

ENVIRONMENTAL PROTECTION AMENDMENT BILL 2010

Second Reading

Resumed from 14 October.

HON SALLY TALBOT (South West) [3.06 pm]: When we concluded Thursday's business, we were in the middle of this debate and I spent the first part of my speech pointing out that we are already awash with definitions of waste, pollution and environmental harm. My question to the government was: why do we need a new act to create the offence of illegal dumping? I had begun to go some way to answering that question for myself, because I had read all the relevant material, had the briefings and had spoken to the stakeholders. I concluded with the acknowledgement that illegal dumping may not be a pollution offence, in which case it becomes complicated to prosecute under the existing provisions of the Environmental Protection Act.

My somewhat rhetorical question was: why is the Environmental Protection Act not sufficient? I draw the attention of honourable members to part V of the act, in which we have pages and pages of sections about pollution. Part V is headed "Environmental regulation". We have "Pollution and environmental harm offences", "Causing pollution and unreasonable emissions", "Discharge of waste in circumstances in which it is likely to cause pollution", "Causing serious environmental harm", "Causing material environmental harm" and so on and so forth. I hope that honourable members who are not as familiar with the Environmental Protection Act as some of us, or perhaps not even familiar with the issue of illegal dumping, will begin to get a flavour of what I am suggesting: that we have some real confusion about the existing provisions of the Environmental Protection Act and the Litter Act.

I then turned to the Litter Act and asked: why is the Litter Act not sufficient? From what I can gather from talking to stakeholders and the people who have put this piece of legislation together, the main problem with the Litter Act is that the penalties are too low. That is not a particularly tricky thing to put right. I think that we could have done that some time ago, given that the measures that the government is particularly keen to counteract were put in place, or at least flagged, by the government in May 2009, and that was a 300 per cent increase in the landfill levy, which came into effect in January this year. In February this year, the Minister for Environment announced that there would be changes to the Litter Act. We have not seen those new penalties; it is not a complicated matter to bring before this place and I just do not know why we have not seen those penalties. I also do not know why we have not seen a real attempt by the government to reframe the Litter Act in a way that would take account of what we are now calling "illegal dumping". It is quite clear to me that the Litter Act was written to cover the offence that we would now call "illegal dumping". I understand that there is another point of possible confusion in the Litter Act and that is between carelessness and intent. When we think about littering, we tend to think about people throwing away junk food wrappers and lolly wrappers; it gets more serious flicking cigarette butts out of car windows, but again that is covered by the term "litter". I readily concede that we tend to think less readily of the dumping of possible toxins and pollutants in waterways under the heading "litter". Nonetheless, the fact remains that the Litter Act refers to such things. It would not have been beyond the wit of government to tweak the Litter Act to substantially increase the penalties and to use that act to achieve the effect of this bill. My point is that I suspect we will create a situation of real confusion on the ground. Day by day, people going about their business as council officers or Department of Environment and Conservation employees, the government has specifically acknowledged, will have to look at an offence that they come across and make a decision on the spot about which act they will use to prosecute that offence. That seems to me to be very cumbersome. It seems to me that it will set up potential challenges to the decision that was made on the ground by the officer. I am sure there are other situations in which public officers must make on-the-spot decisions on the basis of their experience and training. I am sure we can all think of occasions when it is absolutely impossible to avoid putting people in that position. But remember what I referred to earlier in my comments about the nature of the situation in which illegal dumping takes place: it is likely to be somewhere quite remote. People do not go along Canning Highway to dump an illegal load from the back of their ute or trailer; they deliberately choose somewhere remote and probably dark. The old expression "pumper's moon" is used when there is no moonlight; it means that people pump stuff they are not supposed to be disposing of into places when they cannot be seen. There will therefore be people like the inspectors—who will likely be DEC officers—going into quite dangerous situations that will be quite stressful for them. And the government is asking them to make an on-the-spot assessment about whether this or that act is the appropriate one to invoke as they try to catch the culprits. That is the concern that I raise at the outset about the way this bill has been framed.

One would think that many of these questions could have been answered if there had been a proper process of consultation. I know that the minister is likely to stand and say that there have been consultations with local government. However, it will be like one of those many previous occasions when this minister stood in this place

saying that adequate consultation had taken place, yet the only person saying it was the minister because all the stakeholders were saying that there had not been adequate consultation.

Hon Donna Faragher: I thought you were going to be positive!

Hon SALLY TALBOT: Yes, I have been very positive, and I have told the minister that the Labor Party is supporting the bill. However, I have also made the point on previous occasions that what we are paid to do in this place is ask whether there is a better way to achieve an outcome. These are the questions I am putting in front of the minister now and she will have a chance in her second reading reply and when we go into the Committee of the Whole to answer some of those questions, hopefully in some detail.

There is therefore this problem. The best possible construction I could put on it, I suppose, is that there has been limited consultation with local government authorities. But I can assure the minister that local governments are far from happy with the way in which this bill has proceeded. I would be astonished to find that the minister was not aware of that; I am sure she is.

The concerns come under a broad range of headings. However, I guess the most pressing for local governments is that they are beginning to feel that they are a bit in the sights of this government. Over and over again local governments feel that they have been duded by people who have been traditionally on the conservative side of politics and who have always been the friends of local governments. I think it is fair to say that by far the majority—certainly the elected councillors—are more comfortable in the company of those on the other side of the house than they are in the company of those on our side. Indeed, I saw at the weekend a demonstration of the fact that all this has now come to a crashing halt when I read Troy Pickard's advertorial piece —

Hon Ljiljanna Ravlich: Yes; he's had enough of them!

