WASTE AVOIDANCE AND RESOURCE RECOVERY BILL 2007

Consideration in Detail

Clauses 1 and 2 put and passed.

Clause 3: Meaning of terms used in this Act -

Mr G. SNOOK: Obviously "meaning of terms in this act" means definitions. As I said during the second reading debate, this bill is specifically about waste avoidance and resource recovery. I strongly believe we need to define in this bill those parts that are referred to throughout the text. I notice that the minister intends to move an amendment to define "occupier" and "owner" in the clauses in which they occur. I have been in this place only a short time but I have not seen that occur in other legislation that we have handled. A term in any bill relating to a specific name or purpose is usually highlighted in the definition or meanings of terms. Extended producer responsibility schemes are defined in the bill as are CEO and districts. I cannot see why there could not be an amendment to include occupier.

The DEPUTY SPEAKER: Does the member wish to seek leave of the house to move his amendment on page 3, after line 21 as one amendment?

Mr G. SNOOK: Yes.

Leave denied.

Dr S.C. Thomas: Minister, why not let it be done as one amendment, if you are opposing it. Are you opposing the amendment in total?

Mr D.A. Templeman: Yes.

The DEPUTY SPEAKER: It will be one vote if leave is granted to deal with the amendment moved by the member for Moore.

Dr S.C. Thomas: You might as well do it in one hit; there is no point in doing it twice.

The DEPUTY SPEAKER: In the first instance I was talking about "occupier" and "owner". Are we now talking about moving the amendment on page 4 after line 7, "resource recovery"?

Dr S.C. Thomas: No; just deal with the first one.

The DEPUTY SPEAKER: Leave is granted for the member for Moore to move the amendment dealing with "occupier" and "owner" on page 3, after line 21.

Mr G. SNOOK: I move -

> Page 3, after line 21 - To insert -
>
> > **"occupier"** means as defined by the *Environmental Protection Act 1986*;
> > **"owner"** means as defined by the *Local Government Act 1995*;

The DEPUTY SPEAKER: That is correctly one amendment.

Mr A.D. McRae: Has the amendment been circulated?

Mr G. Snook: Yes.

Mr D.A. TEMPLEMAN: I understand the member for Moore's issue. "Occupier" is already defined under the Environmental Protection Act. I refer him, for example, to subclause (2) on page 4 of the bill, which states -

> If a term has a meaning in the EP Act, it has the same meaning in this Act unless the contrary intention appears in this Act.

It is already defined because it is embedded as part of the EP act definitions. I am dealing with "owner" in a subsequent amendment, which has already been circulated. I think that deals with the member's concern about definitions. They are both embedded in the bill but they do not appear in the definition section. They are referred to and both of them refer to relevant acts.

Mr G. SNOOK: I thank the minister for the explanation. However, it still does not in my view clarify the situation. If what he is arguing is the case, why will he go to all the trouble of moving an amendment to the definition of what an owner means to clarify it? I find it difficult to understand. As the bill states in subclause (2) on page 4,

> If a term has a meaning in the EP Act, it has the same meaning in this Act unless the contrary intention appears in this Act.

What about the Local Government Act? Is that in here? I have not seen it in here. The minister might be able to point it out to me. This is not about being pedantic; I am trying to contribute generally to this debate. If something has been left out, so be it. It does not change in dimension the intention of the bill, so I am a little bit bemused.

Mr D.A. TEMPLEMAN: I will seek to move an amendment to the definition of "owner" because the definition in the relevant act does not cover the entire impact we want it to cover. We are therefore effectively adding to that definition in the amendment to the bill that I will move later. Therefore, in effect, under subclause (2), the term "occupier" will have the same meaning as the term in the EP act. However, our proposed definition of the term "owner" will broaden the coverage of what we intend that term to mean in this bill. That is what we are doing. Our proposed definition of "owner" is contrary to the definition that appears in the Local Government Act. That is why we are seeking to make that amendment.

Mr G. SNOOK: This is my last go, Madam Deputy Speaker! Why were not the words "owner" and "occupier" defined in clause 3, "Meaning of terms used in this Act", when those words are referred to throughout this bill? It is as though the minister is saying he does not want to be caught out here. That is what I am feeling. I think that is rather strange, but that is the way things run in this house, and I accept that.

