

**JOINT STANDING COMMITTEE ON
DELEGATED LEGISLATION**

INQUIRY INTO PROPOSED TEMPLATE WASTE LOCAL LAW

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 24 SEPTEMBER 2014**

Members

Mr P. Abetz (Chair)
Hon Robin Chapple (Deputy Chair)
Mr G.M. Castrilli
Hon Peter Katsambanis
Hon Mark Lewis
Ms S.F. McGurk
Mr P. Papalia
Hon Ljiljanna Ravlich

Hearing commenced at 9.55 am**Ms REBECCA BROWN****Manager, Waste and Recycling, Western Australian Local Government Association, sworn and examined:**

The CHAIR: Good morning and welcome. I am Peter Abetz, the chair of the committee. We have Simone McGurk, Ljiljanna Ravlich and Peter Katsambanis on my right. To my left we have Kimberley, advisory officer (legal); Mark Lewis, who is from the upper house; and John Castrilli. We have Hansard and we have you!

On behalf of the committee, I welcome you to the meeting. Before we begin, I must ask you to take either the oath or affirmation.

[Witness took the affirmation.]

The CHAIR: You will have signed a document entitled “Information for Witnesses”. Have you read and understood it?

Ms Brown: Yes.

The CHAIR: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the hearing. Please be aware of the microphones; try to talk into them and ensure that you do not cover them with papers or make too much noise near them.

I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Would you like to make an opening statement to the committee before we start asking questions, Rebecca?

Ms Brown: I will make a short opening statement. Thank you for considering the pro forma waste local law. This has been a work in progress for a while. The lack of a pro forma has resulted in local governments having different waste local laws, so there is a degree of inconsistency in how various things are being applied. What we are seeking to achieve with this new waste local law is a consistent approach that local governments can adopt that is in line with the Waste Avoidance and Resource Recovery Act 2007 head of power.

The CHAIR: It is probably most effective if we proceed clause by clause. Starting at the beginning seems like a sensible place to start! I refer to clause 1.5 and to the definition of “collectable waste receptacle”. In terms of the wording, why did you not use “for the deposit and collection” of it as in section 64 of the WARR act?

[10.00 am]

Ms Brown: We are happy with that suggestion. That was a drafting matter so we are quite happy to amend it.

The CHAIR: Clause 1.5(b) refers to non-recycling waste receptacle. Would the words “general waste receptacle” be better?

Ms Brown: Yes, we absolutely agree. That is an editing matter definitely.

Ms S.F. McGURK: Are there other suggestions that the committee staff have made about the definitions that we can say were picked up?

Ms Brown: There were a couple of editorial ones that I agreed with, but we will come to those through the document. The first two I absolutely agreed with.

The CHAIR: The general waste receptacle is the next item we have, which means a “receptacle for the use of”. Are you comfortable with that?

Ms Brown: Yes, so we will change “for the use of” to “for the deposit and collection of” as per the WARR act in the definitions that relate to that.

The CHAIR: The same issue exists with organic waste and “for the use of”. Are you happy with that?

Ms Brown: Yes for general waste, organic waste and recycling waste we will change all of those.

The CHAIR: I refer to the definition of “receptacle” which is “a collectable waste receptacle or a recycling waste receptacle, an organic waste receptacle”. There seems to be an “or” something missing there.

Ms Brown: Okay.

The CHAIR: Does that make sense to you?

Ms Brown: Yes.

The CHAIR: We have “recycling waste receptacle” and the words “for the use of” again. The next major one is paragraph (g), which reads “any other waste determined by the local government to be recycling waste”. Who determines that? How is that determined? Is that clarified somewhere? What is the process?

Ms Brown: If a local government is entering into a tendering process for its kerbside recycling waste collection, it would specify in that tender what it was seeking to achieve. So a range of different recycling materials would probably be listed, as well as pricing considerations and everything like that. In addition to those things already listed in the local law there could be other things that the recycler is able to provide. For example, plastic is probably the most diverse material collected. Approximately 60 per cent of councils collect only PET and HDPE plastic—that is your coke bottles and milk bottles—whereas the other 40 per cent collect all plastics. That is why there would be a case for a local government to determine additional waste and that would be based on the contractor and what the contractor can sort and recycle.

Hon LJILJANNA RAVLICH: And that is okay?

Ms Brown: Yes.

