

WASTE AVOIDANCE AND RESOURCE RECOVERY AMENDMENT (VALIDATION) BILL 2014

Second Reading

Resumed from 17 June.

HON STEPHEN DAWSON (Mining and Pastoral) [2.52 pm]: I rise this afternoon on behalf of the opposition to inform the house that we support this bill. As we know from the explanatory memorandum —

The Waste Avoidance and Resource Recovery Amendment (Validation) Bill amends the *Waste Avoidance and Resource Recovery Act 2007* to ratify the *Waste Avoidance and Resource Recovery Levy Regulations 2008* and amendments to those regulations, and provide that those regulations are taken to be validly made; and to provide that the rights and liabilities of all persons shall be the same as if the *Waste Avoidance and Resource Recovery Levy Regulations 2008* and amendments to those regulations have been validly made.

We know from the minister's second reading speech that the reason this bill is before us is essentially that legal proceedings are currently before the Supreme Court of Western Australia. Those legal proceedings have been brought by two companies that dispute their liability under the regulations to pay, because they contend that the 2008 regulations are invalid because only four of the five members of the Waste Authority WA assented to a resolution that was made in May 2008.

It is probably worth giving this place some history of the original Waste Avoidance and Resource Recovery Bill.

Hon Ljiljanna Ravlich interjected.

Hon STEPHEN DAWSON: I am aware that we have time limitations this afternoon, so I will not be taking interjections from my own side, or, indeed, the far side. So I would encourage members that if they want to make a contribution, they might seek the call when I have finished and have sat down.

It is worthwhile giving some sense of the history of the original bill, which passed this place in December 2007. When the original bill passed this place, it was heralded as a historic bill, and in fact there was bipartisan support in both this house and the other house for that bill. I know that Hon Donna Faragher is very interested in this, having spent some time in this area as a former Minister for Environment, so I look forward to her contribution later on.

The original Waste Avoidance and Resource Recovery Bill allowed for the establishment of extended producer responsibility schemes. This is where producers of consumer goods essentially become responsible for those goods for the life of the product. One of the main features of the original bill was to establish the Waste Authority WA, which was established in 2008 and has stood the test of time.

The bill provided also for the establishment of regulations to enable levies to be set for landfill. Prior to that time, the levies for landfill had been set under the Environmental Protection Act. Not only was the setting of levies moved across to the new bill, but also the new bill allowed for an increase in the levies. The money that would come in from those increased levies was to be paid to local governments to enable them to invest in programs and activities to reduce waste across the state, and grants were also to be made available to encourage business, industry and the community to reduce waste.

I have to place on the record that although we support this amendment bill, we are concerned that one of the intents of the original bill has been lost. The revenue that is forecast to be raised from these levies will be \$60 million in 2014–15; \$104 million in 2015–16; \$105 million in 2016–17; and \$108 million in the year after that. When the original bill passed this place, that money was to be spent on environmental initiatives. However, what we have seen since that time is a massive change in the way this levy is spent—so much so that only one-quarter of the revenue that is estimated to be raised by this levy will go to the Waste Authority to help fund recycling programs, and the remainder will be directed to consolidated revenue. We are very concerned—I am sure that Hon Sally Talbot when she makes her contribution later on will say a similar thing—that 75 per cent of the funds raised by this levy will now go into consolidated revenue rather than be set aside to be spent on environmental initiatives to ensure that we tackle the problem of waste in this state.

We know that the amount of waste that has been recovered in Western Australia over the past few years has been on the increase, and there is certainly evidence that increases to the landfill levy have helped to accelerate this trend. However, it is a concern that when this state is benchmarked against other mainland states, our performance is still very poor, and we will require a significant boost in funding if we are to achieve comparability with, or indeed overtake, some of the other states in this area. Therefore, we are very concerned that 75 per cent of this money will not be spent on the initiatives that when the original bill passed this Parliament all these years ago it was expected that money would be spent on.

The Minister for Environment is on the public record as saying that the government was focused on using the extra cash that the increases would generate to fund recycling initiatives, including plans to harmonise Perth's bin system. I contend that if the government was serious and committed to improving recycling rates in the state, it would be allocating the total revenue to recycling and environmental improvements.

The waste avoidance and resource recovery account was established in 2008 under section 79 of the Waste Avoidance and Resource Recovery Act 2007. The account holds revenue allocated from the levy and funds programs and waste management initiatives outlined in the Waste Authority's business plan or as approved by the Minister for Environment. Since 2008, \$187 million has been collected by this levy, but only a small proportion of that money has been used to fund environmental initiatives and decrease the amount of waste in our society. We know from the minister's second reading speech that the state expects to recover approximately \$12 million plus penalties of about \$7.8 million from two companies involved in a Supreme Court case.

When the Carpenter government brought the original legislation to Parliament, the Labor Party was committed to waste avoidance and resource recovery. That legislation was brought in for the right reasons; it was not a revenue-raising measure. The landfill levy has raised a significant amount of money for the government. It was supposed to be used to assist business to develop alternative industries and to recycle waste products, but that has not been happening. We have one of the worst recycling rates in the country. Construction and demolition waste is our biggest waste stream. This year's budget also has an increase to the state's landfill levy. An article titled "Waste costs build" from the *Western Suburbs Weekly* of 27 May 2014 states —

Building and renovating is set to get more expensive, with the landfill levy on building waste to increase five-fold on January 1.

