 209, I understand, authorised officers. They are not specifically authorised for this offence, but there are 209 authorised under the Environmental Protection Act.

Hon SALLY TALBOT: Presumably, those 209 local government officers currently deal with noise and other forms of pollution under the EP act.

Hon Donna Faragher: Yes.

Hon SALLY TALBOT: May I ask what their day job is? Are they rangers or health inspectors? Can the minister give us an idea about who we are talking about?

Hon DONNA FARAGHER: Yes, they are generally, as I understand it, rangers or environmental health officers. There may well be others, but they would comprise the vast bulk.

Hon SALLY TALBOT: What sort of training is provided to local government officers to enable them to carry out the role of, sort of, de facto Department of Environment and Conservation inspectors?

Hon DONNA FARAGHER: There are a couple of examples of the type of training that is provided. For officers who will be authorised to deal with a range of matters, there is a two-week course that I understand is actually completed at the police academy. Officers who will be authorised for a specific section, such as that relating to unauthorised discharge regulations, will attend courses provided by the department. It very much depends on whether they are doing a general course to enable them to undertake a number of activities or specific activities.

Hon SALLY TALBOT: For the 200-odd—not that they are odd; I am sure they are not odd at all—DEC inspectors, how will I be able to tell if I am talking to a DEC employee who, for example, monitors roadside vegetation inventories? How will I know whether that person is actually an inspector?

Hon DONNA FARAGHER: I understand that officers will have identification and badges that will identify that they are inspectors under the Environmental Protection Act.

Hon SALLY TALBOT: What sort of training course will those people have done, or is this just by virtue of the job they do for the department?

Hon DONNA FARAGHER: As I understand, DEC officers will do the minimum two-week course at the police academy. They will also do specific courses, again with respect to specific sections of the act relating to unauthorised discharge—that is just by way of example. As I understand, some officers will also complete Certificate IV in Government (Investigations) as well. There are a number of courses, in effect, that DEC officers undertake.

Hon SALLY TALBOT: Can I ask, minister, whether there will be a new component introduced to both types of training in respect of the new offence of illegal dumping?

Hon DONNA FARAGHER: Yes.

Hon SALLY TALBOT: Would the minister like to elaborate on that and give us an idea of what it might entail?

Hon DONNA FARAGHER: To elaborate, the course would include, obviously, working through the new act—for one thing—and going through the key elements of the littering and dumping waste enforcement guideline that we have gone through previously. I understand that with respect to—we will come to it, I hope, at some point in time in relation to this bill—matters surrounding the stop and search of vehicles, that will certainly be a component of the course as well.

Hon ROBIN CHAPPLE: In relation to the matter of a designated person being appointed under part VI, section 87 of the act, I note that recently the Surveillance Devices Amendment Regulations 2010 have been gazetted in this house. Will local government officers who will need surveillance capabilities to try to catch people who are disposing of or doing illegal dumping be allowed, under section 87, to be appointed or authorised persons under the Surveillance Devices Amendment Regulations 2010 published in the *Government Gazette* on 6 July 2010?

Hon DONNA FARAGHER: As to the surveillance matter, it is my understanding that that is for DEC officers. Unfortunately, I do not have the regulations in front of me to triple-check that, but as I understand it, it is for DEC officers.

Hon ROBIN CHAPPLE: I tend to agree with the minister, but because section 87(1) of the act actually identifies that —

> The CEO may appoint persons or members of classes of persons to be authorised persons for the purposes of this Act …

The regulations are attendant to this act, so one would assume, therefore, that if people are appointed under section 87 for the purposes of the waste dumping act, then because it has merely been a regulation associated with surveillance devices specific to the CEO, sort of by conjecture, one would assume that, as identified, the purposes of the Surveillance Devices Amendment Regulations are to enable DEC officers and/or other officers to catch people doing illegal dumping. One of the main points raised in that regulation is that a CEO may, under section 87, be able to appoint an officer of the local government as a designated person; I am trying to get to the bottom of that.

Hon DONNA FARAGHER: As I have said, I believe that it is for Department of Environment and Conservation officers only. But I appreciate the comments that have been made by Hon Robin Chapple and perhaps, with his indulgence, we will check that during the dinner break and come back to him on that. I want to make absolutely sure that we give him the correct information.

Hon ROBIN CHAPPLE: I thank the minister for her comments and I will listen to the answer to that with some interest. Obviously, the Western Australian Local Government Association has made a number of comments on the bill, and I assume the minister and her department have seen those comments. WALGA said recently, and the Greens (WA) support the view, that the EP amendment bill, if passed, will need resources dedicated to its promotion. I would be interested to know where the funding package for that is coming from. If increased penalties are to act as a deterrent, we will clearly need to demonstrate that to the public, and promotion will be needed. I would be interested to know where funding for that will come from. There will also need to be monitoring in place to establish whether the new legislation is being used and to what extent it is achieving its aims. Therefore, will the minister indicate how, if the bill is passed, the public will be advised of the increased penalties; where the budget will come from; what monitoring will take place to assess the effectiveness of the act in its entirety once the amendments are made; and whether there will be a cost imperative associated with that?

Hon DONNA FARAGHER: I suppose there are a couple of elements to Hon Robin Chapple's question. In terms of education, I did respond in my summing-up that the department works closely with the Keep Australia Beautiful Council on education, enforcement and those sorts of things. I believe that the Keep Australia Beautiful Council and the department are very good at promoting—I was going to say "litter" but that is not what I mean—good behaviour on matters surrounding littering and illegal dumping. I have made that very clear in many public forums I have spoken at on behalf of the government, and I have specifically referred to the increase in the penalties for these offences. I must say that the increase is becoming very well known and had become well known before the legislation even came before the house. I suppose, therefore, that there are already avenues for getting the message out and for building on successful initiatives already in place through the department and through the Keep Australia Beautiful Council.

I suppose, again, there are a couple of elements on how monitoring will occur. Obviously there will be anecdotal evidence in any event through contact with local government and all that sort of thing. There will also be monitoring, particularly of the issues surrounding fines and the enforcement of the legislation. I could tell the member now the number of on-the-spot fines imposed under the Litter Act in the past year for littering. The member will probably ask me that, and I do not have it in front of me, but I know it is more than 4 000. It has probably increased since the last time I checked. There are, therefore, mechanisms in place to monitor these things, and that will be done through Keep Australia Beautiful and the department.

Hon ROBIN CHAPPLE: Just touching on that again, will there be no specific annual reporting on the functionality of this, or will it crop up in the annual DEC reports?

Hon DONNA FARAGHER: Like our dealing with other offences, it will be reported.

Hon ROBIN CHAPPLE: Also on clause 1, WALGA recently said—again the Greens (WA) support the view—that there most probably needs to be some strategic programs to counter illegal dumping and litter management. While the increase in fines for illegal dumping and littering is a key part of addressing this issue, WALGA highlighted in its project proposal for the use of the waste avoidance and resource recovery levy in 2009 that a more strategic approach is necessary. The WALGA document recommended a needs analysis on illegal dumping and littering. WALGA is of the view that the minister needs to allocate $100 000 for a needs analysis to address litter and illegal dumping. Is there any proposal in the wholeness of dealing with this matter and the previous dealings on the WARR account for some strategic analysis of how to deal with littering and illegal dumping? Currently, illegal dumping costs local governments in the metropolitan area alone about $4.6 million annually in clean-up costs. There have been a limited number of convictions and therefore a limited opportunity to recoup

these costs. Although the increase in fines for illegal dumping was quite clearly welcomed by WALGA, additional resources will be needed by WALGA and its agencies for the collection of evidence and the enforcement of prosecution. In a previous statement, WALGA said that the increase in the levy was likely to increase the incidence of illegal dumping and no increase in enforcement activities was suggested in the budget to manage this. What type of research assistance is available to local governments for helping them to tackle illegal dumping in the way this bill will be administered, as in many cases it will be through local governments, especially in regional areas?