Hon SALLY TALBOT: He has had enough of them, as Hon Ljiljanna Ravlich said. He was speaking specifically about the local government reform process, which is not what we are talking about here. But if we add all these things together, we can understand why local governments are feeling particularly twitchy when a bill like this hits the Parliament.

I will give the minister a quote, which I will not source for obvious reasons but which I acknowledged at the beginning of my speech. In some direct input from five or six local government bodies in relation to this bill, one of their submissions to me stated that the general flow of unfunded obligations from state to local government must be slowed or even stopped. The challenge for the government on the other side of the house is to begin to act in a way that will address those very real concerns that are coming up over and over again in relation to many measures the government is taking.

The bottom line is the measures that local governments are worried about, and I am representing here their concern about cost shifting. There is no provision in this bill for financial assistance to local councils, and unless financial assistance is given to local councils, the measures put in place by this bill cannot be used. How counterproductive is that? We load up local governments with all these options for action but we do not give them the wherewithal to put that action in place. It simply means that the bill will be ineffective, which is a shame because it is not a bad bill. But without support to local governments, it will just sit there and be another doorstop in the offices of the chief executive officers.

Let me go to some of the specific concerns that arose in a close reading of this bill. The first question, which relates directly to the role of local government, is: who will be "authorised persons" under the bill? The obvious answer to that is that it will be the current DEC officers, who under the definition in this bill will play the role of inspectors. But, of course, as we all know, there are not that many of them; there are not enough to be able to respond to the kinds of incidents of illegal dumping that this bill purports to cover. Who, therefore, will be the authorised officers? Will they be local government officers? I would be astonished if the answer to that was: "No, they will not be local government officers." Surely it makes sense to empower people such as rangers—people who are out there already on the ground looking for this kind of activity. My questions, therefore, are: who will be the authorised persons? What sort of training will they have? Who will pay for that training? Who will accredit them? Who will provide the resources to make sure that those authorised persons are actually equipped with the resources and the understanding of the various acts on which they will be able to draw when they are doing their patrols?

On that same subject, again relating to the concerns of local government, if local government officers are to be the designated authorised persons and trained and resourced, presumably, to carry out that role, has the minister considered delegating to local government CEOs the consent to prosecute? Currently, authority is delegated to CEOs to prosecute under the noise regulations of the Environmental Protection Act. It is not clear to me whether that provision is in this bill; and, if not, I would like to know why that decision has been made.

Although this bill is clearly well meaning, which is essentially why the Labor Party has made the decision to support it, the concern remains about whether this is indeed a strategic approach to the problem. If members doubt that a strategic approach is needed, they need just to look at the various other programs put in place with the aim of protecting the environment. We cannot just put up fences. We cannot just empower people to make arrests. It has to be a whole and integrated program of education, infrastructure provision and enforcement measures. That is why—despite the fact that the opposition is supporting the bill; our support is not without reservation—we have arrived at that position.

I am sure the minister is familiar—other honourable members may not be—with some of the material used in other states. I want to refer briefly to this material to give honourable members a flavour of what I am talking about when I talk about the need for a strategic approach. From the New South Wales Department of Environment, Climate Change and Water website comes a two–A3 page document titled “An assessment of attitudes and behaviour amongst multi unit dwelling residents in relation to illegal dumping”. The back page of the document is of particular interest to me, although the reasons for illegal dumping are summed up in the document. This very comprehensive study, undertaken by the New South Wales DECCW sustainability and programs division, previously known as Resource NSW, was commissioned by Woolcott Research Pty Ltd in 2003 to assess the attitudes and behaviour of MUD residents—multi-unit dwelling residents—towards illegal dumping practices. This is just a brief summary of those findings. The document states the reasons for illegal dumping —

- Everyone does it; and there is almost certainly going to be no reprisal;
- Living in a multiunit dwelling means the culprit is not likely to be identified;
- Insufficient storage space while waiting for Council Clean-up Day;
- Taking the item to the tip is inconvenient and expensive; and,
- It is easy to dump something on an existing pile.

They are very complicated behavioural attitudes to the problem of illegal dumping. When we think about those kinds of complexities, we have to wonder whether a bill that simply slaps on big fines for an offence we are effectively creating with this bill will have the effect that we desire; that is, assuming that we are agreed on the effect that we want to bring about, but I will come to that little later.

Throughout this debate, we have to bear in mind that the Department of Environment and Conservation is getting a bit of a reputation for mining its existing operations for cash cows. Clearly, it found a beauty in the landfill levy and, boy, have they milked that for all it is worth! My concern is that all we have done is to create another cash cow for the Department of Environment and Conservation. I am assuming that is not the outcome we want; I am assuming that we want to prevent people from dumping waste that is likely to pollute the environment. My point is that I doubt that that will happen as well under a provision that effectively contains no strategic approach to the problem.

While on the need for a strategic approach—members will remember that I have talked in terms of education, infrastructure and enforcement provisions—I draw the attention of honourable members to the handbook for local government produced in New South Wales. I wonder, minister, whether this government will produce a similar document in Western Australia. I understand that the New South Wales document is quite lengthy and is provided to all local governments to help them focus on the problem. I will go through a couple of points made in the introduction to the handbook titled “Crackdown on Illegal Dumping – Handbook for Local Government”. The handbook states that it —

...provides an insight into what motivates illegal dumpers and focuses on ways of minimising the opportunities that give rise to illegal dumping in NSW. The Department of Environment and Climate Change (DECC) is committed to strong enforcement to deter and punish illegal dumping.