The latest State Budget sets out that the fee for waste disposal is to rise from \$8/tonne to \$40/tonne. It will then increase to \$50/tonne in July 2016 and \$70/tonne in July 2018.

Based on 30T, the levy would add about \$1000 to \$1500 to every home build from 2015, Alcock Brown-Neaves Group managing director Dale Alcock said.

Mr Alcock said that these small incremental changes were slowly but surely chipping away at affordability.

"It signals that the State Government is not genuinely concerned about housing affordability and homeownership in WA," he said.

It is quite a good article and could have been used in many debates this week, including the budget and revenue debates. The article points out —

- Full exemption on transfer duty for first homebuyers reduced from \$500,000 to \$430,000.
- Transfer duty ...

I will leave that one alone. Although the first home owner grant for new and established homes has not been affected, it has caused community concern. Another issue to cause more concern is the increase to land tax, which has risen by 10 per cent in this budget on top of the 12.5 per cent increase in last year's budget. That is a significant number. It is not 22.5 per cent; it is more like 24 per cent. State land tax has risen by almost one-quarter. Of course, we also have the increase to the landfill levy for building waste. I do not particularly have an issue with the increase to the landfill levy. If it stops people dumping this stuff, that is great. If it ensures that more people re-use their products, that is great too. But I do have an issue with the fact that money from the landfill levy is not being used to reduce waste in this state. The government is not even hiding the fact that this money is not being used to reduce waste. The landfill levy is really a pure revenue grab. It cannot be argued that this is about changing the industry, and that the industry has to get on board—as I think the minister said previously. This is a revenue grab. Really, we should strive to work harder with industry rather than just whacking it over the head. If this money had gone to the Waste Authority as intended, perhaps the agency could have worked with industry to lower the amount of waste going to landfill.

I think it is important to place on the record a piece of correspondence circulated to members at the time the first amendment to this legislation was made in 2009. The letter is from the Conservation Council of Western Australia, the Waste Management Association of Australia and the Boomerang Alliance and is about the first increase to the landfill levy. It states —

We are not opposed to the raising of the WA landfill levy; in fact we support an increase in the landfill levy and believe this is necessary to better reflect the environmental costs of landfill, to create an economic incentive to divert recyclable materials from landfill, and to raise funds promoting better waste management practices and increasing recycling. Any increases to the landfill levy should however be the subject of adequate consultation with Local Government and the waste management

industry and supported by a business plan for the use of the resultant funds in targeted waste minimisation programmes, including supporting efforts by Local Government and industry.

At present, the WARR Act requires that moneys raised as a result of the WA landfill levy are hypothecated for waste avoidance, recycling, and related purposes as determined by the Waste Authority. The Bill —

That of 2009 —

if passed would allow the levy funds to offset very significant reductions in the Treasury allocation to the Department of Environment and Conservation (DEC). The effect is that Landfill Levy funds would be providing an increase to the State Governments consolidated revenue base, and as such, any claims that the Landfill Levy funds would be used to support environmental programmes cannot be supported.

I want to bring members back to a press release issued by Dr Steve Thomas, MLA, a previous shadow Minister for Environment—and I think a former member for Vasse. Was he the member for Vasse?

Hon Helen Morton: Capel.

Hon STEPHEN DAWSON: He was the member for Capel. Excuse my —

Hon Simon O'Brien: Members for Vasse are fortunately a rare breed.

Hon STEPHEN DAWSON: Thankfully. There certainly was another shadow Minister for Environment from Vasse—Bernie Masters, MLA, when he was a member of the Liberal Party.

I digress. Back to Dr Steve Thomas's press release dated 23 November 2006; it reads —

Calls by Environment Minister Mark McGowan for public comment on his new waste bill will be wasted unless the State Government reverses its lack of commitment to recycling.

Shadow Environment Dr Steve Thomas said Mark McGowan had doubled the waste levy earlier this year and misled the community into believing this was to improve recycling.

“Unfortunately this money has been in effect stolen from the recycling industry, and has been redirected into eleven FTE jobs within the Waste Management division of the Department of Environment and Conservation,” ...

“The levy had previously been directed partly to those bodies actually doing the recycling, especially local governments, and research.

“This practice appears to have been abandoned by Mark McGowan in favour of plumping up his department—the very department that appears unable to develop a system of payments to recyclers despite the fact one existed and was working well up until July this year.

Dr Steve Thomas talked about a levy to fund the waste branch of the Department of Environment and Conservation, which I think is a very appropriate use of funding. Since 2006, this government has taken \$50 million from the Department of Environment Regulation or earlier agencies, and used money from the waste levy to make up that department's budget shortfall; and 75 per cent of the money from the waste levy has gone into consolidated revenue. It is lucky that Dr Steve Thomas is not in this place in this day and age, because we could point out to him how hypocritical he would be if part of this government. He said we should not fund 11 full-time equivalent positions in the waste management division of the department, yet this government now funds a variety of agencies from the waste levy. The other consequence is that our waste figures in this state are not decreasing substantially and that we are out of step with the rest of the states.