Hon DONNA FARAGHER: As I said previously, the department and Keep Australia Beautiful already undertake consultation with local governments, and will continue to do so to assist in the development of approaches to matters surrounding litter and illegal dumping, whether that relates, as I said before, to enforcement or education and promotion initiatives. If I might be so bold as to say, we already have a very effective Keep Australia Beautiful Council whose primary remit is in matters surrounding the delivery of education, not only obviously in specific areas depending on the particular strategy it might be focusing on, but also indeed to the wider community. Funding is provided through the Waste Authority to the Keep Australia Beautiful Council to do those very things.

Hon ROBIN CHAPPLE: I think that the Western Australian Local Government Association was saying that because of the huge costs already involved, notwithstanding what is being done through the Keep Australia Beautiful Council, WALGA would like to see a much more strategic involvement between the government and WALGA about problems that cost WALGA, as I said, $4.6 million annually. WALGA would like to see whether that process can be commenced as a result of the amending bill before us.

Hon DONNA FARAGHER: I would have thought that local governments would welcome this bill because it will hopefully provide a very strong deterrent to illegal dumping in the first place and will therefore reduce those costs. I know that local government is supportive of the bill, particularly in that regard. I do not have anything more to add other than to say that, as I have already indicated, the Keep Australia Beautiful Council and the department have worked, and will continue to work, with local governments on important initiatives, whether they involve enforcement or education. I believe that is the appropriate avenue for them to take.

Hon SALLY TALBOT: Am I correct in understanding that the CEO of the Department of Environment and Conservation appoints each local government officer who is appointed as an authorised person?

Hon DONNA FARAGHER: That is correct.

Hon SALLY TALBOT: I would assume that that is currently the case, and so the intention is to continue with the same procedure.

Hon DONNA FARAGHER: There will be no change.

Hon SALLY TALBOT: I thank the minister for that and for providing clarification earlier about local governments being able to keep the fines raised by prosecutions. I understand that a local government CEO would have to have approval from the CEO of DEC to commence a prosecution. Is that correct?

Hon DONNA FARAGHER: That is correct. That is in line with current procedure.

Hon SALLY TALBOT: I might have misunderstood, but I thought that with regard to the noise regulations, for example, the power to prosecute has been delegated to local government. Perhaps the minister can explain the difference to me.

Hon DONNA FARAGHER: As I understand it, the power to prosecute has not been delegated. However, I will double-check. The police, for example, have not been delegated the authority to deal with noise-related activities. The advice I have received is that that delegated authority would not apply to a local government. I am happy to double-check that for the member.

Hon SALLY TALBOT: I thank the minister. I would like that to be clarified because I know that local government is under the impression that the power to prosecute under the noise requirements of the Environmental Protection Act were delegated to local government CEOs a number of years ago. The reason I am making this point should be quite self-evident. Two points must be considered. The first is that it is obviously a more cumbersome process for a local government CEO to make an application to the CEO of DEC every time the local government CEO wants to either consider or commence a prosecution for illegal dumping. That is a cumbersome and bureaucratic process. The second point relates directly to the minister's advice in the second reading debate when she said that a local government is able to keep the revenue from the fines as long as the local government has commenced the action. Therefore, it will clearly be in the interests of a local government to be the instigator of the prosecution. If that decision rests in each case with the CEO of DEC, we will have a potential conflict of interest, particularly if there is an element—or it begins to confirm our suspicions that there

is an element—of this being a cash cow. If a case is open to prosecution, who will get the money? There will be a bit of competition for that. The minister's clarification will help us progress this particular point.

Hon DONNA FARAGHER: I will not be drawn into questions about cash cows, otherwise we could be here all night because I disagree with the assertions made by Hon Sally Talbot. However, we are making good progress and so we will move on. I will say with respect to local government having to seek the consent of the director general that that is simply in line with other procedures, such as noise, for example, whereby the police would be under similar requirements. This will ensure that a consistent approach is taken for enforcement and the like, and that that is consistent with the department's current enforcement policy. A local government might conduct an investigation and decide that it wants to transfer the responsibility to DEC. A local government can institute proceedings provided that the local government gets the consent of the director general of the department and provided the prosecution is in line with the enforcement policy. Under the act, the local government will be able to undertake prosecutions. This mechanism ensures that the prosecution and all that goes with that is in line with the department's existing policy. As I said, that is no different from circumstances that already relate to the Environmental Protection Act.

Hon SALLY TALBOT: Is the minister indicating that the same provisions would apply to the police? If the police wanted to be the instigator of a prosecution, would the police also have to apply to the director general of DEC?

Hon DONNA FARAGHER: Yes, that is the case. As I said earlier, that is in line with, for example, prosecutions relating to noise that the police might be involved in; they would also seek the consent of the director general of the department. As I understand it, that is currently the case.

Hon ROBIN CHAPPLE: I apologise to the minister because I might be asking something that we have sort of got the answer to before. I want to go back to clause 87. The CEO of the Department of Environment and Conservation may appoint persons or members of classes of persons to be authorised. Does the CEO do that as a general point? Does he decide that a series of officers in a local government are prescribed for the purposes of this provision at all times, or does that have to be prescribed on an issue-by-issue basis? When an offence is committed, can I seek for an appointment to be made by the CEO, or can the Shire of Port Hedland, for example, go to the CEO of DEC and ask to have an occupational safety and health officer appointed as an appointed person for the purposes of administering this provision for the next 10 years or whatever, or is it done on a case-by-case basis?

Sitting suspended from 6.00 to 7.00 pm

Hon DONNA FARAGHER: Before the break I indicated that I would advise the house on some questions that have been asked, particularly by Hon Robin Chapple, who I know will be very interested in the answers that I provide. During the break we double-checked the amendment regulations pertaining to surveillance devices, and they provide for conservation and land management officers, forest officers, rangers and wildlife officers under the Conservation and Land Management Act and inspectors under the Environmental Protection Act to be prescribed as law enforcement officers for the purposes of the Surveillance Devices Act. They do not cover, as I had previously understood and advised, authorised persons under the Environmental Protection Act—only departmental officers.

Hon Sally Talbot asked a question about noise regulations and noise offences. Local governments have been delegated various powers relating to the regulation of noise, but they cover minor offences; they have not been delegated the ability to commence prosecutions for tier 2 noise offences or any other tier 2 offence, which is covered here, without the prior consent of the chief executive officer of the department. Finally, in response to the question asked just before the break by Hon Robin Chapple about authorised officers, under section 87 the CEO can appoint local government officers as authorised persons and by doing so grant them with specified powers under the act. The powers are in addition to the investigative powers that they may already have as local government officers; however, to reiterate, to institute a prosecution for a specified tier 2 offence, the local government CEO or, in the example that I previously described, a police officer would need to seek the consent of the CEO of the department.

Hon SALLY TALBOT: I thank the minister for providing that explanation. I assume that the minister has considered and rejected the possibility of delegating the power to prosecute under the illegal dumping provisions in the Environmental Protection Act. Would the minister consider delegating those powers to local government? If not, in what circumstances, even for a tier 2 offence, might the director general refuse permission? I am labouring this point a bit because the question about recouping some of the costs associated with the policing and clean-ups of illegal dumping is very much on the mind of local governments. Therefore, it is obviously very important for them to know that when they prosecute, they can keep the proceeds of the fines. Could the minister give us some idea about, firstly, why she would not consider what I am proposing and, secondly, the

circumstances in which she thinks the director general might refuse permission to delegate powers to local government?

Hon DONNA FARAGHER: When talking about tier 2 offences, we are talking about serious offences, and we need to keep that in mind. Therefore, when looking at cases that might proceed to prosecution, the department would obviously want to make sure that enforcement is consistent with its policies and procedures. There may be an example in which the CEO of the department might form the view that a particular situation might be more appropriately dealt with under another part of the act. That is just one example, but it is one in which it would be important to get the consent of the director general to ensure that we are getting the best possible outcome. There are two elements. Using the example I have just given, the first element is that the offence could be dealt with under another part of the act, or indeed under another act, so we would need to determine whether there was a clear case, and the second element is that a tier 2 offence is a serious offence.