Members will remember that we are talking about deterring illegal dumping. My question is: do we do that just with fines? Surely, in most other areas of human activity it has been conclusively shown that the existence of substantial fines is not enough; we have to change behaviour at the level of the individual and the way to do that is through sophisticated education programs and studies of the kind in New South Wales, to which I have just referred, about how multi-unit dwellers approach the issue of illegal dumping.

The preface to the handbook continues —

Illegal dumping damages the environment and costs the NSW community millions of dollars each year. Reducing litter and illegal dumping is a key outcome area of the NSW Government’s Waste Avoidance and Resource Recovery Strategy.

Strategy! Members will note the key word missing from all the material the government has provided about this bill.

Interestingly, the handbook goes on to state —

An additional \$18 million has been allocated over five years to strengthen DECC's enforcement and compliance programs as part of the NSW Government's five year City and Country Environment Restoration Program.

DECC is working in partnership with local government to tackle illegal dumping. Support will continue for Regional Illegal Dumping Squads, which have proven to be very successful partnership programs in dealing with illegal dumping on or near the urban fringe of the greater Sydney metropolitan area.

This handbook provides practical advice about developing, implementing and evaluating effective illegal dumping programs that will assist local councils. The Government case studies demonstrate applied prevention techniques that will assist council officers in managing illegal dumping in their local area.

This is the missing key and is why local government is not happy with the way the introduction of this bill has been handled. Members will note the emphasis in the handbook introductory statement to the effect that the "DECC is working in partnership with local government to tackle illegal dumping." Members would be hard pressed to find a local government elected member or a local government officer in this state who would say that in their opinion the DEC in WA is working in partnership with local government to tackle illegal dumping—far from it! In fact, local government is feeling very poorly treated in terms of the state government expectations for local government in the making of this bill.

I come to the question, also raised by local governments, about the return of fines money to local government. I understand that is currently provided for under the Litter Act. Again I say, things might have been much more straightforward if the government had decided to beef up the Litter Act and keep in place the existing provisions. I understand—the minister might be able to correct me—that all fines raised under the Litter Act go back to local government. Think about it; one does not have to be a high-flown policy analyst to work out where the incentive lies if local government collects the fines. Clearly, local government will put its own resources into policing under the Litter Act because it will get the money to address the problem.

In relation to the offences that will now be called illegal dumping, we had to do much more than pick up fast food wrappers; much more than even clean up areas where people chuck dog ends and cigarette packets. The reality is that at the very serious end of the litter offence the clean-ups can cost hundreds of thousands of dollars. Of course, this is one reason local governments are anxious about whether this bill will be effective. Local governments claim there is no provision to mirror the measures in the Litter Act for the collection of fines to be returned to local governments.

I have received some late advice from the minister's office about a discretionary power under this bill thereby allowing the fines to be returned to local governments. I have not been able to check the reaction of local councils to this, but I suspect that a discretionary measure will not make them terribly happy. I suspect that what they will seek—certainly, what we on the Labor side of the chamber would seek—is some far more certain outcome about the eventual allocation of the revenue raised from fines under this bill; otherwise, how can local governments go about planning? If local governments were certain of the income from the fines—presumably they have some idea about the extent of the illegal dumping problem within their council areas—they would then be able to put on extra council officers to up their compliance monitoring and enforcement measures because that can be funded, albeit in a sort of reverse cycle, by the fines that are collected. Therefore, I doubt whether the provision for it to be a discretionary move will answer the questions that have been raised about the cost of the enforcement and clean-ups.

I also raise the question about the burden of proof. Under the Litter Act, we do, I understand, have a lower—what would we call it—threshold for evidence than that proposed under this legislation. I wonder what the reason for that is. Again—the minister will no doubt correct me if I am wrong—my understanding is that the EP act provisions virtually mean that somebody will have to be caught in the act. A number of stakeholders have confirmed my suspicion that if we maintain the evidence at that level, this new offence will be very, very difficult to prosecute, just as litter offences would be difficult to prosecute if they were assessed by the same standard. I think it makes sense to consider moving to a standard of proof that is more consistent with a kind of civil offence. I am not in any sense trying to downgrade the importance of an act of illegal dumping; I am saying that a balance of probability might result in much more successful prosecutions than a caught-in-the-act provision. I know that the bill gives authorised persons or inspectors the power to stop and search vehicles. That being the case, I would have thought that a lower standard of proof would have been entirely appropriate in that if somebody is caught driving away from a place with bits and pieces that look like what has been dumped, it is

much more likely to be successfully prosecuted if that standard of evidence were lowered and the burden of proof shifted. I would appreciate hearing the government's response to that, too.

One of the things that has consistently upset local government over the two years or so that this Liberal–National government has been in power is the implication that local government has been sitting around doing nothing about some of these problems. Of course, as many honourable members who keep in close touch with their local government authorities know, that is far from the case, certainly, when it comes to illegal dumping.

I have another question for the minister that I am genuinely puzzled about because the minister knows as well as I do that the Western Australian Local Government Association has now, for many, many months, had a submission on the table putting forward the case for a needs analysis for littering and illegal dumping. It asked for \$100 000, which I think would have been very, very well spent because it would have enabled the people who actually have the on-the-ground responsibility for the education, enforcement, policing and clean-ups of these kinds of offences to have their say about what sorts of measures were likely to be more effective than others. It just seems to me and to many others in the local government sector that the government has once again just ridden roughshod over what should have been regarded as relatively expert advice—the expert advice provided by people with the on-the-ground experience and responsibility for policing and enforcing measures to do with illegal dumping. I will just briefly go through the submission, which I am sure that the minister has in her possession as well, about the needs analysis that local government has been desperate to do for at least the past 12 months. It points out that, currently, councils are bearing the cost of illegal dumping. Just in the metropolitan area alone—members who are familiar with areas like Albany or Broome, from one end of the state to the other, will know how much this figure would increase if we took into account the whole state—it is more than \$4.6 million annually in clean-up costs. The reality is that there have been only limited convictions; therefore, the opportunity to recoup some of that \$4.6 million a year has been limited. The submission that WALGA put to government goes on to say —

While the announced increase in fines for illegal dumping is welcomed, additional resources will be needed for collection of evidence, enforcement and prosecution.