The CHAIR: The challenge with that, having talked with the councils—it is an ongoing issue—is that when people move from one suburb to the next, if for the last 10 years they have been able to recycle a particular thing they just keep putting that in the bin, but for that local council that does not fit their criteria. It would be great to get some uniformity throughout the recycling industry in terms of what can be recycled by the different contractors. I guess that is something we have to work towards.

Ms Brown: I absolutely agree. Consistency is what we are aiming for, but it is an infrastructure issue to a large extent. Two of the sorting facilities for the recyclables in Perth are relatively brand new facilities and can sort everything; they have enough equipment, the machinery and markets for the product. The older facilities do not have the right sorting equipment to be able to separate, particularly the plastics. Over time as those plants reach the end of their life, we will reach a

situation at which we can probably recycle everything. It is not unique to WA; it is the same issue in other states as well.

Hon MARK LEWIS: Does every council produce a list of what is recyclable waste?

Ms Brown: Educational material is produced by every council that says what you should put in, predominantly, your yellow top recycling bin and what kind of materials you should put in your waste bin. The terminology in the local law is probably more legalistic than would be used in local government communications, but that guidance is definitely provided to all ratepayers through a couple of different methods. People receive an annual calendar that lists all the different materials. There is information on the council's website and sometimes there is information on the bins themselves and sometimes information is provided through fliers and the like.

Hon MARK LEWIS: Perhaps it should read "to be recycling waste as prescribed by" however they prescribe it. They would have to prescribe it somehow. Paragraph (g) states "any other waste determined by local government to be recycling waste". I would add "as prescribed by" because I assume they will have to prescribe what is recycling waste if there are different and very varying recyclable items for each council.

Ms Brown: There is not too much variation with that. Usually what the council determines is in their educational material. I am not using "determine" in the Local Government Act sense. The local government will decide these are the materials that we recycle because this is the material that our contractor can take and that will be reflected in its educational material.

The CHAIR: Is that what you meant, Mark?

Hon MARK LEWIS: I would have thought that to get around the issue of moving from shire to shire and the difference in recyclable waste, it should be prescribed, because if I change council and I keep putting in the bin the same stuff that I used to put in the bin under the previous council, how will I know other than by educational material? If it is only educational and I keep putting that stuff in the bin, then I am not contravening any local law.

The CHAIR: You are eventually, because there is a provision in here if you put the wrong thing in.

Hon MARK LEWIS: But if it is not prescribed, I am not.

Mr G.M. CASTRILLI: Mr Chair I think what Mark is getting at is that if it is not prescribed, some councils will prescribe it very well while some councils will not. We are trying to get consistency in waste collection and recyclables and some normality about how councils prescribe them in the same way. Some might vary to a large degree.

The CHAIR: The prescribing is done under clause 1.6 I think: "Local public notice of determinations". The word "determined" is used in paragraph (g), "any other waste determined by the local government". How is it determined? It is done so by the local government giving a public notice as well as education and all the other things. That then has a standing in law.

Hon MARK LEWIS: Then it could read "as per section 1.6".

Hon LJILJANNA RAVLICH: But you do not need "determined" and "prescribed" in the same thing. It is already covered with "determined".

Hon PETER KATSAMBANIS: That is the section that requires public notice of a determination. The determination that the council would make would be under its general powers under the Local Government Act.

Ms Brown: Yes, that was the intent. We will be strongly encouraging local governments to look at the definitions in this local law and make sure that they apply to their situation. If they do not apply to their situation they should change it when they put in the local law rather than having to determine it at a later date. I would generally only see this list expanding rather than contracting as we get better equipment and we are able to sort more material. The determination would be in a

circumstance in which a council employs a new sorting facility that can suddenly sort a lot of material and then that would need to go through that determination process and advertising process—as well as, I would say, a fair degree of local government education. Local governments and their contractors do not want people to put the wrong things in the recycling bin, because that costs the local government and it means material cannot be recycled. They have a strong interest in ensuring that that is the case. I take the point about moving to a new area and having inconsistent systems; absolutely, we need to be working towards consistency to ensure that public education occurs.

[10.10 am]

The CHAIR: Clause 1.5 deals with the definitions and “collectable waste receptacle”, “general waste receptacle”, “recycling waste receptacle” and “organic waste receptacle” appear to be circular; in other words, each definition relies on the other. Logically, should there not be a definition of “receptacle” that stands on its own?

Ms Brown: Yes, we agree they are circular. We can change the order to overcome that.