I return to the minister's second reading speech. I have previously pointed out that legal proceedings are pending in the Supreme Court, with two companies disputing their liability to pay the levy. I think everybody knows that these two companies have been around for a long time, and from the outset they have been saying that they do not think they should pay this levy. What brought the Waste Avoidance and Resource Recovery Amendment (Validation) Bill 2014 on was that an argument was recently raised that because four of the five members of the Waste Authority assented to a resolution in 2008, the regulations for the charge of this fee should be called into question. Clause 11 of schedule 1 of the Waste Avoidance and Resource Recovery Act 2007 provides that each member of the Waste Authority must assent to a resolution made without a meeting by letter, facsimile, email or other similar means. When the department did a search of the material held by government, the records revealed that only four of the five members assented to a resolution recommending the making of the regulations. As the minister's second reading speech stated —

Although the argument advanced by the companies turns on a technicality, the government is concerned that the argument is likely to succeed when the matter is determined in court. The levy act and the WARR act give the relevant power to make a recommendation to five members of the Waste Authority

acting together. They did not give that power to only four of the five members. The levy act authorised regulations to be made, but only on the recommendation of the Waste Authority.

I thank the people who briefed the opposition last week; we had staff from the minister's office, the State Solicitor's Office and the department. I thank them for their time. Because this argument was advanced by the companies recently, the minister tells us that the government considers it likely that the Supreme Court will find that the conditions for the valid making of the 2008 regulations were not met. As I have said, the minister has stated that the companies' argument is a technicality. I think it is important for us to look at the minister's second reading speech and remember it, because although the issue was in court last week, I think it has been postponed until August, when there will be a directions hearing. I think this issue will be around for a long time, and I place on the record that we are supporting this bill because of the minister's advice in his second reading speech.

The second reading speech describes the companies' argument as a technicality, and reads —

It does not challenge the merits of the decision to impose the levy or the policy implemented by the 2008 regulations. Further, the issue I have referred to does not deny the capacity of the Waste Authority to make the recommendation at all. The issue is simply that the members of the Waste Authority adopted a procedure that was not contemplated by the WARR act.

We are debating this bill because of a technicality that has the potential to have a significant impact on the state's revenue.

As I said, increases to the levy were recently announced in the budget to commence from 1 January 2015. The second reading speech states —

The increases will drive the recovery of millions of dollars' worth of valuable resources lost to landfill each year and significantly increase the recycling rate in Western Australia. The new rates will provide in excess of \$130 million over the next five years for recycling projects, which represents a significant boost for the recycling sector.

I agree that the new rates will provide much-needed funding to the sector and the Waste Authority that will ensure that we meet the aims and objectives of its plan, the waste strategy and its business case. But we are getting \$130 million over five years; that is only 25 per cent of the dollars. Can members imagine if all this money was used to tackle the problem of waste? Can members imagine if this money was used to tackle problems relating to the environment?

I have a lot more to say on this bill, but I am looking at the time and I know a number of other members on this side have contributions they wish to make. As I have said, we support this bill, but it is disappointing that the government has moved away from the intent of the original bill. It is very disappointing that we have not tackled things such as extended producer responsibility properly. It is very disappointing that we in this place have not properly tackled the issue of a container deposit system. Before we left office in 2008, we had announced that Western Australia would co-chair an investigation into the environmental, economic and social benefits, as well as the cost, of a national container deposit system; we left that task in the hands of the then Minister for Environment, Hon Donna Faragher. We have not seen any movement on this issue over the past few years, yet we still have a huge issue with recycling in this state. I hope the current minister will use some of the money from the increase in the levy to ensure that we properly tackle the issue of waste in this state. With that, I conclude my remarks.

HON SALLY TALBOT (South West) [3.18 pm]: Once again we stagger towards the close of a parliamentary session, trying desperately to help the government rescue itself from the mess it has created and its management of the Waste Avoidance and Resource Recovery Act.

Several members interjected.

The ACTING PRESIDENT (Hon Alanna Clohesy): Order! Hon Sally Talbot has the honour of the call.

Hon SALLY TALBOT: It is indeed an honour to have the call on this particular bill.

I would have described this act as the government's Achilles heel, but anybody who knows Greek mythology will know that the origin of the expression "Achilles heel" is that it is the one tiny weakness that ends up fatally weakening a very strong body, so I certainly cannot call it that. It is more like its bugbear, its *bête noire*—the bane of its existence. We always seem to find ourselves in this position of it having taken a misstep in the management of this legislation. There should have been no reason for this, as Hon Stephen Dawson noted. I pay sincere tribute to the role that Hon Stephen Dawson had in a previous career in bringing this piece of legislation to the Parliament; I, of course, was the parliamentary secretary at the time and took it through this place, and I think we were very, very good at it.

Several members interjected.