Hon SALLY TALBOT: One final question on this. Can the minister tell us either how many or what proportion of cases she expects to be prosecuted by local government as opposed to either the police or the Department of Environment and Conservation?

Hon DONNA FARAGHER: We anticipate that the majority of prosecutions would come from the department. However, we also recognise that local governments have a number of people on the ground and that there would be a number of prosecutions from local governments. I think that the number of prosecutions made by police would be a lot smaller. In my summing-up, in response to some comments made by Hon Robin Chapple, I mentioned that we were providing the opportunity for police to become authorised persons, but I think it would be in cases, normally, in which they might be dealing with another criminal offence, for example, and as part of that, illegal dumping has also occurred. Therefore, it would be sensible to enable the police to also have that power. I think that it is far less likely given the scope for this to happen, but the opportunity should be there for the reasons that I have outlined. Essentially, prosecutions would rest mostly with the department while recognising that local governments have a clear on-the-ground role.

Hon ROBIN CHAPPLE: On this very matter, the CEO may determine to take action to prosecute illegal dumping and not allow or support the local government to take action. Should the CEO take action under the Environmental Protection Act and the local authority is the bearer of the burden of cleaning up the site, how will the finances in that area work out? I know that the minister has pointed out that in section 99Y there is provision to apportion costs, but if the local government is not taking the action, how would that occur?

Hon DONNA FARAGHER: Section 99Y would also apply to the department. Just so that we are clear, local government could decide, for whatever reason, to pass the case over to the department. If there was a clear case that local government had done all the investigation and it sought the consent of the director general—unless, for the reasons that I have already outlined to Hon Sally Talbot, it might be deemed more appropriate to be dealt with under another act or there is not a clear case—the consent would be given by the director general. I just want to make sure that we are clear about how we would see the operation of the act.

Hon ROBIN CHAPPLE: If local government—this is hypothetical—had done all the work in putting together the case and it was not competent enough, in the CEO's view, to prosecute the case but the CEO wanted to use the funds associated with the investigation and deliberation by the local government, would it be compensated by the CEO after the department had taken the action in the courts? I am trying to protect local government's investment in a prosecution.

Hon DONNA FARAGHER: I understand that, under section 99Y, a public authority—that is, local government—could seek recompense for expenses incurred. It states —

> order the offender to pay to the CEO, public authority or person the reasonable costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as does not exceed the prescribed amount and is fixed by the order.

Even if there was a circumstance such as Hon Robin Chapple has described, I understand that, under section 99Y, the public authority would still be able to apply to the court. It would not just be the department, given the fact that the department has instituted the prosecution in the circumstance that Hon Robin Chapple referred to. The local government would also be able to apply in that regard.

Hon Robin Chapple: It could become party to that act.

Hon DONNA FARAGHER: That is correct.

Clause put and passed.

Clause 2: Commencement —

Hon SALLY TALBOT: I wish to ask a couple of questions about when the bill takes effect. I am wondering about this training component. Just over 400 officers are credentialled to be inspectors or authorised persons. Those 400 have to at least be retrained or receive supplementary training before the bill is put into effect. Has any consideration been given to that fact in putting these details into clause 2?

Hon DONNA FARAGHER: Obviously we need the bill to pass through Parliament to ensure that we have a provision for us to deal with illegal dumping. Having said that, the 400 or so departmental officers would have already received their training. To be fair, local government officers would also have received training across a range of matters, particularly the extra training that might be required. The department has developed a course in anticipation of that. It is somewhat well advanced, ensuring that that course will be ready to go if and when this bill passes Parliament.

Hon SALLY TALBOT: Can the minister provide any details about how that course will be rolled out? Presumably it is a statewide course. I understand the minister to say that the course has been designed by DEC and will therefore be provided by DEC. What is the cost of the course? I assume that people who work for DEC will not pay to take the course. Will the department charge local government for people to take the course? Will the 409 officers who are currently working on the Litter Act and the other sections of the EP act be the same 409 officers or can some people be credentialled just to be illegal dumping inspectors or authorised persons but not, for instance, have responsibility for other pollution provisions in the EP act?

Hon DONNA FARAGHER: In terms of the DEC officers, I will deal with them first. Obviously the member is quite right, that would be part of their ongoing training. With respect to local government authorised officers, at first they would have to be authorised to be able to deal with this offence. In terms of the training that then is attached to that, it is likely that that will be absorbed by the department in terms of additional training required.

Hon SALLY TALBOT: I want to put one brief point on the record. I think I understood the minister to say that they are going to be trained in relation to the additional power they have got, which I think the minister previously identified as the stop-and-search power. I agree that people who are going to exercise that type of power need to be well equipped to exercise it. I want to put on the record that I think it is a bit of a miscalculation to think that everything else substantially stays the same. We are all in agreement that the penalties under the Litter Act are inadequate to deter this kind of behaviour and the penalties under the EP act essentially do not exist for illegal dumping. We are creating a new offence with very substantial penalties. I put it to the minister that somebody who is put in charge of policing that offence will need to have a range of resources at their disposal that they do not necessarily have now. There is the world of difference between a ranger who is enforcing the Litter Act and an authorised person or inspector who is going after illegal dumpers. Irrespective of what people might be carrying, these people will want to avoid a penalty of $62 500 for an individual and twice that for a company. They will be playing for pretty high stakes here. I do not know how the minister can respond to that, but I want to place on record my concern that the kind of training that people need might be a little more extensive than the government is envisaging at this point.

Hon DONNA FARAGHER: I suppose what I can say is that I recognise, and the department recognises, that training will be required. These are serious offences. That is not to say that in other parts of the act where we have authorised officers they do not have sufficient training to be able to manage those processes as well. I have every confidence that the department will be able to deliver on these additional requirements with respect to training for this new penalty. I am not saying that illegal dumping will go away, but we all agree—which I am pleased to say and is probably a first!—that by significantly increasing the penalties from where they are now, we are providing a deterrent. I appreciate that will not stop everybody, but the mere fact that we are increasing it from $1 000 to $62 500 will be a deterrent. One of the clear reasons for the introduction of a bill of this type and penalties of this type is to provide a very real and clear deterrent to would-be dumpers that it is actually not okay to dump rubbish in state forest or wherever they want to dump it. One would hope that as part of the behaviour change it will make people think twice. That is the key element for increasing the penalty. I accept what the honourable member says with respect to training. As I have tried to outline, there certainly will be courses provided to assist them in that regard.

Hon SALLY TALBOT: I absolutely agree with the minister about the deterrent effect of the penalty, but I put it to her that the real deterrent will be the inspector regularly patrolling that place. If the inspector is built like some of our colleagues in this place, it will be fine; but if that inspector happens to be female and five foot four, then she is going to need a range of resources at her disposal.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 49A inserted —

Hon ROBIN CHAPPLE: I am sure the minister is aware that the Western Australian Local Government Association has recently raised some concerns about the burden of proof. The current burden of proof in the EP act reflects how well-drafted amendments can be implemented. In general, the difficulty in any illegal dumping case is proving that the person discharges or abandons, or causes or allows to be discharged or abandoned. A clear line of evidence is often hard to establish especially to the point of proving beyond reasonable doubt that a person did the dumping or caused or allowed the dumping to occur. Past complaints from local government have been that the courts seem to expect the dumper to be literally caught in the act and will not accept a chain of evidence. Some sort of provision to allow an amended burden of proof would be useful in this case. The burden of proof could be amended so that it is similar to the Litter Act. Does the government have any intention to address this issue, either specifically or in relation to unlawful dumping, or in relation to the burden of proof for environmental officers more generally? In other words, does the government have any intention to introduce a civil penalty provision?