It goes on to point out —

The increase in the Levy is likely to increase the incidence of illegal dumping. No increased enforcement activities are suggested in the budget to manage this ...

It points out what I just alluded to in quoting from the preface to that local government handbook that —

in NSW when the Levy increased they put in place additional illegal dumping measures ...

Local government was asking to conduct research into the kind of assistance that local governments require to tackle illegal dumping. Members can see how these two approaches are diametrically opposed. On the one hand we have the government walking into this place and saying, "There's your bill to create the new offence of illegal dumping with whopping great fines and that will solve our problems", and on the other hand we have local government saying, "Please help us with just \$100 000 to identify the sort of assistance that you could give us to tackle the crime of illegal dumping." The submission goes on to point out —

Additional resources will be needed by Local Government ... to increase the policing of the Litter Act and encourage the community to dispose of material appropriately.

Again, the education strategy is referred to, which is totally lacking in the way that the government is approaching this. WALGA goes on to say —

Litter / illegal dumping issues can also be addressed as part of Local Government Strategic Waste Management Plans and are part of the rationale for Extended Producer Responsibility Schemes (particularly CDS).

Do not mention the war! We are still waiting for some kind of initiative to come out of this government but it will not even step up to the plate and help us ban plastic bags, even though I can tell members that if they conducted a poll in any part of this state, they would find overwhelming community support for all these measures. Local government is asking for \$100 000. It wanted to develop a business case and undertake sufficient research to determine the needs of local government and what type of assistance would be the most effective and efficient. WALGA's request has simply been ignored. Is it any wonder that its members look at this bill that the minister has come into this place with and hold their hands up in dismay? They believe that they will not be able to use the Environmental Protection Amendment Bill to maximum effectiveness because the government is not working with them to provide the kinds of infrastructure and enforcement measures that will be needed to do so. This legislation is a piecemeal hodgepodge knee-jerk reaction to the problem caused by the massive increase in the landfill levy at the beginning of this year. It is just a knee-jerk reaction to grab a

headline; it does not really address the problem of illegal dumping; it just takes a political problem off the government's lap.

Hon Donna Faragher: Are you supporting the bill or not? I am getting confused!

Hon SALLY TALBOT: Yes, we are. I hope I am giving the Minister for Environment a sense of how it might have been done differently and the extent to which these measures will be very carefully monitored from the moment they come into existence to make sure that they do exactly what the minister is promising they will do. I hope that the minister is taking note of some of the points I am making because it may be that there is a better way to do it. When the Approvals and Related Reforms (No. 4) (Planning) Bill 2009 was before this place, with the help of Hon Robyn McSweeney, we made a number of albeit small but significant changes to the legislation that we believe will make it better law. Hopefully we can do the same with this bill.

I will ask a couple of questions that I hope the minister will not take to be rhetorical. How will the success of the future act be measured? Clearly, if it is just a cash cow for the Department of Environment and Conservation, it will be measured in the number of fines that are enforced. I want to know how many prosecutions the government expects to see in the first year or so and how we will know whether it is working and is effective. What monitoring will be done of the way local government uses the new act? Can we expect a higher level of enforcement than we are getting under the existing provisions of the Environmental Protection Act or the Litter Act? We all know that successful prosecutions have been pitifully few under the Litter Act.

I will wind up my remarks because other members want to speak. The cost of illegal dumping is a dollar impost on the community, and wrecks the amenity, the health and wellbeing of the environment. We should be looking for long-term behavioural change and at proper education programs that include a detailed analysis and understanding of the sort of damage that has been caused by illegal dumping. We also need to put in place proper auditing and evaluation programs, and programs that secure a stakeholder commitment. I am happy to include the whole Western Australian community in the stakeholder commitment because each Western Australian becomes a stakeholder in trying to save money and protect the health of the environment. We need to move away from addressing the clean-up side of this very serious problem to prevention. I hope the minister shares those priorities and indicates to us where in the bill we can find those spelled out for us.

HON ROBIN CHAPPLE (Mining and Pastoral) [3.42 pm]: Like my colleague, the Greens (WA) will support the passage of the Environmental Protection Amendment Bill 2010. We have flagged a number of amendments that are standing in my name, which we will try to progress through this place when we deal with the matter in committee. The Greens are continually concerned about the production of waste and its management, particularly regarding landfill and illegal dumping. Illegal dumping occurs in the Mining and Pastoral Region, where a large amount of land is under the control of local governments. We have found that because of the increased charges as a result of the advent of the Waste Avoidance and Resource Recovery Amendment Act, it is quite easy for material to be dumped outside the confines of a normal waste facility. Indeed, it has cost and is costing local government a significant amount of money to try to find the perpetrators and deal with the residual impact of illegal dumping. A large illegal dump that was eventually found in a small quarry adjacent to a railway line obviously had been operating for many years without anyone knowing about it. Car bodies, tyres and even large rolls of conveyer belt had been dumped at the site by a mining company. When the area was eventually identified, it required a large amount of rehabilitation and over many months the material had to be transported to a proper dump where it could be buried. That incurred a significant expense for the local government involved. Section 115 of the Environmental Protection Act allows for some offset of the costs associated with prosecution expenses. I will read into this place section 115 of the Environmental Protection Act, which states —

Award of prosecution expenses

The court by or before which a person is convicted of an offence under this Act may, whether or not it imposes any other punishment, order that the person convicted pay the reasonable costs of and incidental to any inspection, measurement, test, analysis or other action made or taken by or on behalf of the prosecution towards the investigation of the offence and the giving of evidence relating thereto, and may make such order as that court thinks just as to those costs.