Amendment put and negatived.

Mr G. SNOOK: I move -

Page 4, after line 7 - To insert -

> **"resource recovery"** means any waste management operation that diverts a waste material from a waste stream and which results in a certain product with a potential economic or ecological benefit;

Dr S.C. THOMAS: I foreshadow that the member for Moore is proposing a second amendment that will effectively apply to the Waste Avoidance and Resource Recovery Levy Bill. We will get to that bill in a moment. That amendment proposes to exempt resource recovery sites from the proposed levy, and thereby effectively remove a disincentive to recycle. The member for Moore is seeking to define "resource recovery" so that he can lay the groundwork for that amendment by then also defining "resource recovery facility". For that reason, if the government is opposed to exempting a resource recovery facility from the proposed levy, it will obviously also be opposed to that amendment. I note that this amendment by itself probably does not make immediate sense, but it does make sense when we consider the consequential amendment that will be moved, which will be to exempt a resource recovery facility from the proposed levy.

Mr D.A. TEMPLEMAN: I again draw the member for Moore's attention to clause 5, "Objects of this Act", subclause (1)(c)(ii). In the government's view, that subclause provides a definition of resource recovery. The other important element is that the regulations will achieve the same objective. I understand the member's view about wanting to push for a definition. However, we believe that is covered adequately within the text of the bill.

Mr G. SNOOK: This clause of the bill spells out in detail the meaning of a range of terms that are used in the bill. Therefore, I am still, minister, with respect, firmly of the view that it should also clearly define the very essence of what we are trying to achieve in this bill; namely, resource recovery. Resource recovery is one of the most critical elements of this bill, because we are trying to lift the only 20-odd per cent of waste that is recycled - which we are not all happy about - and thereby reduce the amount of waste that goes into landfill. In a very small way, the minister's explanation does cover what the minister is tying to achieve. However, it is more of an object than a definition. There is a difference between an object and a definition. We should first define what resource recovery means, and we can then move into what the object is. It is like having a business plan. It is as simple as that. I cannot see why the definition that I have proposed would in any way be detrimental to or change the meaning and direction of this bill. The minister should accept in good faith that I am genuinely trying to contribute to building a better act. The minister is telling me that if we read this bill, we will understand what the government is trying to achieve in this legislation. To use the minister's own words, this is ground-breaking legislation. It is significant legislation. It is a first for Western Australia. We are stepping into a brave new world. I am not aware of whether other states have provided a definition of these words. This definition is very clear. It is similar to the definition that is used by the European Union. Europe is supposed to be pretty good at the game of waste management, recycling and resource recovery. I have transcribed part of the definition that is used by the European Union and have used that to provide what I think is a good, clear definition of what resource recovery is all about. Resource recovery is one of the principal elements of the minister's bill. It is, therefore, appropriate that we include in this bill a clear definition of those words. The definition outlines all the objects and benefits of reducing landfill, increasing the percentage of waste that is recycled, benefiting the environment, increasing economic return, and transforming waste management in Western Australia. Surely this very good intention of resource recovery should be clearly defined.

Mr D.A. TEMPLEMAN: I can accept where the member is coming from, but one of the important aspects is that we do not want to constrain potential that is not known at this stage. We need to have scope within a definition that does not constrain what resource recovery means now and might mean in the future. We need to be aware that new technologies will come on stream and a whole range of new products and waste elements will be created that we do not even know about at this stage. I believe that the bill gives us flexibility because it does not constrain us. What we are focusing on in this bill is implementing a broad range of mechanisms that address resource recovery, including elements that the member has already mentioned. I think the bill adequately covers what resource recovery means or can include. That is why I highlighted that part of clause 5(c)(ii) that gives a description of what we are talking about. We could probably argue all night on this one, but I think the thrust of the definition is already adequately covered in that clause. One of the dangers of defining things too narrowly is that we start to discount other potentially important considerations. I would not want us to be constrained by having a definition that may in future be seen to have been too constraining.