Hon DONNA FARAGHER: I am aware of the proposition that has been put by WALGA. I say at the outset that if this bill passes, the dumping of waste will be a serious offence with significant penalties. It is my view, and the government's view, that it would not be appropriate to reduce the burden of proof for such an offence. I have sought advice from the Department of Environment and Conservation in relation to this, given the proposition that was put by WALGA. DEC's experience, as I have been told, is that there is not a difficulty with courts refusing to accept chains of evidence. It is actually not an issue that DEC has experienced, as has been suggested by WALGA. Even with respect to the Litter Act, albeit that it has a much smaller penalty, it does not provide a reduced burden of proof for litter offences now. That is not possible in that regard. It does provide, obviously, for infringement notices to be issued. I have taken on board what WALGA has raised and I have sought advice from the department. They have come back to me, in terms of their experiences so far, that the courts have not had that difficulty as suggested by WALGA.

Hon SALLY TALBOT: Surely under the Litter Act the person who can be charged or issued with the infringement notice, if a piece of rubbish comes out of a car, is the owner or the driver of the vehicle. Am I right in thinking that is not the case for these illegal dumping provisions?

Hon DONNA FARAGHER: I will refer to the two elements. In the Litter Act, if someone throws something out of the car, and it has been seen it is the passenger, and the driver does not identify who the passenger was, the driver could then be liable. With respect to illegal dumping, the person who would be charged is the person who has either caused the illegal dumping or allowed it to occur. An example of someone "allowing dumping to occur" could be the owner of a small business who allows an employee to dump something from that small business that they should not dump. It has to be the person who either caused the dumping or allowed the dumping to occur.

Hon ROBIN CHAPPLE: I will take the grin off my face.

Hon Donna Faragher: Please do.

Hon ROBIN CHAPPLE: Obviously, if one dumps a body, which they are not going to do unless it was an illegal dumping, but then the person who does the dumping of that body is also party to the offence, is that person party to an offence in this case, or is it the person who instructed the individual to do the dumping?

Hon DONNA FARAGHER: It could be either/or, or both depending on the circumstances, and it would be guided by the policy of the department.

Hon ROBIN CHAPPLE: Going back to the Surveillance Devices Amendment Regulations 2010, one would assume that in this part, where we are talking about the offence, we might be going to use the Surveillance Devices Amendment Regulations 2010 in trying to catch some of these people. How would that intermesh with prosecution in this regard? I am trying to find out if it meshes; and, if so, how it meshes and how the prosecution is carried out in relation to this, plus the Surveillance Devices Amendment Regulations.

Hon DONNA FARAGHER: Mr Chairman, I seek your advice, because Hon Robin Chapple is referring to the Surveillance Devices Regulations, which to my reading fall somewhat outside the scope of clause 4 of the bill. I am happy to continue on, but I am conscious that it is a separate issue. I want to get some guidance from you in respect to how far we can go with surveillance devices in this clause which relates to illegal dumping.

The CHAIRMAN: After giving consideration to the minister's request, I think that the member's question is basically still within the scope of the bill. I do not think there is any particular issue with that. If the minister is unable, perhaps at this point in time, to make some sort of statement on that, I suggest that could be done later. There is even the capacity to postpone the clause, if that be the case. But at this point, given the context in which the member has asked that question, I believe it is within the scope and intent of this clause.

Hon DONNA FARAGHER: I appreciate that advice, Mr Chairman. I am just conscious that I do not want to get into a debate on surveillance devices in a more general sense.

In terms of the use of surveillance devices and the evidence that might be gathered through that process, that evidence could well be used as part of the prosecution and that would be no different from any other part of the legislation where similar procedures were to be implemented. That evidence could be used as part of the case that will be put forward to the court.

Hon SALLY TALBOT: I want to pursue this definition of "place" in proposed new section 49A(1), which reads —

> In this section —
>
> ***place*** includes water, a vehicle and a receptacle.

What intrigues me is that subsequently in that proposed new section when the word "place" is used, it is followed by "other than water to which the public has access". I am wondering why we needed the term "water". Why do we have to have "water" in the definition of "place"? Why do we not have a separate definition of something like, "water to which the public has access"?

Hon DONNA FARAGHER: The reason for the separation into two offences is to allow for an offence where there is a person in control or management of a place who has given consent to the dumping. When it comes to water, there is not always a readily identifiable person in control or in management of a publicly accessible area of water, whether it be a river, a public lake, an estuary and the like; therefore, that is one reason. If I could put it in contrast: there is generally a person in control or in management of a place other than water to which the public has access; that is, the premises or area of land where the person is a private landowner, lessee, licensee or government agency with statutory management over that relevant section of land. In those cases, the person would obviously have obtained the consent of the person who owns that part of the land where the rubbish was dumped; therefore, a defence would be available. But that is why we have essentially had to separate it. It is because, as I have said, we cannot always identify somebody who is actually in control or in management of publicly accessible water.

Hon SALLY TALBOT: I think that is a commendable thing to do, but I am still a bit confused. The definition of "waters" on page 15 of the EP act —

Hon Robin Chapple: It is under "waste"

Hon SALLY TALBOT: It is under "waste"; I thank Hon Robin Chapple. It states —

waters means any waters whatsoever, whether in the sea or on or under the surface of the land;

Why do we not just use the word "waters"?

Hon DONNA FARAGHER: It is because we have to draw a distinction between an area to which the public has access and an area to which the public would not usually have access. For example, in terms of water there might be a farmer who has a dam. That is an example in which we could identify the owner and, hopefully, water is in that dam. However, we might not be able to identify the person who is in control of the publicly accessible water source, which could be a river, state coastal water, an estuary or a public lake. We must therefore create that distinction, as it is not always possible to identify the owner; whereas it is generally easier from a more terrestrial point of view.

Hon SALLY TALBOT: Let me move now to proposed section 49A(4) and ask a few questions about the notion of "with the consent of the person who controlled and managed that place". The minister may be already acquainted with this question because it has been raised with me by several people, particularly by those in local government. Hon Robin Chapple touched on this matter during the second reading debate in his comments about the different penalties for other pollution offences under the EP act; for example, section 53, "Occupiers of prescribed premises to be authorised in respect of certain changes leading to discharges of waste or emissions of noise, odour or electromagnetic radiation". As I understand it, the penalties that relate particularly to section 53(1) are $50 000 for an individual and $100 000 for a corporation. Why would we want a greater penalty for a new offence for illegal dumping than currently exists under section 53?

Hon DONNA FARAGHER: With respect to section 53, first of all we need to put on the record that we are talking about prescribed premises and therefore premises that are already regulated.

Hon Sally Talbot: Yes.

Hon DONNA FARAGHER: That is obviously one element. The reason for this bill is to deal with a problem that has been identified already; that is, the penalties are too low. We are therefore taking that action for illegal

dumping. That is the reason why we have taken the action we have for an identified problem, which is what we are trying to resolve by increasing the penalties. But, again, with respect to section 53, this is not the issue. I appreciate what the member is getting at, but it should also be borne in mind that this relates to prescribed premises which are already regulated.

Hon SALLY TALBOT: The problem is, and this is why I relate it to the question about a defence being "with the consent of the person who controlled and managed that place", that surely one could conceive of a situation in which people were effectively illegally dumping on their own premises, but because those premises were prescribed premises, they would be liable only to the lesser charge under section 53(1); or they could use the defence under proposed section 49A(4).

Hon DONNA FARAGHER: I might ask a question of Hon Sally Talbot. I am not quite sure how people would illegally dump on their own premises. I am not trying to be difficult; I am just trying to understand the logic, because people would not illegally dump on their own premises. Perhaps the member might explain it in another way.

Hon ROBIN CHAPPLE: Kwinana Industries is a case in point where it actually dumped 2,4,5-T on its own property.

Hon DONNA FARAGHER: Without looking at a specific case, it may well be that there are different provisions within the act which would be applied in the circumstance to which the member has referred. There might also be circumstances with respect to the licence conditions, and if a company breached those conditions, that obviously would be a matter to be addressed through the department. It would depend on the circumstance, but they are just a couple of examples of how it might be dealt with.