The CHAIR: Will changing the order solve the problem? What is the definition of “receptacle”? Is the receptacle the one that the council provides, if I remember rightly? It is a collectable waste receptacle that has been supplied for use by the local government or its contractor, which has otherwise been approved by local government. Does that include skip bins? My office is a commercial property. The council does not provide a rubbish collection service so the owner provides a skip bin that is emptied every week. I think Cleanaway or someone comes along and takes it. Do any of these things refer to that or is it purely for domestic rubbish collection?

Ms Brown: Yes. Local government has power over only local government waste under the WARR act—so waste from its own operations and households, which is why all mention of “commercial waste” has been excluded from this local law. It is no longer appropriate. In terms of the definition of “receptacle”, we were thinking that receptacle means “a receptacle” and just those two points underneath so that the definition is no longer circular.

Hon PETER KATSAMBANIS: Would this cover the situation of what the City of Stirling is considering? It is considering moving from a pure verge-side collection to providing receptacles that go beyond one set of premises for a street or an area where traditionally what has been put on the verge is put into these receptacles? I would not be certain that that circumstance—the big skip for the whole street, for want of a better term—would be covered in that definition.

Ms Brown: We do not have provision for skip bin collections as part of verge collections. That may be something that we need to include. We have not included as part of a receptacle, but it could be part of the verge collection.

Hon LJILJANNA RAVLICH: I make the point that the City of Belmont, for example, does not have verge collections but people have an entitlement to three skip bins a year. Would that be a part of it?

Ms Brown: I think we would cover that under the verge collection part. Maybe we could discuss that when we get there, if that is okay.

The CHAIR: Just on the definition of “recycling waste”, who within local government would be responsible for making the determination and what expertise would they have?

Ms Brown: As I mentioned, the definition of what is considered recycling waste will be determined by the contract that the council has in place. The decisions about that process would be made by the relevant officers within local government who have expertise in waste.

The CHAIR: There does not appear to be a definition of “premises”. Is that an oversight or do you feel that it is not needed?

Ms Brown: It is thought not to be needed. I understand that in the Local Government Act “premises” is not defined.

The CHAIR: That is interesting. Do you think that leaves some clauses potentially unclear? For example, in a multiple dwelling situation?

Ms Brown: My legal advice is that we do not think it is unclear for a multi-dwelling situation.

The CHAIR: As long as the receptacles are provided and if there is one receptacle for three or four small units, for example, that is all —

Ms Brown: The local law refers to the owner and occupier of premises and that has a broad enough definition to cover that. It also covers the strata companies that may be looking after the waste services for that area.

The CHAIR: I remember a situation in which a unit that was next to a church was being used as an office, not for living in. The council insisted that the church pay for a rubbish collection service, even though the church did not make use of it and did not want to make use of it, because they said, “It’s a premises.” For every premises, the council has to provide bins and every premises had to pay for them whether they use them or not. How do you define “premises”? Is it a place where people live? What is the difference between a commercial premises and a premises?

Ms Brown: I would say that that is covered under the Waste Avoidance and Resource Recovery Act and which particular areas local government have to provide services to.

Hon LJILJANNA RAVLICH: Would it not be based on rateable properties in a legal sense?

Ms Brown: No. Local government does not have to provide a service to commercial premises under the WARR act. Obviously, previously, they did under the Health Act. There are sections within the WARR act that allow local governments to charge for the services they provide. If you look under clause 2.1(1), “Supply of receptacles”, of the local law, it says —

The local government is to supply, for the use of each premises that are, or are capable of being, occupied or used for residential purposes ...

The CHAIR: Fair enough; that defines it. Fine—that is not a problem.

Clause 1.6: would local governments keep a register of the determinations that they make?

Ms Brown: Yes, I understand that they have to under the Local Government Act. It would be through their internal document management systems, which are also prescribed.

The CHAIR: Clause 2.2(1) states —

An owner or occupier of premises must not deposit or permit to be deposited in a receptacle any non-collectable waste.

How do you envisage that this will be actually enforced?

Ms Brown: It would be on a complaint basis. If you notice that your neighbour is regularly filling your recycling bin with material that is not recycling material and is not your material, you can complain to the local government. There have been cases of that that have occurred.

Mr G.M. CASTRILLI: How do you find out who did it?

Ms Brown: You get up very early!

The CHAIR: “An owner or occupier of premises must not deposit or permit to be deposited in a receptacle any non-collectable waste”; in other words, people putting the wrong stuff in their bins.

