

**WASTE AVOIDANCE AND RESOURCE RECOVERY LEVY AMENDMENT REGULATIONS 2009
— DISALLOWANCE**

Motion

Pursuant to standing order 152(b), the following motion by Hon Robin Chapple was moved pro forma on 30 March —

That the Waste Avoidance and Resource Recovery Levy Amendment Regulations 2009, published in the *Government Gazette* on 22 December 2009 and tabled in the Legislative Council on 3 March 2010 under the Waste Avoidance and Resource Recovery levy Act 2007, be and are hereby disallowed.

HON ROBIN CHAPPLE (Mining and Pastoral) [8.59 pm]: I rise tonight to speak to the disallowance in my name. There are many aspects to this that I want to touch on tonight, but I am cognisant that there may be other speakers so I will not take up too much of the time of the house outlining my concerns. I think we need to go back to the fundamentals of this regulation. It is a regulation to introduce a massive tax—something that is never contemplated by any system when developing regulatory frameworks. I think we need to go back and touch on the sixteenth report of the Standing Committee on Environment and Public Affairs entitled “Municipal Waste Management in Western Australia”, which reviewed the legislation. We have to remember that recommendation 3 of the committee recommended the Waste Avoidance and Resource Recovery Act 2007 be amended to limit the Department of Environment and Conservation’s access to the funds from the landfill levy to offset actual administration costs of the landfill levy and other specified purposes set out in regulations. I think we need to realise again that regulations were never intended for this purpose. The question was asked many times during the debate in both this place and the other place why the funding arrangement was not established in the principal amendments to the waste avoidance legislation. We were consistently told that it was Crown Law’s view, which we never got to see, that there was a need to introduce the legislation and then, by regulation, create a taxing provision.

The Waste Avoidance Resource Recovery Levy Amendment Regulations that we are dealing with are actually quite simple, but their implication is absolutely disastrous. Regulation 12(1) states in part —

R is, if the first day of the return period is —

- (a) before 1 January 2010 — \$3;
- (b) on or after 1 January 2010 — \$12;

That four-fold increase is a massive increase by anyone’s standards who has ever had anything to do with regulations. The principle of regulations is that, in fact, they should not be a taxing agent. They should not accrue an interest over and above the consumer price index. Quite clearly, this is nothing more than using a regulatory framework to actually generate extra funds. Regulation 12(2) is to delete the passage that begins with “R is” and ends with “9” and insert —

R is, if the first day of the return period is —

- (a) before 1 July 2009 — \$7;
- (b) on or after 1 July 2009 and before 1 January 2010 — \$8;
- (c) on or after 1 January 2010 — \$28.

That is a massive increase and something I am sure former members of this house who have had a long experience with delegated legislation and attendant legislation would be horrified to see. It sets very dangerous precedents. I can talk about much of the deliberative debate that was held when this house dealt with the Waste Avoidance and Resource Recovery Bill, but I think we need to understand the principles of regulation. It gives me a great deal of concern that we are generating these sorts of funds through a regulatory provision. It is something that was not anticipated under the Westminster system, the Canadian model, the New Zealand model or any other models that I am aware of, with the exception of regulations that pertain to matters in the United States, where in fact regulations are used for specific taxing matters.

I wish to make a few comments that are important to put on the record. Mr Desmond Pearson, the Auditor General, and Mr Glen Clarke, Executive Director, Office of the Auditor General gave evidence to the Joint Standing Committee on Delegated Legislation on 14 September 2005 that —

The principle of tax or a fee is established and debated and put in place for the long-term, but the year by year variations are done routinely and are subject to review by —

The delegated legislation committee —

which has the power to move for a disallowance if there is a problem with its application. That is why it is very important.

We also need to understand comments made to the Joint Standing Committee on Delegated Legislation and reported in its thirteenth report, tabled in 2004, which are —

The common law and s 46 of the *Constitution Acts Amendment Act 1899* impose strict legislative requirements in relation to taxes. A tax may only be imposed by an Act of Parliament, and such an Act must deal solely with the tax and no other matter.