Mr G. SNOOK: I place on record my extreme disappointment in the minister not accepting what I, my colleagues and supporters believe is a genuine attempt to improve this bill. That will now stand on the record. What good that may do for waste avoidance and resource recovery in the future, I do not know, but I would just like to have it known that I am very disappointed we could not put the words that the minister has used in the bill into a form that exactly speaks the values that he outlined to the house a moment ago.

Amendment put and negatived.

Clause put and passed.

Clause 4 put and passed.

Clause 5: Objects of this Act -

Dr S.C. THOMAS: These comments probably do not need a response, but I want to put on record my concern about clause 5. The objects of the proposed act are primarily to contribute to sustainability, which is great; the protection of human health, which is wonderful; the protection of the environment, which is good; and a move towards a waste-free society. I want to put on record my problem with the words "waste-free society". I recognise that it is an aspirational goal. It is a bit like renewable energy by 2020 being an aspirational goal, but that is one that has a genuine possibility of being reached. However, a waste-free society is one of those aspirations that may just encourage those who are way out there and who do not have a realistic expectation of what waste management in this state would be. I prefer the use of a different term, but I accept that the minister is putting out what he sees as an aspirational goal. I think it is a mistake because I think it encourages those who believe that a waste-free society is a realistic and attainable goal.

Clause put and passed.

Clauses 6 to 9 put and passed.

Clause 10: Authority may use other names -

Dr S.C. THOMAS: The fact that the authority may use other names strikes me as a bit odd. The clause states that in addition to its statutory name, the Waste Authority may operate under any other name approved by the minister. Under what circumstances might the minister need a non de plume for the Waste Authority and why would it not use its statutory title?

Mr D.A. TEMPLEMAN: This element of the clause allows that for marketing purposes at some stage in the future the Waste Authority may deem it appropriate, when marketing itself or a particular aim of its work, to incorporate into or add to its name an element that better allows it to market something. For example, the Waste Authority in the future may decide to include in its title elements of "towards a zero waste outcome". Again, this clause gives some flexibility. An example is Ecocycle in Victoria; I understand that that badging, as it were, was obviously created to focus on elements that were deemed or are deemed to attract attention to better market a concept or an idea. That is the reason behind allowing this element in the act. It is again creating flexibility, trying to be forward thinking and planning strategically for possible future opportunities. It needs to be approved by the minister, as the member is aware.

Dr S.C. THOMAS: Yes, as approved by the minister. A statutory authority should be recognised as such, because it has the power of a statutory authority in the statutes, the law, behind it. The government's advertising program is a bit sneaky at the best of times. That tends to be the way in which governments work. I can imagine the government coming out with "Waste Authority - isn't it wonderful that the Labor Party is doing such a wonderful job"!

Mr G. Snook: Dot com dot ALP!

Dr S.C. THOMAS: Yes. I recognise the minister's argument. Rather than opposing it, I just say that we will be watching very closely to make sure that the authority does not spend a lot of money on coffee cups and T-shirts saying "Waste Authority - what a wonderful job we are doing - dot com dot au".

Clause put and passed.

Clauses 11 to 26 put and passed.

Clause 27: Public notification of draft waste strategy -

Mr D.A. TEMPLEMAN: I move -

Page 15, line 1 - To delete "plan" and insert instead -

waste strategy

Dr S.C. THOMAS: Rather than opposing the amendment, I ask if there is any reason for "plan" getting in there rather than "waste strategy", or is it just one of those things that occur?

Mr D.A. Templeman: It was simply a typographical error.

Amendment put and passed.

Dr S.C. THOMAS: Subclause (4) states -

The Waste Authority may fix and charge a fee for supplying a copy of the draft waste strategy.

Has any thought been given as to whether it will be a nominal fee or a cost recovery fee? Are there any indications about what sort of fee will be set? Can the minister give members some sort of basis for that?

Mr D.A. TEMPLEMAN: Obviously, the intention is for it to be a nominal fee. However, the reality is that a copy of a draft strategy is now almost totally available on the Internet -

Dr S.C. Thomas: "Almost available" is another one of those anomalies; either it is available or it's not. It's a bit like being pregnant!

Mr D.A. TEMPLEMAN: The reality is that most reports or strategies are available, and I am sure, as the Waste Authority is focused on zero waste as an aim, that it will be a method of technology that will certainly be embraced. My understanding is that requests for hard copies of reports are decreasing. That fee is one that the Waste Authority could fix, but I would expect it to be a nominal fee.