The ACTING PRESIDENT: Order! We are nearly there, members—nearly there! Please allow Hon Sally Talbot some time and clear air to finish her remarks.

Hon SALLY TALBOT: We set the bar so high that when this government took office in September 2008, it could not even get over the footings of the bar we set. As Hon Stephen Dawson noted, when the legislation went through this place, it was hailed as world's best practice. I remember—I think I have shared this story with honourable members before—that I had three or four advisers in the chamber with me sitting at the table. When we finally left the chamber, having taken the bill through the house, one of them turned to me with tears in his eyes and said that he had been working on the bill for 25 years. It was not the Gallop or Carpenter governments that invented the waste levy—indeed, we had had a waste levy for decades; it was a Labor government that harnessed the resources of the waste levy to provide a viable funding stream for recycling initiatives, which the Liberal–National government has now spent six years systematically trashing. It started within a few months of it coming to government. Even then, those members who remember—not many members here now were here at that stage—at the end of 2009 —

Several members interjected.

The ACTING PRESIDENT (Hon Alanna Clohesy): Order, members! Really! Please allow Hon Sally Talbot to have the call or we will be here all night.

Hon SALLY TALBOT: I know that this matter causes great discomfort to members of the government, but I will persevere because I want to make some very important points. I am only sorry, as Hon Stephen Dawson noted, that this debate has been severely limited in time. Of course, the government has spent six years getting further and further into the mess it created when it took over in 2008, and now we have limited time in which to rescue hundreds of millions of dollars of state revenue from the mess that this government has been turning a blind eye to for the past six years.

The 2009 budget was when the rot metaphorically and literally set in. The government, of course, would have us believe that the reason the Labor opposition was so upset at that time was as a result of the 300 per cent increase in the waste levy. But as those members who were here at the time will remember, that was never the issue. We never made a secret of the fact and never disguised the fact—we were always absolutely open, honest and transparent—that the waste levy would rise over time. A price signal is sent to the market, and it has to be flexible in terms of the how the market responds to the price signal. Of course, the waste levy was always going to rise. But two things happened at the end of 2009. Those members who were here at the time would remember that we swapped chambers because air conditioning was being put in at this end of the building and we were all sitting in the greenie-blue end of Parliament House. We went for days and days on that one bill trying to get it right. Sadly, of course, the government used its numbers to force through a number of measures that resulted in our great piece of legislation, the legislation hailed worldwide as being world's best practice, being effectively trashed. We did not amend the WARR acts, the levy act and the act itself to implement a rise in the levy, because we did not need legislation to do that. The way that Labor had set up the act and the way the act functioned in the first couple of years meant that the levy was set by regulation. We did not need to come back to Parliament. Of course, it could be disallowed. Everybody knows that that mechanism is open to Parliament, but I have not seen any increases to the waste levy being the subject of a disallowance motion. We are all on the same page as far as that goes. As I said, the Liberal–National government tried to make that the issue at the time but, of course, it was not the issue. As Hon Stephen Dawson said, the two issues were, firstly, the end of hypothecation—just follow me here, members—and the end of hypothecation went along with an increase in the waste levy of 300 per cent, with 75 per cent of the revenue going into consolidated revenue. The other thing that we have not referred to in this debate is that the minister herself took over the power to make changes to the waste levy rate. That was the second strand of the amendment bill. But the main one that Labor vehemently and vigorously objected to, and has continued to object to ever since that day, was the removal of 75 per cent of the waste levy, because that was Labor's groundbreaking move. As I said earlier, it gave the recycling industry a steady and substantial income stream to put in place some of the things that the state so desperately needed—they are needed as desperately now in 2014 as they were in 2007 when the original piece of legislation went through Parliament—to get us off the bottom of the table. We are bumping along the bottom. Every state and territory has a better recycling rate than does poor old Western Australia because of what the Liberal–National government has done to our legislation.

What happened at that time? I have been through this story many times, but because there are some new members here, I cannot resist the opportunity to tell it again. It is a very powerful, if not tragic, story. The minister and those who were running the environment portfolio in those days had a brilliant idea. All senior bureaucrats and Treasury officials hate to see pots of money sitting around the place, particularly when those pots are used for recycling. Recycling is airy-fairy stuff and not the core business of government. With the hypothecated money sitting there, the minister, Hon Donna Faragher, decided in her wisdom—I am sure she did so with the best advice in the world, because some very senior people were advising her—to get her hands on