Ms Brown: Absolutely. We have had cases of people putting things like bottles of oil in their bins. If they are very sneaky, they can put them in their neighbours’ bins if they do not want to be detected. That is the kind of issue that that would address.

The CHAIR: How will that be enforced?

Ms Brown: As I said, it will be based on a complaint basis. The onus, I suppose, is on the person whose bin it is to see whether someone is putting other material in their bin.

Ms S.F. McGURK: Would they do it themselves? The council can take it up on their own.

Ms Brown: Yes, because it is a considerable potential danger to the people collecting and sorting the waste if the large list of non-collectable waste is deposited in kerbside bins.

The CHAIR: Plus it contaminates a lot of the recycling —

Ms Brown: Absolutely.

The CHAIR: — which then gets quite costly for the council.

[10.20 am]

Ms S.F. McGURK: I have a question on clause 2.4(c). Why not use a formula instead of a determination?

Ms Brown: There are a limited number of bin sizes. As one option, we were looking to just list them and put their weights, but realistically it is easier for the council to look up what services they provide, what their trucks' lifting capacities are and what their bin standards are. If you have got a bin that is of Australian standard—I cannot remember the number offhand—it should be able to take a certain amount, whereas if the bins are less standard, they might have a slightly lower kilo per unit. Seventy is fairly consistent across all the councils that we have looked at and we have also spoken to the bin manufacturers in terms of a good midpoint for councils. If councils have got smaller bins—for example, if they have got 140 litres—they are probably going to have a reduced capacity, but it may not be exactly in line with a kilo-per-litre rate.

Hon PETER KATSAMBANIS: Although councils might have standardised bins because they are cheaper to buy, it may well be in some inner-urban areas that the trucks they use are smaller with less power. Therefore, although the bin make take 80 kilograms, the truck can lift only 60 kilograms or whatever the case may be.

Ms Brown: Absolutely.

The CHAIR: Will councils communicate what constitutes organic waste?

Ms Brown: Absolutely.

The CHAIR: Clause 2.7 indicates the duties of the occupier in terms of putting out their bins. Clause 2.6 seems to almost double up a little bit. Is there any reason for that extra clause?

Ms Brown: The intention of clause 2.6 is to be more flexible; to be allowed to provide direction as needed and provide specific direction. Clause 2.7 is the more general direction.

The CHAIR: Where the council can put in the exact details?

Ms Brown: Yes.

Hon PETER KATSAMBANIS: Clause 2.7 seems to read that an owner or occupier must actually put their bin out on collection day, which would not cover circumstances, for instance, when owners or occupiers have gone away.

Hon MARK LEWIS: Or when they forget, like I did on Monday!

Hon PETER KATSAMBANIS: I understand that sometimes you need to phrase things in a particular way for convenience, but is there a neat way of making sure that there is no opportunity for people to be punished in those circumstances? I understand the “must” in relation to clause 2.7(a) but not clause 2.7(b).

Ms Brown: Clause 2.7(a) states —

except for a reasonable period before and after collection time, keep each receptacle in a storage space ...

So that is a must. That is keeping the bin somewhere safe.

The CHAIR: In my situation, there is only my wife and I, so often our wheelie bin might have only two little bags of rubbish in it. We often only put ours out every third week, unless there is something smelly in it. It states that they “must” be put out. Does that allow that flexibility? I am not quite sure whether it does allow that flexibility.

Ms Brown: I do not know whether it says exactly that they must be put out.

Hon LJILJANNA RAVLICH: Clause 2.7 states, “An owner or occupier of premises must”.

The CHAIR: And clause 2.7(b) states —

within a reasonable period before collection time, place each receptacle on the verge ...

Hon LJILJANNA RAVLICH: But there are no penalties attached to it, so the absence of a penalty means that, basically, you cannot be —

The CHAIR: There are lots of penalties for failing to do all sorts of things.

Hon PETER KATSAMBANIS: Two hundred and fifty dollars.

Hon LJILJANNA RAVLICH: For not doing that—specifically for that?

The CHAIR: Perhaps you can address that?

Ms Brown: We will look at the wording. The intent absolutely was not to say, “You have to put your bin out every week”, because you do not. So we need to address that.

Mr G.M. CASTRILLI: Over the page, clause 2.7(c) states —

ensure that the premises are provided with an adequate number of receptacles ...

How does that work? The council supplies the receptacles, but does that mean that the owners must inform the council that they need bins and then it is up to council to determine the number of businesses and the size?