Dr S.C. Thomas: You're aiming for a nominal fee, basically?

Mr D.A. TEMPLEMAN: Yes.

Clause, as amended, put and passed.

Clauses 28 to 31 put and passed.

Clause 32: Minor amendments to waste strategy -

Dr S.C. THOMAS: This is a pretty obvious one in terms of minor amendments to most acts; the Planning and Development Act being a prime one. My definition of a minor amendment and the minister's definition might vary. Will there be a set of guidelines to indicate the difference between a minor amendment and a major amendment?

Mr D.A. TEMPLEMAN: I think it is important to highlight that local governments have requested a definition of "minor amendment", and since under the provision as drafted the minister's approval is required, it is necessary for both the Waste Authority and the minister to be satisfied that the amendment is minor for it to be made under this provision. If that is not the case, the amendment will be dealt with by a review of the waste strategy. The review clause is referred to under the next clause, clause 33. It highlights that both the Waste Authority and the minister would need to be satisfied that it is actually of a minor nature.

Clause put and passed.

Clause 33 put and passed.

Clause 34: Power to request report on waste strategy compliance -

Mr D.A. TEMPLEMAN: I move -

Page 18, line 18 - To insert after "provide" -

a report on

Page 18, line 19 - To delete "a report on".

Page 18, line 23 - To delete "reasons" and insert instead -

report

Dr S.C. THOMAS: These are pretty simple typographical errors. I do not really have a problem with it. This bill has been a long time in the making; it is not like the member for Cockburn's nuclear bill, which was cobbled together. This one has a bit more history behind it. Hopefully there are not too many more of these to come.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 35 to 45 put and passed.

Clause 46: Extended producer responsibility schemes -

Mr D.A. TEMPLEMAN: I move -

Page 26, after line 30 - To insert -

(2) Where a regulation made in respect of a matter referred to in Schedule 3 Division 3 specifically provides that this subsection applies in respect of a provision of the regulation, a person who commits an offence under the provision is liable to a fine of $50 000 and a daily penalty of $5 000.

Dr S.C. THOMAS: Although this looks like a simple amendment, it has a significant impact because it puts a penalty in place regarding product stewardship, that is, the potential for extended producer responsibility schemes. Effectively, that is potentially container deposit legislation or regulation to be contained in the deposit regulations. Previously, the government opened up a set of statutes that allowed it to make container deposit regulations. This amendment puts in place a fine of $50 000 plus a daily penalty of $5 000 a day for somebody who is in breach of those product stewardship regulations. That is my reading of this amendment. That is a significant change. We do not even know what the container deposit regulations will be. The minister, in his second reading speech, did not enunciate what the regulations would be or when they would occur. We are still waiting to hear whether the regulations will be in place in the next 12 months. Irrespective of that, we cannot assess the types of regulations we are being asked to agree to, and we are being asked to accept a penalty of $50 000 for a breach of one of those regulations. Although we do not want to prevent the government from doing what it plans to do, I make the point that it is difficult for an opposition to support a penalty when, in effect, we do not know the circumstances to which that penalty might be applied. Can the minister provide us with some examples of the sorts of breaches that might attract the $50 000 fine or the fine of $5 000 a day? Ideally, the minister would table the secretly discussed regulations that he has proposed and has ready to go for early next year. He might have negotiated those regulations with the department and he might happen to put into the opposition's hands a copy of the regulations that happened to fall off the back of a truck. He might be able to discuss with us the negotiations he had with private industry. We might then have an indication of whether we should support this amendment. However, without that information, if we were to vote for this amendment we would be accepting a penalty without knowing what the penalty was for.