Hon SALLY TALBOT: Yes, but that is precisely the point, minister: it is the breaching of those licence conditions that is prosecutable under section 53(1) at a lesser penalty than the penalty for illegal dumping. What I am asking is: why can we not simply make the penalty under section 53(1) identical to the penalty under proposed section 49A(4)?

Hon DONNA FARAGHER: Again, it could be dealt with under different offences. It may be the case that, say, for example, someone dumps a whole lot of oil, or something like that, on their premises and that extends beyond the boundary of their facility, which would be prosecuted under the dumping waste provisions. However, there might be elements of the circumstance whereby it might be more appropriate that it is dealt with under the Contaminated Sites Act. There are other provisions and other offences that would be able to be deal with it to address the issues that the member has raised.

Hon SALLY TALBOT: Yes, of course, they could be dealt with in different ways, but my point is that clearly we maximise the deterrent effect when the penalties are the same. Therefore, let us look at section 53(1) of the Environmental Protection Act and proposed section 49A and put the same penalty in place. I think that this is what the minister referred to in her second reading response about Hon Robin Chapple's amendment when she said that would in fact impose significantly higher penalties than the penalties for the most serious offences that currently operate within the act. She also said that the member may believe that those penalties should increase as well for tier 1 offences. I may have misunderstood the point the minister was making, but it seems to me that she makes essentially the same point.

Hon DONNA FARAGHER: Again, section 53 deals with specific offences. It is different from what we are dealing with within the Environmental Protection Amendment Bill. The bill that we are dealing with is obviously about illegal dumping and is primarily for those cases. I appreciate where the member is coming from about the prescribed premises, but if people decide to actually dump on their premises, it relates, therefore, to that offence. I appreciate what the member is saying when she asks: why do we not have the same offence? The fact is that we do not and we are dealing with a problem that has been identified with respect to illegal dumping. That is why we have gone with the offences that apply for that particular act of illegal dumping. I appreciate that there are differences in the penalties that would apply, whether it is under section 53 for illegal dumping or, indeed, under other parts of the act that have offence provisions. We are of the view that the penalties for illegal dumping that we are putting forward are appropriate penalties. Section 53 is separate from that.

Hon SALLY TALBOT: I think that the minister is confirming that we could at least in theory have a situation whereby somebody was effectively operating an illegal landfill and when the Department of Environment and Conservation comes along and says, "You've just dumped all this X into here and we're going to charge you under section 49A", that that operator of the illegal landfill could then say, "I'm claiming the defence provided in section 49A(4) and I've given myself permission."

Hon DONNA FARAGHER: Again, I will go back to the term "prescribed premises". If someone wanted to operate a landfill, the landfill would have to be prescribed. If someone was operating a landfill and it was not

prescribed, it would be illegal and therefore that person would have a problem already in terms of that. There are other provisions that would deal with —

Hon Sally Talbot: But the penalties are much less under the illegal dumping provisions.

Hon DONNA FARAGHER: If they were not prescribed premises, which is what section 53 refers to, and someone was operating the premises as a landfill, it would be illegal; therefore, that person could be charged under the illegal dumping provisions if that is not what the premises are prescribed to do. That is a circumstance with the exception that, obviously, if it is the person's own property, then it would not be illegal dumping. However, if the person was allowing people to bring stuff in, it would be illegal. I am not quite sure if that has answered the member's question.

Hon SALLY TALBOT: Yes, I think that is the situation that I am concerned with.

I have a couple of other water-related questions to pursue on clause 4. We have talked about how the definition of "place" includes water and we have this concept of water to which the public has access. Can the minister just clarify for us what the situation would be for ephemeral watercourses, which are sometimes dry and sometimes wet? Which category do they come into? Is there any danger of them falling between the two offences that we have defined? If I can just elaborate while the minister thinks about it, I guess the point is that what might be polluting or dumping when a watercourse is dry might be different from when the water is running.

Hon DONNA FARAGHER: It would not make a difference. It would still be illegal to dump; therefore, the provisions of the act would apply.

Hon SALLY TALBOT: I return to the all-encompassing definition of waste. What would happen if someone discharged pool water into a public drain or public watercourse? That can presumably be prosecuted as pollution under existing provisions of the Environmental Protection Act.

Hon Robin Chapple: The Local Government Act.

Hon SALLY TALBOT: Sorry?

Hon Robin Chapple: The water authority prosecutes you for pumping water into a drain.

Hon SALLY TALBOT: Could that now be prosecuted under the illegal dumping provisions?

Hon DONNA FARAGHER: There could be a number of elements to the circumstance Hon Sally Talbot has described. It could be in breach of a number of water acts that are already in place. I apologise as I do not have the acts in front of me, but I understand that a number of elements within current water acts could apply. It could be dealt with under the elements of pollution through the Environmental Protection Act or it could fall within the gamut of illegal dumping. However, I think it is fair to say that a number of other acts are already in place that would probably manage that process.

Hon ROBIN CHAPPLE: Proposed section 49A(5) states —

> A person charged with committing an offence against subsection (2) or (3) may be convicted of an offence against the *Litter Act 1979* section 23 which is established by the evidence.

I assume that this is an ouster clause, under which the offence can be dealt with under the Litter Act if it cannot be proven that it was dumping of waste under proposed subsections (2) or (3).

Hon DONNA FARAGHER: Proposed subsection (5) effectively allows a court to determine that if a case is not strong enough to be dealt with as illegal dumping, it can be dealt with under the Litter Act. We are enabling a process to occur to enable a conviction under the Litter Act when there might not be a case for it to be dealt with as illegal dumping.

Hon ROBIN CHAPPLE: I thank the minister. Does the "may" in proposed subsection (5) relate specifically to a court action and not to the CEO as described under the Environmental Protection Act?

Hon DONNA FARAGHER: Yes, Hon Robin Chapple is correct.

Clause put and passed.

Clauses 5 to 7 put and passed.

Clause 8: Section 91A inserted —

Hon ROBIN CHAPPLE: I will go back to something we have dealt with before but I will also go a little further. Will the minister clarify whether local government officers, as distinct from local government CEOs, will be able to institute prosecutions with the consent of the CEO of the Department of Environment and Conservation? Will the officers be able to do that or will it have to be the CEO of the local authority?

Hon DONNA FARAGHER: It would be the CEO.

Hon ROBIN CHAPPLE: Local government officers will be designated as inspectors and/or authorised persons under the Environmental Protection Act for the purpose of compliance activities relating to these new offences. A local government officer will go out and find the evidence and bring it back to the CEO, who will then initiate the legal matters. Who will give evidence in court? Will it be the CEO or the officer associated with the gathering of the information?

Hon DONNA FARAGHER: Obviously, any witness would provide information. In that instance one would assume that one witness would be the officer in charge of undertaking the investigation.

Hon ROBIN CHAPPLE: Will local governments get additional funding to carry out that function? I am assuming that they may not always achieve a prosecution. Local government officers will operate within the constraints of the act as delegated officers on behalf of the department, but the local government itself will not be funded to carry out that function unless a prosecution is successful.

Hon DONNA FARAGHER: That is not the case now. If a local government takes someone to court under the provisions of the Litter Act, it is not recompensed if the prosecution is unsuccessful. Obviously, section 99Y deals with circumstances in which offenders are convicted and the CEO or a local authority is able to apply for compensation. However, appearing in court would not necessarily be out of the ordinary for officers as part of their core duties. If they have decided to commence proceedings with the consent of the director general of the department, it obviously means that they believe they have a very strong case. This would be part of their normal duties, and that is no different from situations that occur now.

Hon ROBIN CHAPPLE: I suppose my point is that there is not yet any evidence to show that the increased charges for the dumping of waste established under the Waste Avoidance and Resource Recovery Act have had any effect on illegal dumping, but one could possibly say that the corollary is the potential for more illegal dumping as a result of the government raising extra funds through the Waste Avoidance and Resource Recovery Act. Is it not therefore the responsibility of the government, if it wants to bring into play these amendments, to be in a position to be able to assist or fund local governments over a number of years, including future budget years, to enable local governments to carry out the tasks they are being asked to do by the government?