It is quite clear that there is almost a uniform understanding that regulations do not raise taxes. I need to point out that the bill that we passed here made specific provision, albeit against the comments of many people in this chamber and the other chamber, to enable regulations under that act to be made to generate a taxing arrangement.

Hon Ken Travers: It still does not make it legal.

Hon ROBIN CHAPPLE: It does not. It is not ultra vires the principal act but it certainly goes against every sentiment of regulations established anywhere around the world.

Hon Ken Travers: Also, whether it is still a legal tax is another point.

Hon ROBIN CHAPPLE: We are aware that the Western Australian Local Government Association and other people have been looking at this. I do not think the game is up yet on the question of whether it is legal in the long run, but I think some very strong principles are established under international law that say that this sort of thing is not in the interests of good governance. This always was and always will be the great waste robbery. It is a matter on the public record.

Hon Ken Travers: That is very clever.

Hon Ljiljanna Ravlich: It is very, very clever and it is appropriate.

Hon ROBIN CHAPPLE: I thank members. Do they want me to repeat it?

Hon Sally Talbot: Yes.

Hon ROBIN CHAPPLE: The great waste robbery. It is interesting that we have a department and a government that are hell-bent on generating tax by, in my view, a fraudulent method. I say it is fraudulent because it is not honest to members of the general public, to the waste avoidance entity or the Department of Environment and Conservation, which this government had failed to fund properly and therefore had to resort to the great waste robbery to prop up its budget deficit. The general public is paying for this by what they can put into their green bins and by the amount industry has to pay to deal with its waste. This is not in any way, shape or form about minimising waste. This is nothing more than a revenue-based Multanova. The levy gathers income for the state government because it failed to properly manage its budget in the lead-up to the last budget. Much has been said in the debates in this and the other place about what has gone on.

My principal argument is that this sets one of the most dangerous precedents that this Parliament may face when dealing with attendant or delegated legislation. I would hate to think that a future government, whether it is this government or the next government, would ever use this form of deceitful approach of accruing taxation for general revenue. I think I have made my point very clear. I understand that other members wish to talk on this. I reiterate that the government is using regulations for the wrong purpose.

HON DONNA FARAGHER (East Metropolitan — Minister for Environment) [9.11 pm]: I will respond on behalf of the government to this disallowance motion. I constantly find it amazing how members on the other side of the house can do miraculous backflips when it suits them. We have seen evidence of that from the Greens (WA) tonight. I do not intend to speak for long on this disallowance motion. However, I put on the record my amazement that the Greens, of all people, have moved this motion, given their previous supposed support for the levy.

Hon Ken Travers: How is that a backflip?

Hon DONNA FARAGHER: I will get to that. I appreciate that there is a difference of opinion across the chamber about the Waste Avoidance and Resource Recovery Amendment Bill 2009, which was passed last year. It is fair to say that the legislation was very well debated in this house. I think it was debated for 24.5 hours. Some members on this side of the house are still getting over Hon Sally Talbot's 10-hour tedious speech. However, I do not intend to recanvass all those matters because they were very well canvassed when we dealt with the legislation.

Hon Ken Travers: You are just trying to inflame the chamber, aren't you?

Hon DONNA FARAGHER: I am making a simple statement. I remind the chamber that these regulations, which are the subject of the disallowance motion, address only the rate of the levy. All other aspects of the levy regulations remain unchanged. Hon Robin Chapple said a moment ago that the levy is not about reducing waste. I remind the chamber that the landfill levy and the regulations that provide for it have been in place since 1998. They provide a financial disincentive to take rubbish to a landfill and encourage people to reuse or recycle their waste. That is fully supported by this government. It is clearly not supported by the Greens anymore. I am sure that we will hear from Hon Sally Talbot in a moment. I have no doubt that we will see another backflip and that she will not support it either. We will wait with bated breath. The fact is that the previous levies for putrescible and inert waste were far too low. In comparison with the levy in other states, the Western Australian levy was very low. The levy in New South Wales was and continues to be many times higher than the Western Australian levy. I think that the levy in New South Wales is around \$58 per tonne. I understand that that will again increase on 1 July. Victoria's municipal and industrial waste levy will rise to \$30 per tonne from 1 July. South Australia's levy is currently around \$25.20 per tonne. By increasing this levy, Western Australia's levy, albeit not as high as New South Wales, will be far more consistent with the levy in other states.