Mr G. SNOOK: I agree with my colleague the member for Capel. Will we be setting levies after this? We will not be setting levies. We have no regulations. The minister has had negotiations all the way through this process with people from the Western Australian Local Government Association and the Department of Environment and Conservation and yet at the eleventh minute of the eleventh hour on 14 November, the government has introduced this amendment, which has come out of the blue. I concur with the comments of my colleague. Why is it so? It makes me believe that the minister does have regulations tucked in his back pocket that are ready to roll out. On the other hand, why would the minister not include in the regulations the penalties that apply, which I suppose he will do, unless there is another set of amendments? They would be much easier to amend. We would not have to amend the bill; we could use the chief executive officer's powers, as the minister outlined during the second reading debate. He could talk to local government, which would have an input into the discussions. That is democracy. The minister spoke about all that. Why introduce the amendment now? Will it be used or not? Obviously someone thought that it was needed, because it was not talked about just a little while ago. I add a note of criticism. This bill has been around for a long time. As the member for Capel said, there is a raft of typos in the legislation. Introducing this amendment runs counter to the goodwill and cooperative spirit with which we have approached this bill. Has the minister talked to WALGA about the amendment? Why introduce the penalties in the bill and not in the regulations? This is a set of rules and implications that will not be discussed with WALGA. It will not be able to consider them through the usual process.

Mr D.A. TEMPLEMAN: Members must understand the context of what is proposed. There is no intention to fine the Western Australian Local Government Association. WALGA is not the potential target of a penalty. It

must be recognised that we need to put in place clear messages about penalties for these types of offences that can be reinforced by regulation. The regulation will create the context of what a breach may be. We must be realistic and impose a fine that demonstrates clearly, predominantly to very big corporations, that there are consequences for a breach of an extended producer responsibility. It is considered that a penalty of up to $50 000 is an adequate penalty. The sum of $10 000 is a pittance to big companies that disregard a particular regulation. We are setting clear and appropriate penalties. The regulations that determine the context of breaches are determined as part of a future EPR. The proposed amendment is far more appropriate than the original proposal to set the fine at $10 000. WALGA is not a target of potential penalties. Industries and companies that might breach particular regulations are the target. I think that a penalty of $50 000 is appropriate, particularly if we ensure through the EPR that we want industry to take this matter seriously.

Mr G. SNOOK: Will the minister explain the definition of "person"? Where is that defined in the bill? I need an explanation of what that definition relates to. Does it need clarification, or has the government forgotten to put it in the legislation because this is such a late amendment? We might have to reconsider this clause in the other place if we do not check what the definition of "person" is. The amendment refers to "person". Is there a definition in the bill somewhere?

Mr D.A. TEMPLEMAN: I understand that the definition of "person" appears in the Interpretation Act. That is where the member will find the definition. We would not need to define "person" in this bill as a succinct or distinct definition.

Mr G. Snook: Could it be a company or an organisation?

Mr D.A. TEMPLEMAN: I understand that is correct. Again, I do not believe it affects the implementation of the ultimate decision, but perhaps I can provide that information in my third reading response. I do not have a legal officer with me to give the member for Moore a definite determination on that at this time of the evening. Parliamentary counsel has provided us with the overview of this particular element. It is important to highlight that the regulations established in the scheme will specify the details of the offence. The maximum penalty will be at least $50 000 for an individual and five times that for a body corporate. That clarifies the specific theme that the member for Moore highlighted. I apologise that we do not have a formal legal person present who can refer directly to the definition of "person" in another act.

Mr G. Snook: I just raised it because it has to work.

Mr D.A. TEMPLEMAN: Yes, and I thank the member for Moore.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 47 to 49 put and passed.

Clause 50: Provision of waste services -

Dr S.C. THOMAS: My question relates to this clause and to clauses 53, 56 etc, but I have to put the question somewhere. My understanding of clause 50 is that the chief executive officer will in most areas effectively ask a local government whether it can provide a waste service. The local government may say yes, and it would automatically have a licence, which is fine. If the local government says no, the CEO can apply to employ a private organisation, if necessary, or another local government, and give the organisation a licence to provide that waste service. The CEO will therefore monitor and evaluate the service. If in the opinion of the CEO the service is inadequate - which could theoretically occur - the local government may well appeal that process. If it appeals that process, it goes to the State Administrative Tribunal. If the local government loses the appeal, it will have an issue because, on my understanding of the various parts of the SAT act, it will be up for the costs of the appeal to SAT. If at the end of that process the local government continues to be deemed by the CEO to be unable to provide that service, will the CEO come up with an alternative provider for that service and will he or she then charge the local government for the provision of that service? If a local government is simply unable to provide a service and the CEO is required to basically find it somewhere else, will the charges for that service go back to the local government, and will those costs be redeemed from that local government?