Hon DONNA FARAGHER: I am pleased that Hon Robin Chapple took on board my comments about illegal dumping. I have not received advice from the department that there has been any increase in illegal dumping in response to the 300 per cent increase. Having said that, I suppose the fact is that local governments do not need to go down this path if they do not want to; this will provide them with an opportunity to do so, and obviously I would expect that they will have officers on the ground who will be authorised persons. However, if a local government did not want to go down the path of having authorised officers, the government will not force it to do so. We have around 200 Department of Environment and Conservation officers who will be authorised to do that, so it is no different from the current circumstances, as I have already explained, and I do not see any reason to change that.

Hon SALLY TALBOT: I ask the minister to consider a phrase that is used in the middle of proposed section 91A(1). Firstly, could we delete the exclusive language and replace it with inclusive language? It makes reference to "reasonable grounds for believing". Can the minister tell us what she understands that to mean, or what she intends it to mean?

Hon DONNA FARAGHER: To explain "reasonable grounds" by way of example, the current situation is that if someone enters a state forest with a loaded trailer and looks somewhat suspicious, an officer seeing this happening does not have the capacity to stop the person to ascertain whether or not he is about to illegally dump. This provision provides a mechanism for the officer to stop the person before he illegally dumps rubbish in a state forest. It is, I suppose, a pre-emptive measure for dealing with circumstances in which it can be seen that someone might be about to illegally dump rubbish in the state forest; he can be stopped and asked questions about his intent before he illegally dumps rubbish.

Hon SALLY TALBOT: How is this actually going to work? Is the minister envisaging a DEC officer or authorised person being on duty somewhere near the entrance to a national park, seeing somebody entering the forest carrying a trailer with stuff on it, and stopping the person and asking, "Are you going to illegally dump this?" Does the minister envisage that the answer might be "yes"? What will the officer do then?

Hon DONNA FARAGHER: I suppose this can be answered in a couple of ways. The officers would be collecting evidence in advance if they were to stop a vehicle to ascertain what the driver was doing. If the driver said, "We're just going for a drive in the state forest," and happened to have a fridge, or whatever it might be, in the back of the car, the officers would not be able to stop him, but they would be able to take down the details and a description of what was in the car, so that if the driver intended to dump the waste, the fact that an officer had stopped him would be enough of a deterrent for him to decide that it was probably not a good idea.

However, if he still went ahead and did it and the officer either followed him or later found the fridge in a section of state forest, the officers would have information to hand as a result of having stopped the vehicle and asked the driver some very pertinent questions.

Hon SALLY TALBOT: We all know about many areas around the state where illegal dumping occurs. Will it be the case that every vehicle that enters certain areas will be stopped and searched and an inventory prepared of what they are carrying? This sounds like quite a different provision from the one that I thought this proposed section describes. This sounds more like entry and exit inventories being taken. If a vehicle does not have within it upon exiting a state forest something that it had upon entry, will the driver have to provide evidence that it has presumably been consumed?

Hon Robyn McSweeney interjected.

Hon SALLY TALBOT: I will just explain. When I read this clause, which I have read a number of times, I made a certain assumption, and I am sure I am not alone in this. It states —

> An inspector or an authorised person may at any time stop, enter, search and inspect any vehicle or vessel in order to ascertain if he has reasonable grounds for believing that an offence under this Act …

What might those reasonable grounds be based on? When I first read the clause, and subsequently, I assumed that somehow we are looking for something that is not immediately apparent. Why do we need a new clause in the EP act if we have people driving interstate with fridges on the backs of their utes and then arriving without the fridges? That is not what this clause is about. This clause should be about being able to open vehicles, open concealed places, and say, "We got you. You thought you were going to get away with this." That is clearly the way the stop-and-search powers under the Fish Resources Management Act work. It has one of the most powerful stop-and-search provisions of any legislation. It empowers Fisheries officers to go into people's fridges in caravans, for example, look in the freezer and see what they have in there. This is not about DEC officers sitting on the side of the road watching fridges go in and out of national parks.

Hon DONNA FARAGHER: It is not the intention to stop every vehicle that goes into every part of a state forest. We do have a problem, as I indicated previously, in that inspectors are currently unable to intercept vehicles, even in cases in which it is very clear that illegal dumping is about to occur or, indeed, in cases in which pollution or unauthorised discharge might already be occurring. They do not have that capacity at the moment. In this instance, it does enable them to intercept vehicles, and there have to be reasonable grounds. Obviously there are certain forests that are more problematic than others. The officers would need to have those reasonable grounds. Hopefully, it will prevent people from continuing with their planned dumping activity because they know that there is an officer there who has suspicions. It will not be the case that every person who wants to go into a state forest will be stopped. There is the element of reasonable grounds. The provision will not be any more forceful. I hope Hon Sally Talbot is not thinking that that is the case. The provision will deal with a situation in which currently the department is prevented from being able to deal with and to intercept vehicles. That may relate to potential illegal dumping or clear instances in which pollution or discharge might already be occurring. That has been a failure of the act.

Hon SALLY TALBOT: With respect, I suggest that the minister may have misread this clause.

Hon Robyn McSweeney interjected.

Hon SALLY TALBOT: Hon Robyn McSweeney can say that the minister has not misread it. This is not about the power to stop and search if an officer has reasonable grounds to suspect that an offence is going to be committed. It is about the power to stop and search to ascertain if the officer has reasonable grounds. They are quite different things. This is not just a matter of the way the clause is phrased. If the clause has been properly drafted and it means what it says, we would stop every vehicle that went into a state forest because, as a result of what was found, we thought an offence was going to be committed. It is quite different from other stop-and-search provisions in which we have to have reasonable suspicion that something is going to happen. We cannot have it both ways.

Hon DONNA FARAGHER: In response, there would need to be reasonable grounds. With respect to ascertaining whether an offence has been committed, as I mentioned before, inspectors are currently prevented from ensuring compliance with controlled waste, for example, because they are unable to stop commercial vehicles transporting controlled waste. This creates a situation in which inspectors may be unable to act until the controlled waste has already been illegally dumped. That can also lead to harm to the environment or to human health or whatever it may be. In terms of "ascertain", it is not new inasmuch as there are powers under other acts that are closely equivalent to the powers that we are proposing here. There are existing powers for inspectors under the Fertilizers Act and they are narrower than the powers of Fisheries officers under the Fish Resources Management Act. With respect to the Fertilizers Act, officers are empowered to stop and search vehicles in order to ascertain whether they have reasonable grounds to believe that certain substances are present. We are not

putting something new forward. In fact, the provision is narrower than the provision in some other acts. We have provisions for reasonable suspicion and also reasonable grounds but we are currently prevented from using them.

Hon SALLY TALBOT: I suspect that this clause was supposed to read as follows: "An inspector or an authorised person may at any time stop, enter, search and inspect any vehicle or vessel if he has reasonable grounds for believing that an offence under this act is being, has been or is likely to be committed." I suspect that that is how the minister wants it to read. I ask the minister: when an inspector stops a person and the person says, "Why have you stopped me?" is the inspector going to say, "I have stopped you to ascertain whether, as a result of what I find, I might have reasonable grounds for believing that an offence is going to be committed" or "I have stopped you because I have reasonable grounds for believing that an offence is about to be committed"?

Hon DONNA FARAGHER: I reiterate that the words "in order to ascertain" are an attempt to respond to the current situation in which inspectors are prevented from ensuring proper compliance with, for example, controlled waste laws. That is an issue that has been identified by officers with on-the-ground experience. That is why those words have been placed in that clause. Because officers are unable to stop offenders, it creates a situation where they may be unable to act until the offenders have already illegally dumped. We want to be able to prevent offenders from being able to commit the illegal dumping before being prosecuted, in order to avoid the ensuing pollution and harm to the environment and human health. This issue has been identified through the experience of the officers on the ground who deal with these matters.

Hon SALLY TALBOT: If that is the case, then the minister is saying that the inspectors and authorised persons can stop a vehicle or vessel without reasonable grounds for suspicion.