Hon Robin Chapple has stated that these regulations will have disastrous consequences. I can advise the member that since the introduction of these amendment regulations, the early indications are that there has been a reduction in both putrescible and inert waste. That is a good thing.

Hon Adele Farina: Is it being illegally dumped in forests?

Hon DONNA FARAGHER: No, it is not. There is no indication from the department that that is happening.

Several members interjected.

Hon DONNA FARAGHER: Members do not like to hear that waste is actually being reduced, and that is exactly what the levy was designed to do.

Hon Ken Travers: That is not what the levy was designed to do; it was designed to raise money to cover your budget blow-out.

The DEPUTY PRESIDENT: Order!

Hon DONNA FARAGHER: I remind Hon Ken Travers that the levy has been in place since 1998.

Hon Ken Travers: Yes, but the increase —

The DEPUTY PRESIDENT (Hon Michael Mischin): Order! I have just called order on several occasions to enable the minister to provide her speech in response. Proceed.

Hon DONNA FARAGHER: Thank you, Mr Deputy President. I do not intend to speak for much longer because I know that other members want to speak.

I reiterate that I find it quite bizarre that the Greens (WA) have moved this motion. Hon Robin Chapple has said that these regulations represent an incredulous increase. I remind Hon Robin Chapple of what he said in this house on 18 November 2009. He said —

It is very important at this stage in the debate to make it clear to this place, to the Parliament in general and to the public that the Greens (WA) are not opposed to a landfill levy or, indeed, the proposed increased landfill levy; at least, we do not have a problem with the level it is being set at.

That is why I have stated that I find it incredible that we have now had a backflip. I am not making it up. Members can look at the *Hansard* of 18 November 2009. I will read it again. He said —

It is very important at this stage in the debate to make it clear to this place, to the Parliament in general and to the public that the Greens (WA) are not opposed to a landfill levy or, indeed, the proposed increased landfill levy; at least, we do not have a problem with the level it is being set at.

Given those comments, I am not sure why the Greens, and particularly Hon Robin Chapple, are now against the increase in the levy, given the levy's objective of reducing waste disposal to landfill. It is quite absurd to say the least. For all those reasons, the government will not support the disallowance motion.

HON SALLY TALBOT (South West) [9.18 pm]: Honourable members will be glad to know that I do not intend to speak for very long on this motion.

Hon Ken Travers: I could move an extension that the house sit beyond 9.45 pm!

Hon SALLY TALBOT: I thank Hon Ken Travers. There are a couple of things about this measure that I have not yet said, and I am confident that I will be able to say them in the next five minutes or so.

We on this side of the chamber will support the disallowance motion moved by Hon Robin Chapple. I am happy to inform Hon Robin Chapple that we in the Labor Party find nothing inconsistent in the remarks he has made this evening, or indeed in the moving of this disallowance motion. However, the vacuous drivel that we have heard from the Minister for Environment this evening shows that she has absolutely no idea about what we are supposed to be debating here.

Hon Donna Faragher: No. I think you've actually got the problem; not me. It's about the levy.

Hon SALLY TALBOT: This is about the regulatory mechanism. Whoever wrote the minister's speech for her this evening either was obviously misinformed by her about the item on the notice paper or has no more understanding than the minister has about what it means to move a disallowance motion.

Hon Donna Faragher: Forgive me if I don't take advice from you. If that was the case, we would always get things wrong!

Hon Ljiljanna Ravlich: You should take advice from Hon Sally Talbot because she is a doctor.