From a careful reading of that, it is clear that that provision is associated with the investigation and with the lead-up to the court hearing and the costs incurred by the person initiating the prosecution for illegal dumping. However, it does not allow the local authority that brings the prosecution to charge for the relocation of the waste to be removed from an illegal dump. I am sure that many members on the other side of the house who come from the country will be aware of many small illegal dumps that are the bane of local government. It is very important for the minister to clearly identify in her response how the penalties for a prosecution under section 115 of the Environmental Protection Act will enable full cost recovery to the local governments that prosecute. The minister also needs to clearly enunciate who can initiate a prosecution. Clearly, it appears that

local government will undertake most of the prosecutions. However, under section 87(1) of the Environmental Protection Act, the CEO—I assume it is the CEO of the Department of Environment and Conservation —

may appoint persons or members of classes of persons to be authorised persons for the purposes of this Act and may, when making such an appointment and without limiting the generality of section 52 of the *Interpretation Act 1984*, limit the powers conferred on the persons or members so appointed by specifying in the authorities issued to those persons or members under subsection (2) —

The section goes on, but my question is: who will enforce this section? Will it be the police? We heard when we dealt with the Waste Avoidance and Resource Recovery Amendment Bill that the police do not want the job. If local governments are to be the authorised officers, local governments need to be recompensed for that and for administering the waste after the event. Will it be the Department of Environment and Conservation and its officers? We know that there are limited numbers of officers, and that became apparent previously during estimates hearings when Mr Cowie identified that police officers could be used to police illegal dumping, which again was later refuted by the police. He identified that there were more than 120 authorised inspectors under the environmental protection legislation. Given that they have a number of other jobs besides being just enforcement officers, it will be interesting to find out how many DEC officers will be on the ground at any one time dealing with these matters.

Like my honourable colleague Hon Sally Talbot, I am concerned that although the essence of imposing fines for illegal dumping is totally and utterly supported by the Greens (WA)—we think that the fines are not nearly large enough—my concern is that this may end up just going back into general revenue and will not suffice to facilitate the assistance of local governments and/or any other parties in dealing with waste matters. Having touched on that issue, I thought it important for the house to note the fines imposed in other states. I will inform members of what happens in New South Wales. There is a campaign in New South Wales that waste is not just rubbish; it is unwanted material and includes garden waste such as mulch, tree trunks and all the rest of it. This campaign says that people should not risk a \$5 000 fine or penalties of up to \$5 million or seven years in jail for illegally dumping waste. That caught my attention. I then looked at the New South Wales Protection of the Environment Operations Act 1997, which provides a tiered range of illegal offences and provisions for fines. These fines seem much more realistic than those proposed in this amendment bill. Tier 3 fines are on-the-spot fines. There are \$750 on-the-spot fines for individuals for illegal dumping, with a maximum on-the-spot fine of \$1 500, and \$1 500 on-the-spot fines for corporations for illegal dumping, with a maximum on-the-spot fine of \$5 000. Tier 2 fines are for the use of land as a waste facility without lawful authority. The maximum penalty for individuals is \$250 000 and, in the case of a continuing offence, there is a further penalty of \$60 000 for each day that the offence continues. The maximum penalty for corporations is \$1 million and, in the case of a continuing offence, there is a further penalty of \$120 000. Tier 1 fines are for the disposal of waste and harm to the environment, which in essence is what this bill is about. The maximum penalty for individuals is \$1 million and/or seven years' imprisonment and the maximum penalty for corporations is \$5 million. If we are really fair dinkum about dealing with the scourge of waste, the fines that are considered in this bill certainly do not go far enough. The Greens will look to amend the level of fines during the committee stage and, indeed, will try to ascertain who will be the authorities who will carry out the prosecution and who will be the officers who will check on illegal dumping and deal with the matters. Will they be local government members? Will they be considered to be authorised people under the Environmental Protection Act? We need to have a clear understanding, especially in rural areas where there are very few DEC officers, that the minister will direct the director general of DEC to delegate to local government CEOs a consent to prosecute.

There are a number of other aspects. It will also be important that the minister identify how the public will be advised of the increased penalties. Will there be an advertising campaign, and who will fund it? What monitoring will be put in place, as Hon Sally Talbot mentioned, to assess the effectiveness of the act? Will there be a sunset clause? Will there be a review date? Will there be something that fundamentally deals with this issue? My personal concerns repeatedly come back to the problems faced in country areas. Although there do not seem to be problems necessarily within the metropolitan area, as identified when we dealt with the WARR amendment bill, we do have anecdotal evidence at the moment that if people have a waste problem, they are quite prepared to drive this waste outside the metropolitan area into some of the regional country areas where there is less monitoring and observation. We have indicated that we will move a series of amendments to deal with the matters associated with the fines. We believe that although we are not going anywhere near the fines in the New South Wales model, our fines are much more realistic and will provide a greater deterrent. I am concerned that the money raised from fines needs to go back to those authorities in country areas that will have to deal with the problem—that is, local governments. We will also seek to insert proposed new section 115A, “Local government recovery of financial penalties”, which states —

Where, under section 114(3), as a result of a prosecution for an offence has been instituted by the chief executive officer of a local government, the court orders a person to pay a financial penalty under this

Act, that court must require that penalty to be paid to the chief executive office of the prosecuting local government.