that money. She thought, “By golly, wouldn’t that be a good thing?” A very famous Treasurer once said, “Never get between a state Premier and a pot of money”; and, never get between a minister and a levy fund that appears to be “raidable”. The minister and her people decided to raid that money. What a fantastic little windfall that was! I can just see them rubbing their hands together with glee thinking, “We’ve outwitted them all. We’ve put up the levy by 300 per cent”. Even then the Western Australian levy was a quarter of what was being charged in New South Wales for exactly the same type of waste. They decided to take the money into the department—“What a fantastic windfall! Aren’t we all terribly clever?” Of course, nobody is cleverer than a Treasury boffin. Treasury said that it was absolutely fine to take all that money. What did Treasury do in the budget? It cut the Department of Environment and Conservation’s budget by exactly the same amount that it had taken out of the waste levy account! Members might think that I am making all this up, because it is a terribly good story. It does not make those on the opposite side of the chamber look terribly smart. Members might think that I am just being a Labor oppositionist and that I am making all this up. But the thing is that we have it all in black and white. I remind honourable members why I am making this point. Here we are at half past three on the last day of sitting for this session and we can count the remaining time available to us because of standing orders. Here we are desperately trying to fix this. The government will say that it is not its problem and that it has been in government for only six years—it had better not say that too loud! What I am pointing out is that we have been back time and again as the government has tried to cobble together a fix for the mess it has made in implementing the legislation. The first budget that this government brought down was in May 2009, after it had been in government for about six months. The Minister for Environment, who at that time was Hon Donna Faragher, sent a memo to the Treasurer three days before the government’s first state budget. Members will like its heading; it is pretty clear what it means and what the problem is: “Shortfall in Landfill Levy Revenue—2009/10 and Ongoing”. That is the heading of the memo. It reads —

The Waste Avoidance and Resource Recovery Act 2007 and the Waste Avoidance and Resource Recovery Levy Act 2007 make provision for the collection of a levy, and the payment of that levy into the Waste Avoidance and Resource Recovery Account. The legislation currently specifies that levy funds can only be used for waste management, recycling and resource recovery programs.

That, of course, is the levy as it was set up by the former Labor government. The memo continues —

Total revenue from the levy in 2007/08 was approximately \$12.2 million, with revenue in excess of \$13 million forecast for 2008/09.

The 2009/10 Budget Statements are based on a 300% (four-fold) increase in the levy and its use for broader environment and conservation purposes.

The approved Budget also includes a \$39 million reduction —

This was the trick that Treasury pulled on the department —

in the Budget appropriation to the Department of Environment and Conservation (DEC) in 2009/10 (and ongoing) in anticipation of increased annual revenue of \$39 million from the levy commencing in 2009/10.

The story I have just told members is exactly corroborated in this memo from the then Minister for Environment to the Treasurer, three days before the budget came down. She thought she had been so clever in getting an extra nearly \$40 million for the department by raiding the waste levy account. The memo continues —

The appropriation reduction has been applied across DEC’s services and has not been restricted to waste functions.

That was the really bad news! It continues —

The approved \$39 million reduction to DEC’s budget is based on the assumption that the quantity of waste going to landfill will not reduce.

Well, well; nobody wrote that on a Department of Lands postcard before an election, did they? Nobody said that the government was actually working on the basis that the quantity of waste going to landfill would not reduce, but, of course, here we have it. Here we have the core part of the funding for the Department of Environment Regulation—the department charged with environmental protection. Members should remember that in those days, 2009–10, that meant that nearly 20 per cent of the entire budget for environmental protection in this state was suddenly directly linked to the production of waste that was liable to the levy as it went to landfill, so of course that waste stream had to be kept high. We were actually using increases in waste to pay for things like black cockatoo protection programs and air quality monitoring—you name it. Whatever the Department of Environment Regulation does in members’ electorates that community groups really like was suddenly tied to the assumption that the amount of waste going to landfill would not fall and, therefore, the money taken in the levy would continue to increase.

I will not continue with that memo, because the purpose of it is perfectly clear, although I will say that it ends by asking for more money. Three days before the budget is brought down, the minister is asking for more money to top up what she can clearly see is going to be a budget black hole within days of the budget taking effect. I have somewhere in my file the response from Treasury, which says, in effect, “Don’t worry; we’ll fix it all up in the midyear review.” This was three days before the budget was brought down!

After the budget was brought down, the second problem arose. I have a letter dated the day after the budget; it appeared on the Waste Authority website sometime that morning, so one would assume that it was written within hours of the budget coming down. It is a letter to Barry Carbon, the then chair of the Waste Authority, from the then Minister for Environment, Hon Donna Faragher. It reads as follows —

Dear Barry

CHANGES TO THE WASTE AVOIDANCE AND RESOURCE RECOVERY LEVY REGULATIONS 2008

As you are aware, the Budget Statements for 2009/10 reflect changes to the landfill levy, effective from 1 July 2009.

This letter is dated 15 May, by the way. It continues —

New levy rates of \$28 per tonne for liable putrescible landfill sites and \$12 per cubic metre for liable inert landfill sites are intended. These new rates must be given effect by amendment to the Waste Avoidance and Resource Recovery Levy Regulations 2008 (WARR Levy Regulations).

In accordance with the Budget Statements, the intention is that additional revenue derived from the increase in the levy will be used to offset a reduction in the appropriation from the Consolidated Fund required by the Department of Environment and Conservation (DEC). To ensure that priority waste management actions continue to be supported the Waste Authority will continue to receive funding consistent with existing revenue from landfill levies.

That is, the 25 per cent that was still going to the WARR account. The letter continues —

The Budget Statements reflect an anticipated change in the expenditure rules for revenue from the landfill levy, which would allow funds from the Waste Avoidance and Resource Recovery Account (WARR Account) to be applied to a broader range of environmental and conservation purposes. This will require legislative amendment which the Government is proceeding with.