Ms Brown: That is the intent, yes. Basically, if you move into a house and you do not have a bin, you must inform the council so that they can provide the receptacle.

Mr G.M. CASTRILLI: I presume the council must supply it in reasonable time.

Ms Brown: Of course.

Mr G.M. CASTRILLI: Of course.

Hon PETER KATSAMBANIS: In our recent experience in replacing damaged bins, we had a sensational service from my council. They did it very well.

Ms Brown: That is good to hear.

Mr G.M. CASTRILLI: Is there a penalty in there for not supplying in a reasonable time?

The CHAIR: The owner has to ensure that he gets an adequate number of bins, but the council determines that. If I want to get two bins, the council will not give them to me; they say I am entitled to only one.

Ms Brown: They might say that if you want an extra bin you have to pay for it. That is the usual approach. Council recognise that their ratepayers have different needs. If you have a family of 10 people, a 240-litre rubbish bin is probably not going to cut it.

The CHAIR: Do they actually allow that?

Ms Brown: Yes, definitely. If you request an additional bin or an additional recycling bin, there will be a charge because it is another cost of service. Also, it is intended for multi-residential developments where usually it would be the strata company that is requesting that they want more recycling bins or less waste bins.

Ms S.F. McGURK: The wording in clause 2.9 seems to imply that the local government or contractor is allowed to damage the bins, receptacle, but no-one else is. This is strangely worded.

Ms Brown: The intent is that the council is not going to go out of its way to damage its bins, but accidents happen during collection. General wear and tear occurs and local government or its contractor should not be covered by this clause because they are the ones providing the service. For example, the City of Canning replaces about 2 000 bins a year and they have about 32 000 households, so that is an ongoing position where bins are probably being damaged by collection, by wear and tear, and the council needs to destroy or, in their case, recycle the receptacles, so that is the intent there. I know it does sound a little strange.

Hon MARK LEWIS: Who determines whether it is done by the contractor? What process is there? My bin was damaged the other day and I had to pay for it, because I could not prove it.

[10.30 am]

Ms Brown: You could not prove it was the contractor?

Hon MARK LEWIS: No. So who determines that? It was not a big deal; I had to go and get a couple of screws.

Ms Brown: My legal counsel suggests it is up to the local government to prove that it was the person who damaged it, rather than the reverse situation where you have to prove that it was not you.

Hon MARK LEWIS: It does not say that. That did not happen to me; I had to cough up.

The CHAIR: Just going back, clause 2.7(c) refers to the premises being provided with an adequate number of receptacles, when the council actually determines that. Would it be better rather than saying “ensure” to have the words “take reasonable steps”? If I ring the council and say that I need extra bins because I have 15 kids in my family, that is a reasonable step. If the council refuses to provide them, I have taken all reasonable steps. Do you think that would cover it better?

Ms Brown: Yes, clause 2.7(c) will be amended to say “take reasonable steps to ensure that the premises are provided with an adequate number of receptacles”.

Hon PETER KATSAMBANIS: Perhaps that wording could also be the solution to clause 2.7(b). You could say something like, “within a reasonable period before collection time take reasonable steps to place each receptacle on the verge”.

Ms Brown: To address that issue we want to be able to say that it is the discretion of the owner as to whether or not they put the bin out.

The CHAIR: An exemption granted under clause 2.8(4) ceases to apply if and when the person to whom it is granted fails to comply with a condition of the exemption. How does a person become notified that they are failing to comply with a condition? There is no mention made that they have to be notified and given a few days’ notice to comply. If an officer of the council deems that that person is not complying, at the moment the exemption stops, but they do not actually know that it has stopped because they do not consider themselves to have failed to comply.

Ms Brown: So what is the notification process if you fail to comply?

The CHAIR: Yes, how will a person know that the exemption no longer applies to them?

Ms Brown: We will take that on board and clarify it.

The CHAIR: Is a verge waste collection defined anywhere?

Ms Brown: We consider it is defined and examples are given in clause 2.10(1); it states there what a verge collection is.

The CHAIR: Is what is in brackets, in effect, the definition?

Ms Brown: Yes.

The CHAIR: It uses the words “verge collection” to define waste collection. Perhaps it could be put in the definition under clause 1.5.

Ms Brown: What we have used here is the common meaning of the word. I do not think verge collection has —

The CHAIR: A technical definition.