This is about dealing with the issue of waste and, hopefully, addresses the concerns of Hon Sally Talbot that this is not just another cash cow for general revenue.

I think there are a number of questions for the minister. I hope to go through the issues in quite some detail clause by clause and, hopefully, to prosecute the arguments put forward by the Western Australian Local Government Association about a number of clauses. We will seek clarification in a number of areas from the minister about our concerns and the concerns of WALGA. The Greens will support this legislation, but we will move a number of amendments that we think will enhance what the minister has put forward and, indeed, will enable local governments to play a meaningful part in the process of dealing with the illegal dumping of waste in a way that will benefit their communities.

HON PHILIP GARDINER (Agricultural) [3.59 pm]: On behalf of the Nationals I speak in favour of the Environmental Protection Amendment Bill 2010. With the introduction of the landfill levy, which has substantially increased the cost of waste for consumers—constituents of local communities—there are behavioural consequences. I will not dwell too much on some of these matters because a lot of them have already been covered by earlier speakers. The behavioural consequences first try to encourage each of us to separate the waste we have in our homes and businesses so that it can be recycled. That is the carrot, if we like, for the behavioural consequence of actually doing something different as a result of the increased landfill levy. The collection of waste from constituents means a closer examination of how our plastics and glasses are separated into one bin, our papers into another bin and our putrescible waste being dealt with as other household waste.

The building wastes are more complicated because it is much harder to recycle much of the building waste that results from industry. I was recently in London where one could see how new technology—that is part of the underlying plan of the landfill levy—can be used to deal with our waste. Australian technology is employed in London for some of its waste recycling. That waste technology came from New South Wales, in particular Sydney, where recycling of plastics was developed in advance of the 2000 Olympic Games. It is called closed-loop technology. The design of the plant that was used in Sydney was then sold and marketed by the Sydney operators. London purchased it and spent £25 million building a plant and applying the technology to recycle the different plastics.

It worried me where I live in Subiaco that I had to put glass and different plastics into the one bin. I thought, “Why don’t we have two bins?” When I saw the closed-loop technology at work, I began to understand. As the waste goes along, the elevator air jets in that case—in future it will be lasers—separate the glass and the different plastics, be they milk-container plastic or coca cola-bottle plastic. They are different plastics by weight because various compounds of chemicals go into them and, therefore, purity is required to recycle them into the final product. That is a commercial operation in London that generates revenue. There are positives, but one of the big positives we have to try to get from the landfill levy, which we went through when the landfill levy bill was considered, is what new plants are required to deal with the waste that is not being dealt with.

The second part of the behavioural consequence, of course, comes back to the stick. The stick in this case relates to the waste that people may consider taking outside the metropolitan area into regional areas where there are many, many places that this material can be dumped at no cost. It might be in trailer loads but more likely in truckloads. There is already evidence of dumping occurring in a shire about 140 kilometres north of Perth. We need a bill of this kind that provides for a fine that is sufficiently material to hurt people who are caught. The question I would like the minister to answer is: where will the money from fines go if and when they are collected? The thing I am even more concerned about is whether we will ever catch anyone, because, as I think Hon Robin Chapple said, dumping is very hard to police when it is taken by truck at night to little places outside the metropolitan area. Who will be there watching? As the minister’s second reading speech suggests, we are relying on Department of Environment and Conservation inspectors to police this. As everyone in the country knows, we in the country do not rely on inspectors to police things; it is fellow neighbours and farmers—Neighbourhood Watch, except in the country it is called Rural Watch. They are the people who will see the lights of vehicles going down the roads at odd times of the night and wonder what is going on. They may go out and investigate at some risk to themselves. People often go down the roads shooting kangaroos et cetera. It is common for people in rural areas to try to look out for themselves because they cannot rely on police, certainly not DEC inspectors, to be out at different times of the day or night watching to see whether people are illegally dumping material in these small but quite numerous expanses of government or local council land, or even on the roadside. I have a question about whether any fines will arise out of this. Just one fine may be enough, but we know from experience in other areas that one person being caught is not the deterrent we would all like it to be. That is the question I would like to hear a response from the minister on.

The Nationals agree with the sentiment of the legislation; it is the practicality of it about which we might be a little concerned. Thank you very much.

HON DONNA FARAGHER (East Metropolitan — Minister for Environment) [4.07 pm] — in reply: I thank members for their support of the Environmental Protection Amendment Bill. I want to respond to some of the issues that have been canvassed during the second reading debate. Some of them are general and others are more specific, and I hope I will be able to cover most of them during this summing up.

I am very pleased that Hon Sally Talbot started her remarks very positively. I am not sure whether the rest of her speech was in the same vein; nonetheless, she raised a number of matters that I am very happy to go through. I must say, firstly, that I reject the suggestion that we have taken too long to deal with this legislation after I made an announcement earlier this year that I would bolster and update the Litter Act. Hon Sally Talbot will not be surprised to hear me say that, but I do so for good reason. Hon Sally Talbot said that the previous government was moving to amend legislation to deal with illegal dumping and litter. We often hear in this place that the previous government was going to do this and that, but often it did nothing at all. I understand though that it did moot change in this area, but it was back in 2003. I refer to an extract from *Hansard* in the Assembly dated 27 February 2003 by then Minister for the Environment, Hon Judy Edwards, who said —

The Government is considering changes to the litter laws.