Mr D.A. TEMPLEMAN: There is a cost-recovery element from the local government in that process.

Dr S.C. Thomas: So there will be a charge attached to local government for the provision of that service?

Mr D.A. TEMPLEMAN: Yes. To clarify that, if the local government ultimately chose not to provide the service and another agency or another provider provided the service, obviously that provider would be able to derive a fee for delivering that service. That would ultimately mean that the local government was no longer able to effectively be in the process.

Dr S.C. Thomas: Would the same apply if the CEO determined that the service provided by the local government was inadequate and the CEO transferred that service somewhere else? The CEO obviously can order reviews. The CEO can give an order to say, "Improve your game", but can the CEO give an order to say, "You haven't improved enough; I'm taking it off you and giving it to somebody else"?

Mr D.A. TEMPLEMAN: I understand that is possible, yes.

Clause put and passed.

Clauses 51 to 60 put and passed.

Clause 61: Local laws in respect of waste management -

Mr D.A. TEMPLEMAN: I move -

Page 35, after line 12 - To insert -

(3) The CEO must consult the local government before giving a direction, or refusing to consent to the making of a local law, under this section.

(4) The CEO must not give a direction to make a local law unless the local law is relevant to the protection of human health or the environment.

(5) A local government aggrieved by -

(a) a direction of the CEO given under this section; or

(b) a decision of the CEO to refuse to consent to the making of local laws,

may apply to the State Administrative Tribunal for a review of the direction or decision.

Mr G. SNOOK: The opposition agrees with this amendment. This was one of the provisions the minister agreed to in negotiations. Subsequently, I was briefed by the Western Australian Local Government Association that it was disappointed that this provision was not included in the bill. I intended to move such an amendment but I am glad I did not, as it would not have been passed. I am therefore very happy that the minister has agreed at the eleventh hour to move it. I appreciate that and I thank the minister.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 62 and 63 put and passed.

Clause 64: Subject matter of local laws -

Leave granted for the following amendments to be considered together.

Mr D.A. TEMPLEMAN: I move -

Page 36, after line 16 - To insert -

(1) In this section -

"owner", in relation to premises comprised of or on land, has the meaning given in the *Local Government Act 1995* section 1.4.

Page 36, line 26 - To delete "occupier" and insert -

owner or occupier of the premises

Page 36, line 31 - To delete "upon the occupier" and insert -

on the owner or occupier

Amendments put and passed.

Clause, as amended, put and passed.

Clause 65 put and passed.

Clause 66: Local government may impose waste collection rate -

Mr G. SNOOK: Subclause (2) states the amount by which the annual rate must not exceed. Will the minister outline the current setting, if there is one? I am sure that this refers to the levy. I apologise for not having looked it up; I did not have time.

Mr D.A. TEMPLEMAN: It is taken straight from the Health Act 1911.

Clause put and passed.

Clause 67: Local government may impose receptacle charge -

Leave granted for the following amendments to be considered together.

Mr D.A. TEMPLEMAN: I move -

Page 39, line 8 - To insert after "owner" -

(as defined in section 64(1))

Page 39, lines 9 and 10 - To delete "in which a waste receptacle is in use" and insert -

provided with a waste service by the local government

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 68 to 81 put and passed.

Clause 82: Power to require information or material -

Dr S.C. THOMAS: I think tonight I have moved as many amendments as the minister!

Mr D.A. Templeman: You have done so very well.

Dr S.C. THOMAS: I thank the minister.

I refer to an "authorised person" who may be required to investigate. Is that person likely to be the same person as the inspector that is referred to in clause 83, which relates to inspectors being appointed under the Environmental Protection Act, or will that person be an administrator in the Department of Environment and Conservation, which is a separate entity? Who from those two units is likely to be an authorised person in that process?

Mr D.A. TEMPLEMAN: The "authorised person" means the chief executive officer or an inspector who has been authorised. It specifically relates to inspectors.

Clause put and passed.

Clauses 83 to 101 put and passed.

Schedules 1 to 5 put and passed.

Title put and passed.