Hon DONNA FARAGHER: The inspectors are currently prevented from ensuring proper compliance. Therefore, this is a compliance measure as well, obviously, to see that the officers are doing the right thing. I do not believe that the concern is real, but I appreciate where Hon Sally Talbot is coming from. I am happy to remove "in order to ascertain" if that is the wish of the chamber. I would only do so on the basis that the key aspect to this issue is the concept of "reasonable grounds". The words "in order to ascertain" are included to deal with a situation that has been identified by officers on the ground dealing with these matters—a problem that they have identified. Including those words enables and ensures proper compliance with controlled waste laws that have been found wanting. That is the simple reason for why those words are there, but I am happy to consider a removal of those words if that is the wish of the chamber. I do not consider this lightly because I recognise and appreciate that this is a matter that has been raised by Department of Environment and Conservation officers. It is a loophole and a challenge for them to be able to ensure proper compliance with controlled waste laws—I am using that as an example. They have identified this as a problem and that is why those words are in the bill.

The DEPUTY CHAIRMAN (Hon Michael Mischin): Minister, given the nature of the clause, do you wish to take some advice and postpone consideration of it? I leave it open as an option.

Hon DONNA FARAGHER: I will let Hon Robin Chapple take the call.

Hon ROBIN CHAPPLE: I understand why the words "in order to ascertain" are in the bill, but I think it is in the wrong place. I am not necessarily saying they should be removed. If we went on to say "and inspect any vehicle or vessel if he has reasonable grounds for believing that an offence under this act", we would need to put in "in order to ascertain" after "this act" in some way, and then continue with "is being or has been or is likely to be committed". He is trying to ascertain whether he has reasonable grounds, not the other way around.

Hon SALLY TALBOT: Can I just add to that? The minister said just now that these were reduced powers, or they were lesser powers than were available to fisheries officers under the Fish Resources Management Act. If the minister goes down the track that Hon Robin Chapple is suggesting, the Department of Environment and Conservation officers or inspectors would be given equivalent powers. The whole point here is that fisheries officers enter places to see whether an offence has been committed. I am not sure whether that is what the minister wants anymore. I listened to the offer made by the Deputy Chair; I think the minister should take it.

Hon DONNA FARAGHER: Obviously, I do not have the Fish Resources Management Act in front of me and I am not the Minister for Fisheries, but the information that I have is that the powers being proposed here are narrower than the powers available to fisheries officers under that act. It is equivalent, or a close equivalent, to the powers of inspectors under the Fertilizers Act, but it is narrower than the powers under the Fish Resources Management Act.

Hon SALLY TALBOT: Do I understand that the minister wants to go on; that she does not want to report progress?

Hon DONNA FARAGHER: I am happy to move an amendment if it will satisfy some of the concerns that have been raised by the opposition.

Hon Sally Talbot: To delete the words "in order to ascertain"?

Hon DONNA FARAGHER: To delete the words "in order to ascertain". As I have said, there was no mal-intent in putting those words forward. There was a clear purpose for doing so, but I am happy, based on some information provided to me, that we can remove those words for the purpose of progressing the bill. Therefore, I move —

Page 5, lines 7 and 8 — To delete "in order to ascertain".

Hon ROBIN CHAPPLE: I wish to thank the minister; it is a progressive way that we are dealing with amendments.

Amendment put and passed.

Hon SALLY TALBOT: I will re-ask a couple of questions to make sure that we are on more solid ground. What would constitute reasonable grounds?

Hon DONNA FARAGHER: I thought we had moved on from that, but obviously not. On "reasonable grounds" is a common term. It is things like time, place and circumstance. If there is a circumstance in which someone is heading into state forest and has a trailer with a heap of rubbish on the back of it, obviously that would form reasonable grounds; and if the person is doing that in the dead of night and there happens to be an inspector—I am not saying there necessarily would be, but a circumstance in which it might be late at night—those sorts of things would fall within the ambit of "reasonable grounds".

Hon SALLY TALBOT: Would it be "reasonable grounds" if somebody was going into an area that was known to be a place where people illegally dumped? Would that be grounds for stopping the vehicle and searching it?

Hon DONNA FARAGHER: Again, it would not matter whether it was a highly visited area or a well-known dumping area. If someone was driving into a well-known dumping area with a trailer load of asbestos, for example, obviously there would be reasonable grounds to stop that person to seek some information.

Hon SALLY TALBOT: If there was no material visible to the inspectors, would they not be able to stop the vehicle or the vessel?

Hon DONNA FARAGHER: Again, they would only be able to stop them if they had reasonable grounds to suspect that they had material that they were about to dump, so they would have to have reasonable grounds.

Hon SALLY TALBOT: Would it be a defence for a person to claim that the inspector or authorised person did not have reasonable grounds for belief?

Hon DONNA FARAGHER: I understand that it would not be a defence, per se.

Hon SALLY TALBOT: What would happen if the inspector or authorised person finds something that suggests an offence is being committed under some other act?

Hon DONNA FARAGHER: The power would relate only to this act. If the officer saw some other potential criminal offence that would be covered under another act, obviously the officer could report that to the police, much like any other citizen in that regard, but the powers we are referring to here relate only to the act to which it applies.

Clause, as amended, put and passed.

Clause 9: Section 99A amended —

Hon ROBIN CHAPPLE: I move —

Page 5, lines 16 to 31 — To oppose the clause.

I rise to oppose this clause, and I hope that the minister and her advisers will listen to the argument I put forward because I think it is a better outcome if we remove this clause. I am moving to oppose this clause because it has the effect of watering down the whole concept of modified penalty notices. The existing section 99A(1) makes it clear that a modified penalty notice should be issued only in very limited circumstances. It is important that an alleged offender not be let off lightly unless the person meets all of the criteria in existing section 99A. We agree that the notation in the explanatory memorandum to this bill that existing section 99A(1)(c) or (d) is highly unlikely to be met in the case of the offence the subject of this bill, and that the act gives us a choice as a Parliament to merely note that and therefore it would be very rare for an offence the subject of this bill to be made the subject of a modified penalty notice, or to water down existing section 99A in the case of the offences the subject of this bill. This clause takes that second option, and we say we should take the first option. This clause amounts to saying that unlawfully dumping is worse than the offences normally the subject of a modified penalty notice, so the government proposes to water down the definition of "modified penalty notice" when applied to those offences. We believe that is an unacceptable response when the rest of the bill is designed to

target what is supposedly very serious offences that the law does not currently address. We therefore urge the chamber and/or the minister and her advisers to support the opposition to this clause because we think that the outcome will be a strengthened outcome under modified penalty notices.

As to Quorum

Hon KATE DOUST: Mr Deputy Chair, I draw your attention to the state of the chamber.

The DEPUTY CHAIRMAN (Hon Michael Mischin): I believe there is a quorum present. There are 13 members, including myself; 13 including the minister.

Hon KATE DOUST: My apologies, I have never understood the Chairman to be actually counted as part of a quorum before; it is usually the members seated on either side.

The DEPUTY CHAIRMAN: All right. Be that as it may, I think we have a quorum now.

Hon KATE DOUST: We do now.

The DEPUTY CHAIRMAN: Yes. I thank Hon Kate Doust for drawing it to our attention.

Committee Resumed

Hon SALLY TALBOT: I support the amendment. When I saw this measure in the bill to remove paragraphs (c) and (d) from section 99A, my first reaction was that it looked as though they were being removed because the government expected the opposition to say that they were nonsensical in relation to illegal dumping offences. I must say that my intention would have been to go down exactly the path suggested by Hon Robin Chapple and to leave those two paragraphs in there. I cannot foresee that they would do any harm. They might never be invoked, but why would we not want to concede the possibility that even illegal dumpers can have a road to Damascus experience and may well want to avail themselves of the provisions of paragraphs (c) and (d)? Surely the environmental outcomes would be better were that to be the case. Labor will therefore support Hon Robin Chapple's amendment.