As you will appreciate, these changes will have significant implications for the Waste Authority’s own agenda for making changes to the levy and aspects of its administration and enforcement.

I will cut a couple of paragraphs and get to the key point, which is —

Firstly, I ask that as a matter of urgency you seek a recommendation from the Waste Authority to the Governor in Executive Council, to increase the levy to \$28 per tonne for liable putrescible landfill sites and \$12 per cubic metre for liable inert landfill sites. This recommendation should refer to a set of draft regulations which are being prepared and will be provided to the Waste Authority shortly.

We have been here before; we have seen this government try to patch up parts of the act before. Why did we not know that we should have been doing this at that stage? What on earth has the government been doing? It has just been dozing away in the background, tapping little sources of money here, raiding kitties there, and all the time failing to keep its eye on the ball.

What happened in 2009? Fundamentally, we saw about 20 per cent of the core funding for the department charged with the protection of the environment suddenly being intrinsically and inherently linked to the amount of waste that was going to landfill. All of a sudden the bottom dropped out of any sort of momentum to reduce waste, because as waste was reduced, so funding was reduced to the department.

Then along came this legal case, which has been going on for a long, long time. Again I ask: why was it up to lawyers working for private companies to send the government scurrying back here today to fix this problem? Why has it taken the government this long to work out what was going on? I have a question that the minister might care to answer in her response to the second reading debate; hopefully I will leave her enough time to do so. It is a question I asked in the 2011 estimates hearings, supplementary information number B2. I asked how many companies had refused to pay the landfill levy and what their names were. I think I know the answer to this question, but we ought to have it on the record. The answer I got, dated 15 June 2011—I suspect that was when it was asked—was that three companies were refusing to pay the landfill levy: Eclipse Resources Pty Ltd, Happy Valley Resources Pty Ltd and Moltoni Corporation Pty Ltd. Given that we have been informed, in the context of this bill, that there were only two companies, I would like to know what happened to the third entity involved in that legislation.

This brought us to another massive problem. Having identified these three key problems in the way in which the government treats this legislation and the fact that power, decision-making and money is being taken away from the Waste Authority, we then find there is a massive problem with what is technically referred to as sequential landfill. I spent considerable time researching this and it is hard to say whether the problem is that the government does not know what it is doing or it is being deliberately obstructive in trying to get this issue resolved. It is a very big issue. Members will remember that at the time, a couple of financial journalists were covering the progress of this case through the courts. I saw one estimate of \$100 million at stake. In our briefings we have been told that the costs have been withheld by these companies, so the cost the government is seeking to recover is in the order of \$20 million. I certainly saw estimates in the media over the years that it was as high as \$100 million. I would like to know a little more about where we get those figures from. I will use someone's name here, but I hope he will not mind because he has made many public statements about this in the past. Some clearly aligned political operators have got involved with this issue along the way. I remember a stage when Robert Taylor, the journalist who worked for *The West Australian*, and who clearly has a political allegiance, was working and advocating for Eclipse Resources Pty Ltd. One of the senior people in Eclipse is Rob Sippe, formerly a very senior person in the then Department of Environment and Conservation, who left about 10 years ago when many of what I call "old policy" people—not old chronologically, but people who had spent their careers in the department developing policy—left for their own reasons, which I would not dream of speculating on. Rob Sippe had a very sound reputation when he worked in the public service. He is now a senior executive at Eclipse. I put it to members that a covert operation was never conducted by these people. I must say that I am not an advocate for the industries but from the research I have done and conversations I have had with many people around this state and the country—members will be well aware that other states take a quite different approach to the classification of sequential landfill—I have never been convinced that the companies were anything other than totally up-front with the government about their intentions. It was a very clear-cut and precise argument that simply said that if companies use clean fill to backfill limestone quarries, which are what mainly involve Eclipse's operation—I do not know where the Moltoni Group is operating—they would not have to pay the levy. Half of Beaconsfield was rehabilitated for subdivision as a result of people putting clean fill into used limestone quarries. At some moment in time DEC made the decision that these limestone quarries were going to be categorised as landfill sites. Why was that decision made? Quite clearly it was made so that the levy could be charged. Right from the beginning the companies argued that that was not right; that it was a breach of any number of measures.

I know from the briefing we had from the officers the other day that their argument has expanded considerably from two or three years ago when I was directly involved. They are now arguing that there is a constitutional problem because it, essentially, concerns volumetric tax, which is too complex to go into now; I do not have time. Their clear and simple argument right from the beginning was that this was the wrong use of the act; the act does not make provision for a tax on the use of clean fill in old limestone quarries that are effectively being used to rehabilitate the area for subsequent residential and commercial development. They should not be taxed by the government.