Several members interjected.

Hon SALLY TALBOT: I do want to respond to that interjection so that it gets into *Hansard*.

The DEPUTY PRESIDENT: Order, members! Hon Sally Talbot has the call.

Hon SALLY TALBOT: Thank you, Mr Deputy President.

Hon Ken Travers interjected.

The DEPUTY PRESIDENT: Hon Ken Travers will have the opportunity to speak in due course.

Hon SALLY TALBOT: The absolute nonsense that we have heard from the minister this evening just places on record and formalises for us, and confirms for us in fact, that she has not the faintest grasp of those many hours of argument that went on in this chamber. When this house moved to the other chamber, we carried it on there. She has not understood one word of our objections to this disgraceful stunt that she pulled on us. Has it occurred to honourable members that it is actually very fitting that we should be debating this disallowance motion this evening on the eve of the budget, which will be brought down tomorrow? Tomorrow is the anniversary of this disgraceful stunt that this Minister for Environment tried to pull on this Parliament and on the people of Western Australia.

Yet another way in which the minister has indicated to us this evening that she has not the faintest idea of what the issues are is that she is telling us that the increase in the levy is reducing the amount of waste going to landfill, yet her own budget figures betray the fact that she has absolutely no expectation of that happening. It will be very interesting this time tomorrow evening, when I suspect we will be poring over some very depressing statistics in the budget on that particular measure.

Can I just quickly get to the point of this disallowance motion? What we saw in this trick that the government pulled on us a year ago was a 300 per cent increase in the waste levy and the effective end of hypothecation of that levy to the waste account. If that was the best the government could do on budget night a year ago, it is a very poor show and it has only been confirmed for us over the past 364 days that there has been not one innovative move made about waste avoidance and resource recovery in Western Australia during this very sad time that this minister has been driving the cart. We have seen none of the innovative moves that were enabled by the acts that the Labor government put in place. Why have we not seen the minister walk into this place and talk about container deposit legislation?

Hon Donna Faragher: Did you talk about it? Did you introduce it? No.

Hon SALLY TALBOT: Why have we heard absolutely nothing from this government about extending producer responsibility? The industry is sitting there waiting for the government to move, and it has done absolutely nothing.

This minister has not even grappled with the relatively easy task—stakeholders in the industry have talked to her about this on many occasions over the past 18 months or so—of bringing into line the volumes in the two methods for assessing waste. They, of course, are captured in these regulatory amendments. The reality is that we have two waste streams in this state and we have two different ways—one by volume and one by weight—of calculating the amount of levy that is paid. It is an absolute nonsense. Very simple regulatory changes would have brought Western Australia to the front of waste avoidance and resource recovery in this country. Sadly, after 18 months of this mob being in charge, we have only gone backwards. That is why Labor is supporting this disallowance motion.

HON KEN TRAVERS (North Metropolitan) [9.25 pm]: I am glad I was given the call. When the Minister for Environment sought me to interject on her and I was obeying the instructions of the Deputy President (Hon Michael Mischin), I am glad that I have now got the call.

I want to make one point in this debate. Tonight the minister suggested that this levy was about trying to reduce waste and it was not about the government using the 300 per cent increase as a way of covering the government's budget black holes, its unfunded election commitments and its uncontrollable expenditure. If that was the case, then why was it that when it produced its budget figures last year it did not provide for a decrease in the amount of waste going to landfill? Why did it not, minister? When the former chair of the Waste Authority appeared before the Standing Committee on Environment and Public Affairs he said that he knew that would happen, but the government did not understand that. The government continued to incorporate into its budget figures a belief that there would be no reduction in waste even though the rest of us knew that if the fee was put up it would probably lead to that. That is not why the government did it. The government did it because it needed to come up with money to fund its uncontrollable expenditure growth—no other reason. That is why the Greens (WA) have moved a disallowance motion tonight. They support increases in the levy if it is about reducing waste. They support increases in the levy if it is put into alternative waste management processes. They support it if it is about encouraging recycling and reuse. What the Greens do not support, and what we do not support, is the government's view that waste levies are there to fund this government's inability to control expenditure across all government agencies. That is why it should be disallowed tonight. We have to send a message to this government that it is not appropriate to use levies like this to fix up the Liberal Party's unfunded election commitments. It is not appropriate for the government to continue to put the burden on ordinary working families in Western Australia to fund its uncontrolled and unaccountable expenditure. A 300 per cent increase is the burden this government has put on families. That is who will pay it. It had nothing to do with reducing waste when it was put on. To come into this house and suggest anything else is, very borderline, misleading the house. The facts are clearly there, and they were in the budget papers at the time. To suggest anything else is just nonsense.