Hon DONNA FARAGHER: The government will not be supporting this amendment. We progressed a little on the previous clause, but we will not be supporting it. I hear what the honourable members are saying, but the amendment as proposed by Hon Robin Chapple would remove the ability to impose modified penalties for unlawful dumping offences. There is a reason why this has been done. Modified penalties are a useful enforcement tool for the more intermediate or lesser offences because they provide an alternative to prosecution in circumstances when an offender cooperates with the department and takes steps to prevent future occurrences of the offence. Generally in cases of dumping waste, offenders will never attempt to minimise the impact of the offence, because that would mean picking up the dumped waste—which they do not want to do, as the whole purpose of dumping the waste is to avoid being caught—or notifying the authorities. However, there could be circumstances in which a leak occurs and the company notifies the department immediately that it has occurred, the company cooperates fully with the investigating authorities, cleans up the site, and therefore the leak that occurred is regarded as an error. The CEO would obviously have to be satisfied that there had been that full cooperation, that the company had cleaned up the site and that the leak was an error. In that particular circumstance a modified penalty might be appropriate. It would not be utilised in circumstances when someone illegally dumped for the sake of illegally dumping. The CEO would have to be satisfied that the company had contacted the authorities immediately and said that the leak had occurred, remedied the problem with perhaps a clean-up of the site, and, therefore, the two specific requirements would not apply to the waste-dumping offence.

I must add that I understand the department must publish the fact that a modified penalty was given. It is quite a transparent process. The department and the director general have to be satisfied that the modified penalty should be given for a particular circumstance. If the modified penalty related to illegal dumping per se, I would agree with the member, but it is available in those circumstances when a leak has perhaps occurred and the company responsible has done the right thing by contacting the department, cleaning up the site and doing all those sorts of things that make it obvious that it was a mistake. That is the reason for this provision in the bill.

Hon ROBIN CHAPPLE: In relation to this matter, the minister has said that if a corporation came back and did the right thing, there would be provision for a modified penalty. Would that occur to an individual who offered the same level of going back and cleaning up or is this an out only for corporations?

Hon DONNA FARAGHER: Yes, it could apply to an individual. Again, I refer the member to the entire section 99A. An individual would also have to be able to meet the requirements of paragraph (e), which states —

> (e) the alleged offender cooperated with officers and employees of the Department and provided information and assistance when so requested;

Paragraphs (f) and (g) also apply, which state —

(f) the alleged offender has taken reasonable steps to ensure that the circumstances giving rise to the allegation of the offence do not reoccur; and

(g) having regard to the nature and particulars of the alleged offence …

Again, the individual would have to take reasonable steps to remedy the situation that has occurred. So, yes, it could occur with an individual, but that individual would have to satisfy a number of steps before the director general of the department would entertain a modified penalty.

The DEPUTY CHAIRMAN: The question is that the clause do stand as printed.

Hon ROBIN CHAPPLE: By way of explanation, I heard what the minister said, but I still believe that our amendment is valid and so I will continue with the amendment.

The DEPUTY CHAIRMAN: It is not an amendment. Hon Robin Chapple is opposing the clause.

Hon ROBIN CHAPPLE: I oppose it; sorry.

The DEPUTY CHAIRMAN: The question, therefore, is that the clause do stand as printed. Hon Robin Chapple is opposing the clause.

Hon ROBIN CHAPPLE: I am opposing it.

Amendment put and negatived; clause thus passed.

Clause 10: Section 114 amended —

Hon ROBIN CHAPPLE: I was going to say that we support this clause but take the opportunity to note that we intend to move a new clause designed to provide proper incentive for local governments to be involved in the prosecution of such offences; however, I will now no longer say that because I told the minister that we would remove our amendment 5/N11A from the supplementary notice paper and will not proceed with that amendment any longer. Therefore, my comments on clause 10 are now invalid.

Clause put and passed.

Clause 11: Schedule 1 amended —

Hon ROBIN CHAPPLE: We are now moving to introduce significantly greater penalties. As I indicated earlier, the New South Wales Protection of the Environment Operations Act 1997 has significantly higher penalties than we have in the Environmental Protection Amendment Bill. As we have heard, the minister has identified that our proposed amendments to clause 11 would create a situation whereby the penalties under this bill would be higher than other penalties under the act. However, we do not resile from that fact because, in fact, most probably the other penalties throughout the Environmental Protection Act need to be significantly greater anyway. These amendments will bring the maximum penalties for the offences created under section 49A within a range that is experienced elsewhere in the nation. The penalties imposed under the New South Wales legislation are by reason of simple magnitude of the ability provided to impose per day penalties a greater deterrent to would-be offenders. We note that there are no per day penalties in clause 11. It is odd that this bill, crafted with really laudable intent in more rigorously addressing breaches of the act, contains, in our view, such a relatively weak fines mechanism. It appears that the government, although obviously being strongly advised of the urgent need to police the matters of waste dumping in bodies of water, is being to a degree rather weak-kneed in regards to deterrence and enforcement. This amendment should be one of consistency with the remainder of schedule 1 contained within the Environmental Protection Act. We believe that schedule 1 should also be amended to increase penalties across the board for individual and corporate offenders. If this amendment were to get up, I would hope that the government would immediately seek to raise the fines associated with provisions throughout the rest of the Environmental Protection Act to come in line with the fines that we seek to impose. I point out that these fines that we have identified are still significantly short of the fines that are imposed in New South Wales. On that basis I move —

Page 6, after line 8, in the table — To delete the rows and insert —

1CA	49A(2)	$250 000	$60 000
1CB	49A(3)	$250 000	$60 000

I also intend to later move amendments 2/11 and 3/11 on the notice paper, which read as follows —

Page 6, after line 11, in the table — To delete the rows and insert —

1CA	49A(2)	$2 000 000	$100 000
1CB	49A(3)	$2 000 000	$100 000

Page 6, after line 14, in the table — To delete the row and insert —

10A	91A(2)	$20 000	Nil

Hon DONNA FARAGHER: As I foreshadowed in my summing up, the government will not support this amendment. As I said, I did find it interesting that the Greens are often trying to reduce penalties but in this case they are trying to increase them. In any event, I recognise where Hon Robin Chapple is coming from. Dumping waste is clearly a more significant offence than relatively minor offences under the Litter Act, but it is not as significant as the tier 1 category of offences, such as causing pollution and material or serious environmental harm. We agree on that, I think. Therefore, accordingly, illegal dumping is a tier 2 offence with the same maximum penalties as other tier 2 offences within the act. I appreciate where Hon Robin Chapple is coming from, but I think that we will have to simply agree to disagree. I appreciate that Hon Robin Chapple's preference would be that we increase all the penalties within the act and I think that is really where the honourable member is coming from, but, having said that, we are dealing with the act that we have as is. We believe that tier 2 is the appropriate offence category for this particular situation and the government will not support this amendment.

Hon SALLY TALBOT: I just very quickly indicate that, to be frank, I believe that the level of penalty is the least of our problems. If this bill goes the same way as many other anti-pollution measures, there will be very few successful prosecutions under the act. I would rather have had a couple of other amendments made to earlier clauses of the bill. However, having said that, it still seems to me that one of the grey areas of the bill is a clear understanding about the difference between waste that does not pollute and waste that does. It is not at all clear to me that we make that distinction on a sound basis. If Hon Robin Chapple's ulterior motive is to increase penalties all round, I think we need higher penalties for any act that either leads to pollution or is polluting in itself; therefore, we will support Hon Robin Chapple's three amendments to clause 11.

Amendment put and negatived.

Hon ROBIN CHAPPLE: I move —

Page 6, after line 11, in the table — To delete the rows and insert —

1CA	49A(2)	$2 000 000	$100 000
1CB	49A(3)	$2 000 000	$100 000

Amendment put and negatived.

Hon ROBIN CHAPPLE: I move —

Page 6, after line 14, in the table — To delete the row and insert —

10A	91A(2)	$20 000	Nil

Amendment put and negatived.

Clause put and passed.

Title put and passed.

Bill reported, with an amendment.