I have followed this argument right through other portfolios. Look at how the people in the Department of Planning view this issue. If we say "sequential landfill" to anyone in that department, we get the big two thumbs up sign because they love it. This is what we do when we are responsibly planning, particularly for inner city infill. It is what we do when we finally get to the point of acknowledging that our resource such as our limestone on the coastal plain is not unlimited. This is the reality we are facing. For the first time in our history we have a shortage of limestone and a shortage of sand. For goodness sake! Where can we find alternative sources for limestone and clean sand? It is in recycling. There is an argument to say that this is the best kind of recycling in the construction and demolition waste area.

Departments are clearly at odds with each other. An extremely expensive legal case has been pursued through the courts for years and the anecdotal scuttlebutt around town is that the companies will not give up; they will take it as far as the High Court of Australia if they have to. What a terrible mess we have got into. It is a mess we should never be in. To add insult to injury over all this, I referred to the Department of Environment Regulation on page 674 in volume 2 of budget paper No 2, and found a footnote in the middle of the page that says we are drawing on the WARR account to fund the legal action. How magnificent is that? It is the account the former Labor government set up to pay for recycling infrastructure and recycling programs to try to get Western Australia's recycling record off the bottom of the chart, and this government is now using that money to pay its lawyers to fight in court people who are claiming to be legitimate recyclers. What an absolute nonsense. While I have the budget papers open, I will say that Hon Stephen Dawson was right, our rate of recycling is slowly improving, but I note how slowly it is improving; it has never got out of the 40 per cents. It states on page 673 at line item "Percentage of waste in the metropolitan area diverted from landfill through recycling" that the 2012–13 actual was 43 per cent, the budget target in 2013–14 was 45 per cent, the estimated actual is 47 per

cent and the target for 2014–15 is 49 per cent. Nearly a decade after this legislation was introduced we still have not cracked 50 per cent of our rubbish being recycled.

Hon Stephen Dawson interjected.

Hon SALLY TALBOT: Yes; they would rather spend their money on lawyers than on recycling initiatives. This is not a matter that affects just community recyclers. Our glass recycler has closed down. We are still trucking all our glass to South Australia because the glass recyclers needed a serious injection of cash, which they cannot get now that the government is using this money to fund some of its other processes. It is exactly what the government has done with royalties for regions. The amount of \$250 million a year goes towards running the department. The government should go to Bunbury, Albany, Port Hedland and Karratha and say, “Royalties for regions—returning the money to the people who earned it.” We are running the department with this money. Whoopy-do; it does not go down very well when we get out of this place and go into the real world. I am suggesting that this government has had six years to get this right and it still has not done so. Even with this bill we will not get anywhere near resolving the problem the government has created for itself. It has an absolutely hopeless record.

I will take another few minutes, if the house will bear with me, but I will not speak for my full time. The government is fatally conflicted over sequential land use. Hon Peter Collier tells us about the system he set up in the Department of Aboriginal Affairs whereby he brings people together from other departments to try to break down some of the silo government thinking—the old joined-up government issue. That is an example, but I do not know whether it will work. Hon Peter Collier is very up-front about the fact that he is waiting to see whether it will work. My goodness me, why cannot the Department of Environment Regulation try this and sit down with the planners, the water managers and the transport people and talk about what we want to do with the whole question of urban infill and how we will treat these sites? I think members would find diametrically opposed views around that table, but to listen to the environment minister and the environment bureaucrats in this state, we would never know that there was a counterargument because they are so rigidly fixed on fighting those two companies.

I cannot make a speech about the waste levy without saying, as Hon Stephen Dawson noted, that one of the significant things that the Waste Avoidance and Resource Recovery Act did was provide for extended producer responsibility. It provided for a scheme that the community loves—a container deposit scheme. How many times do people take a group of kids to the movies or out on a picnic somewhere and everybody looks at their bottles and cans and says, “If only we could get our 10c back in Western Australia. Why don’t we have it in Western Australia?” We have been waiting for six years for a Liberal Minister for Environment to say, “Okay, let’s just do it. The Northern Territory has done it; South Australia did it.” A bill has been sitting in the Parliament that this government could have supported. It would not cost anything. Over the long term it would be revenue neutral.

Several members interjected.

The ACTING PRESIDENT (Hon Alanna Clohesy): Order!

Hon SALLY TALBOT: In the short term it would actually make money for government. But no, the government will not budge on it. It has absolutely no vision and no clue. The only thing the government is intent on protecting is its hopeless and helpless record in the area of waste management. Of course, the other thing I must mention is that the government in these budget papers is still predicting a rise in income levy. Why, after all these years—almost 10 years since we started the new system that should have fixed all this—is the government still projecting long-term revenue increases in the levy rates? It means that the recycling rate is not increasing. If we could stop more waste going to landfill, the revenues would come down. That is when this government would know it had a problem. But things are going in exactly the opposite direction.