HON ROBIN CHAPPLE (Mining and Pastoral) [9.28 pm] — in reply: Hon Ken Travers did a marvellous job. In fact he seemed to know our policies better than we do!

For the record, the Greens (WA) support a waste levy. We support a waste levy that generates a redirection in waste. We support a waste levy that actually goes back to the area that it was generated from for the purposes of minimising waste, expanding waste recycling and expanding container deposit legislation—doing all the things that are necessary in this state to minimise waste and to stop waste being put in the ground. If the Minister for Environment is raising this money to encourage waste being put in the ground so that this government can make money out of waste, that is not our ideal. Our ideal is to ensure that waste is minimised and that the money raised goes into the waste avoidance and resource recovery account. By amendment, we tried to make sure that the money raised went back into the waste avoidance and resource recovery account. The minister was well aware of our proposed amendments.

Several members interjected.

Hon ROBIN CHAPPLE: And it was very well introduced by the former government, I think. The key issue that I tried to raise tonight—the minister misinterpreted my comments when I said that this is very dangerous legislation—is that it is not the legislation; it is the process of moving to a regulatory regime to raise tax. That is not something that is accepted by any jurisdiction around the world, with the exception of the United States of America. It is a principle that we do not use regulatory regimes to raise taxation. That is the point that I was making, because that sets an incredibly dangerous precedent, not only for this government but for any future government that might seek to raise taxation by using regulatory powers. The hairdressers' levy might be increased by 300 per cent and the money put into railways! A government could do all sorts of things.

Hon Ken Travers: It would not even have to spend it; it could use it to balance the budget—just to use an example.

Hon ROBIN CHAPPLE: This is such a dangerous precedent. I hope that future members in this place will read this *Hansard* and read into it the notion that regulations should not be used as taxing powers. I make that point very strenuously, because it is certainly the principle that exists everywhere else in the world, and this house and this government have trampled all over a normal procedural process. On that basis, I commend my disallowance motion to the house.

Question put and a division taken with the following result —

Extract from *Hansard*
[COUNCIL - Wednesday, 19 May 2010]
p2877b-2882a

Hon Robin Chapple; Hon Donna Faragher; Hon Dr Sally Talbot; Hon Ken Travers

Ayes (12)

Hon Matt Benson-Lidholm
Hon Robin Chapple
Hon Sue Ellery

Hon Adele Farina
Hon Lynn MacLaren
Hon Ljiljanna Ravlich

Hon Linda Savage
Hon Sally Talbot
Hon Ken Travers

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

Noes (17)

Hon Ken Baston
Hon Liz Behjat
Hon Jim Chown
Hon Peter Collier
Hon Mia Davies

Hon Wendy Duncan
Hon Donna Faragher
Hon Philip Gardiner
Hon Nick Goiran
Hon Alyssa Hayden

Hon Col Holt
Hon Robyn McSweeney
Hon Michael Mischin
Hon Helen Morton
Hon Simon O'Brien

Hon Max Trenorden
Hon Brian Ellis (*Teller*)

Pairs

Hon Helen Bullock
Hon Kate Doust
Hon Jon Ford

Hon Nigel Hallett
Hon Norman Moore
Hon Phil Edman

Question thus negatived.