She went on to say —

... the Litter Act is gravely out of date.

She also went on to say —

Certainly stronger penalties are needed. We are considering into which more appropriate, modern and responsive legislation it would be appropriate to incorporate parts of the current Litter Act.

I acknowledge that suggestions were made back in 2003 by the then government, but, obviously, nothing happened over the next five years, until such time as the current government came into power. We introduced the Environmental Protection Amendment Bill 2010 just over a year after its being announced, and I do not think that was a bad effort; it was much better than that of the previous government, which mooted it back in 2003 and then obviously did nothing. I acknowledge that the previous government was going to do something, but it did not. I think it is important to have that stated on the parliamentary record.

With respect to the levy and its increase by 300 per cent, it has been put by speakers that there has been an increase in illegal dumping following the increase to the levy on 1 January. I have received advice from the department that there has been no increase in illegal dumping since the increase in the levy. I appreciate that those on the other side of the house will continue to say that illegal dumping has increased because of the increase in the levy, but that is not the advice from the department.

With respect to the reasons we chose to amend the Environmental Protection Act rather than the Litter Act, I just say that it is true that some incidences of illegal dumping may be regarded as a form of littering; however, as we all know and as all speakers have indicated, dumping waste can potentially encompass much more serious actions that go beyond the concept of mere littering, such as the dumping of containers of noxious chemicals, for example, which have the potential to adversely affect the environment or create a risk to human health. If and when chemicals were to escape from containers in the future, it would obviously be far more serious than the dumping of rubbish. That is why the new offence of dumping waste will be part of the Environmental Protection Act, which I might also say has a more robust system of penalties and a more comprehensive set of investigative powers and provisions than the Litter Act. With respect to the changes to the Litter Act that I announced earlier this year, that is certainly progressing and it is a very high priority for the government; I think it is probably fair to say that drafting is almost complete.

With respect to differentiating between illegal dumping and littering, members may recall that I advised, during my second reading speech on the bill, that a littering and dumping waste enforcement guideline will govern how this is to be treated. For example, personal litter will be dealt with under the Litter Act; commercial or industrial waste will be dealt with under the Environmental Protection Act. The same consideration will apply if it is deposited by hand or using a vehicle. I will give a practical example. I understand that just last week a gentleman was fined about \$3 200 and ordered to pay more than \$10 000 in clean-up costs for dumping approximately 90 waste drums at 11 bush locations. He pleaded guilty.

Hon Sally Talbot: Which act was that prosecuted under?

Hon DONNA FARAGHER: That is the type of offence that will be captured.

Hon Sally Talbot: Will you take an interjection?

Hon DONNA FARAGHER: I will have to double-check, but as I understand, there will be the elements within that—given that it was pollution—that will be covered under the EP act. But that is the sort of example I can give from a practical point of view.

With respect to authorised officers, I confirm that local government officers are already able to be appointed as authorised officers under the Environmental Protection Act. All officers require appropriate training before being appointed authorised persons. I understand that the Department of Environment and Conservation requires all officers to attend training courses run by the department with the assistance of WA Police. That has been an ongoing process for a number of years and it will be a similar process in this case.

Hon Robin Chapple: If I may interject: who pays for those courses? Does the local government pay for them or does DEC pay for them?

Hon DONNA FARAGHER: I am happy to answer that during the Committee of the Whole stage.

As to the number of authorised officers, as I understand, around 209 local government officers have already been appointed under the act; this is not something new from a local government perspective. In the case of DEC officers, the department has approximately 200 inspectors. With respect to police, which Hon Robin Chapple referred to, the reason for having a capacity for police to be determined as authorised persons is that the reality is that circumstances may arise whereby the police consider it appropriate to prosecute for an illegal dumping offence. By way of example, if a person was seen to be dumping waste in conjunction with other criminal offences being investigated by the police, it would be sensible and appropriate for the police to have the potential capacity to prosecute this type of offence.

With respect to prosecution, I can confirm that local governments will be given consent to prosecute on a case-by-case basis to ensure that prosecutions are undertaken consistent with the department's enforcement and prosecution policy. I understand that this is the same procedure followed for police prosecutions of noise offences. In that regard, with respect to penalties for prosecution, I confirm that local governments that prosecute dumping waste offences will retain the penalty due to the operation of section 60(3) of the Sentencing Act 1995, which states that when an offence is prosecuted by or on behalf of a local government authority, any fine will be paid to that local government authority. That is specified in the Sentencing Act, and it is now provided for under the Environmental Protection Act.

I am also advised that section 99Y of the Environmental Protection Act allows for public authorities—which obviously includes local governments—to apply to the court for the recovery of costs associated with dealing with, and disposing of, anything seized in relation to an offence. I understand the maximum amount is \$2 million, so there is a capacity for public authorities to apply.

As to education, the department and Keep Australia Beautiful work very closely to address issues surrounding illegal dumping. I believe that Keep Australia Beautiful plays a very important role in educating the community on matters surrounding littering, illegal dumping, and all that that encompasses, and it does an excellent job. The department and the council have undertaken considerable consultation with local governments, and they will continue to assist in the development of approaches to deal with illegal dumping related to issues surrounding enforcement, education and promotion and the like. They do that now and I expect that to continue.

With respect to Hon Robin Chapple's foreshadowing, if I might put it that way, of the amendments on the supplementary notice paper to increase the penalties, I find it quite interesting that often—if I might be so bold as to say—the Greens (WA) actually want to reduce the penalties for things, and it is interesting that they actually want to increase these penalties. They are generally trying to relax drug laws and all those sorts of things, but there is actually a proposed increase here.