Finally, I must note that another very serious development is about to take place. I am sorry that Hon Phil Edman has been called out of the house on urgent parliamentary business, as I know that he has been a champion of this industry. I will never give up trying to persuade Hon Phil Edman and his colleagues on that side of the house that moving to incineration, particularly high-temperature incineration, which has never been shown anywhere in the world to be environmentally acceptable, is a terrible mistake. But I tell you what, Madam Acting President! Incineration sits beautifully with this fundamental conflict of interest inside the heart of environmental regulation as it is run by the Liberal and National Parties in this state. The way this government runs it creates more waste so that it makes more money. I could go on about this for a very long time, as members can imagine and as they have heard me do so in the past. The basic point about incinerators is that they are very, very expensive pieces of kit. So the only way a government can persuade investors to put that kind of money into an installation is to make sure that they have a long-term supply contract locked in. When it comes to an incinerator, which product requires a long-term supply contract? It is waste. So that fits beautifully with the strange contortion in public policy that this government has come up with. We will have no need to recycle and re-use anymore because all

the rubbish that we produce will do two things: it will keep incinerators buzzing away 24 hours a day, seven days a week and it will increase the revenue stream to the Department of Environment Regulation. All that, I suggest, is absolutely wrong, and we will fight it every step of the way.

In closing, I just say that what we are actually talking about here is signatures—members of boards and authorities actually taking responsibility for what they do. If only we were here talking about the way the Environmental Protection Authority conducted itself with the James Price Point approval! If only the government had been willing to apply this kind of rigour to the EPA that it is applying to the Waste Authority! If it had, perhaps we would not have ended up with the minister at the time—I grant that it was not Hon Donna Faragher—publishing regulations in the *Government Gazette* to enable one sole member of the Environmental Protection Authority to sign off on the environmental approval for the biggest ever industrial project to come to Western Australia. Members opposite have nothing to say about that, have they? They were quite happy with that; they were absolutely happy with that. They snuck some regulations through the *Government Gazette* that never came to this place for discussion or debate, and it enabled one single signature to go on that final piece of paper. What an absolute nonsense it is to be in this place talking about this legislation at this particular juncture! What a terrible mess the government has made of the management of waste in the state of Western Australia.

HON DONNA FARAGHER (East Metropolitan — Parliamentary Secretary) [3.55 pm]: I did not intend to speak on this Waste Avoidance and Resource Recovery Amendment (Validation) Bill 2014, but I have to say that I was somewhat provoked by the previous member's comments.

Several members interjected.

Hon DONNA FARAGHER: I appreciate that Hon Sally Talbot has not had her moment in the sun for a while, and when she sees a ray she gets a bit excited. However, I will bring her back to what this bill is all about and will keep my comments very short.

Several members interjected.

The ACTING PRESIDENT: Order!

Hon DONNA FARAGHER: It is absolutely ludicrous for Hon Sally Talbot to suggest that because of a failure of this government, we find ourselves dealing with this bill today. She talked about a range of things, but let us come back to the bill. In the second reading speech the minister said —

On 23 May 2008, members of the Waste Authority passed a resolution without meeting. That resolution recommended the making of the Waste Avoidance and Resource Recovery Levy Regulations 2008. On 20 June 2008, the Lieutenant-Governor and Deputy of the Governor made the regulations, which were to come into force on 1 July 2008.

I remind members that this government was not the government on 23 May 2008, 20 June 2008 or 1 July 2008. Who was in government at the time? It was the Labor Party. Who was the failed parliamentary secretary to the Minister for Environment? It was none other than Hon Sally Talbot! It was Hon Sally Talbot —

Several members interjected.

The ACTING PRESIDENT: Order! Are we looking forward to going home tonight?

Hon DONNA FARAGHER: I make the point that it was this government that changed the legislation, through the bill that has been talked about by Hon Sally Talbot, to ensure that regulations in future would be made by the minister rather than by the Waste Authority. I might say that those amendments were opposed not only by the Greens, but also by the opposition. If there is one failing, and it is the only failing in this matter, it is that the Labor Party was in charge at the time and made the mistake. For Hon Sally Talbot to stand in this place, give us a lecture and say that it is our fault is just ludicrous.

HON HELEN MORTON (East Metropolitan — Minister for Mental Health) [3.58 pm] — in reply: I have an extensive response in reply to all the things that have been said in the second reading debate on the Waste Avoidance and Resource Recovery Amendment (Validation) Bill 2014. However, given that nobody has mentioned anything related to the bill itself to which they need my response, I will go straight to the conclusion.

The conclusion is that the government has introduced the bill because of concerns over one of the grounds raised by the companies about the validity of the 2008 regulations. The government does not consider that the other grounds raised by the companies have merit. However, the terms of the bill are such that they will deal with all arguments concerning the validity of the regulations except constitutional ones. The purpose of the bill is to clearly indicate Parliament's support, and I understand the opposition is fully behind it, for the content of the policy behind the 2008 regulations. The bill is designed to enable the regulations to function as originally

intended. The bill will enable the levy to function as it was intended as a market mechanism to drive the avoidance, re-use and recycling of waste, and to discourage the burial of waste in the ground.

I thank the members of the Council and members opposite for their support for the bill and for their knowledge and understanding of precisely why we are passing this bill. I thank the people responsible for clarifying the record after the mistake was made, and Hon Donna Faragher for clarifying the timing of the issues. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Hon Helen Morton (Minister for Mental Health)**, and passed.

Sitting suspended from 4.00 to 4.30 pm