Hon Robyn McSweeney: It's got "environment" in its heading.

Hon DONNA FARAGHER: Yes, because the bill has "environment" in its heading.

I can understand the sentiment behind the member raising the concern, which is for the same reason that we believe that it was important to increase the penalties from \$1 000 where a case for pollution cannot be made, to up to \$62 500 and \$125 000. Obviously, a \$1 000 penalty for illegal dumping is wholly inadequate. With respect to Hon Robin Chapple's proposed amendment, that would in fact impose significantly higher penalties than the penalties for the most serious offences that currently operate within the act.

Hon Robin Chapple: I'm well aware of that.

Hon DONNA FARAGHER: The member may believe that those penalties should increase as well for tier 1 offences—if I may put it that way—but these amendments will heighten the most serious offences that we currently deal with through the Environmental Protection Act. However, I will be happy to go through that again at the committee stage.

Hon Robin Chapple: By way of interjection, I agree with what the minister has put forward. We would wish to see all offences lifted to the standard that we are trying to set with this set of amendments.

Hon DONNA FARAGHER: With respect to the number of prosecutions—Hon Philip Gardiner raised this matter as well and I thank him for his contribution—obviously monitoring will be undertaken by the department. The reality is that illegal dumping has occurred, continues to occur, and has been occurring for far longer than members have been in this place. It is a problem, and we are working to address it. What I think and what I very much hope is that by significantly increasing the penalties we will send a very, very strong message to the community, and would-be dumpers more importantly, that illegal dumping will not be tolerated; and that if they are caught and put before the courts, then the penalties will be significantly higher than they are now. The fact is, as I have mentioned, that a penalty of \$1 000 at most is purely inadequate; it is a joke, quite frankly. I believe the penalties that we are putting forward are appropriate and will send a very strong message to would-be dumpers that they should think otherwise and dispose of their rubbish where it is supposed to be disposed of and in the correct way.

With all of that in mind, I again thank members for their contribution to the debate and I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Chairman of Committees (Hon Matt Benson-Lidholm) in the chair; Hon Donna Faragher (Minister for Environment) in charge of the bill.

Clause 1: Short title —

Hon SALLY TALBOT: I will canvass a couple of general issues so that I can get a little clarification as we proceed through the bill. I understood the minister to say in her second reading summary—in answer to a question I raised about how an inspector on the ground would make the decision on whether something was litter or illegal dumping—that the distinction would be made on the basis of personal litter. Therefore, if it is personal stuff, it is litter; if it is commercial or industrial waste, it is illegal dumping. Further I understood the minister to say that a distinction would be made between the two acts on the basis of whether something was dumped by hand or by vehicle. Have I understood that correctly?

Hon DONNA FARAGHER: I was using that by way of an example of the types of distinctions that might be made. In a more general sense, in differentiating between littering and dumping waste, we would look at issues surrounding volume, the environmental impact, the type of waste, the reason for the offence and the mode of deposition. That is therefore from a general perspective. I was just giving a couple of examples. For example, in differentiating between the types of waste, personal litter would be covered under the Litter Act, and commercial and industrial waste would be dealt with under dumping waste. That was just an example of, I suppose, the tiers under which we would make that assessment.

Hon SALLY TALBOT: I will pursue this a little further. The sort of material that immediately occurs to me is the material that people put on the road verge during a council clean-up, which is clearly of a personal nature. Things like old furniture or washing machines that do not work are clearly personal effects. It is also probably fair to say that such material is generally deposited by hand. Even if it takes two people to carry an old washing machine out to the verge, it is certainly not dumped by a vehicle. I am trying at the outset to get a clearer sense of what is supposed to go through an inspector's mind when he or she looks at something that has been put in the wrong place.

Hon DONNA FARAGHER: The example that Hon Sally Talbot put would be covered under the local government waste law. It would in effect be lawful and authorised. If a local government has a program every six months for people to put out whatever they want on the verge for a pick-up, that would be obviously an authorised action by local government and therefore lawful. As I said before, we are obviously dealing with matters of personal litter versus commercial or industrial waste. There is a clear distinction. Obviously, someone who dumps cigarette butts and those sorts of things is dumping personal litter. Someone who takes commercial or industrial waste to the local state forest would be regarded, obviously, as dumping waste.

Hon ROBIN CHAPPLE: I refer to this very point that Hon Sally Talbot raised. Proposed section 49A of the bill deals with the dumping of waste. Waste is determined under the Environmental Protection Act in part 1, section 3 as follows —

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;

The phrase “prescribed to be waste” is referred to in about eight other regulations. I am concerned that we are making some sort of judgement about what waste might be, when waste clearly has specific definitions in the Environmental Protection Act 1986 and/or indeed a number of other regulations that are attendant to that act. I would love to get a clear understanding of how the minister will make that determination about what is put by hand or what is put by machine or other entity. I am concerned that we need a clear definition, otherwise the courts are going to find themselves with some problems.

Hon DONNA FARAGHER: At the outset, as I said before, it very much depends on the seriousness of the offence. As I mentioned to Hon Sally Talbot, obviously the key issues that would need to be considered would be the volume, the environmental impact, the type of waste, the reason for the offence and the mode of deposition. I indicated in my second reading speech that there will be a littering and dumping waste enforcement guideline that will clearly stipulate the types of waste that will be considered under each of those headings, either littering or dumping of waste.

Committee interrupted, pursuant to temporary orders.

[Continued on page 7836.]