Ms Brown: No, people generally understand what it means because it is a widespread practice here. The terms “green waste”, “bulk waste” and “verge collection” are fairly commonly understood.

The CHAIR: Not being a lawyer, I am not sure whether that has to be defined. I think most people do understand what the term means.

Ms Brown: Our feeling was that we did not need a specific definition for that.

The CHAIR: This is still under “Verge collections”. Paragraph (c) says —

subject to paragraphs (a) and (b), a person may remove any item of that waste.

But paragraph (b) says —

a person must not disassemble or interfere with any item of that waste;

I will confess to my sins. Our dishwasher, the rack was gone. I saw it on the verge collections, exactly the same old dishwasher and I stopped and I thought, “I’ll open it”, and theirs was in perfect condition, so I took it out and I took it and thought, “Great.” Now, I interfered with that. Technically I would be breaking the law—would I—because I disassembled part of the dishwasher?

Ms Brown: No, I would say you have not disassembled. I do not know the legal definition, but the intent of this is that if someone sees a fantastic table on the verge, they pullover and they stick it on the back of their ute and they take it home and they use it, that is fine. We would like to encourage that. That is re-use of material, which is fantastic; it is really good. What we do not want is commercial operations going around and collecting scrap metal or collecting the valuable portions of the verge collection, because that is essentially stealing from the council. It means that the verge collection contractor or whoever has been engaged to undertake that service is going to make a loss that they were not projecting because the valuable portion of the verge collection is gone. That is one of the intents. The other intent is to ensure that people do not dismantle—“interfere”, we can discuss that phase—or disassemble, as in take the back off a television. So, that is the intent of that.

Hon LJILJANNA RAVLICH: But in this case he has rendered that washing machine useless, really, because he has taken a key component for his own use, so who is going to want to pick it up now?

Ms Brown: That is the thing. It would not be re-used as a dishwasher. Anything on the verge that the council collects is going to be recycled, not re-used. It goes into the back of a very large compactor truck, gets squashed and then the scrap metal gets taken off, but very little else is actually recovered through verge collections.

The CHAIR: I guess that word “interfere” is probably a bit of a problem. Perhaps you could look at that. It is very difficult to take something off the verge without actually interfering with it.

Hon PETER KATSAMBANIS: I do not know. I think it works. Having seen it happen, I see where you are getting at. People do rummage through. They may not take anything, but they are rummaging through. That in itself poses all sorts of public risks to passers-by.

Mr G.M. CASTRILLI: In the collection just overall, just give a scenario of how it works if you do not mind. I am living on the twentieth floor in Hay Street and there is a verge collection. How am I going to get—I suppose the strata title body, I do not know how. Just tell me how it works. If I get rid of some hard waste collection, I am not going to dump it on the footpath of Hay Street.

Ms Brown: The City of Perth does not have verge collections for that very reason and it is an ongoing issue for strata companies to dispose of that material. There are various private contractors who will put a skip bin in place and then the strata company could determine that they want to give their residents that service. Otherwise, unfortunately, those residents would have a hard time removing that material from those premises, because in the city centre it is not set up for verge collections at all. Most other councils in the metro area do provide verge collections in some shape or form. Multi-residential is definitely an issue. We have developed guidelines which suggest that in the planning stage of multi-residential developments there should be an area set aside for the storage of bulk waste for the residents of those premises, because multi-residential tends to have a higher turnover, so they will not necessarily be able to wait until their bulk waste collection. There should be somewhere to store the material on-site, then at the appropriate time, when the council gives the notification, the caretaker of the strata or the area should be responsible for taking that waste out onto the verge.

Mr G.M. CASTRILLI: There must be some other areas, other than the City of Perth, the other local authorities have multistorey apartments in their jurisdiction on the footpath, if you like. How do they get on?

[10.40 am]

Ms Brown: They potentially end up with very large piles of material come collection time. Also, it depends on the size of the multi-residential. If it is small units, they are going to have less bulky waste to begin with. It is regulated depending on that type of thing. We have spoken to the strata companies and it is an ongoing challenge for them and also the issue of illegal dumping around their facilities. It is a definite problem.

Mr G.M. CASTRILLI: In the regulations, in what you are proposing, I mean, in that scenario do you see any impacts on any other local authority where this may occur? Obviously, if they have got high-rise accommodation, what you say is an ongoing problem. What happens if it is in conflict with the local law? How do they get around it? Do they just turn a blind eye or work out the best way possible or what is it?

Ms Brown: Generally, in practice, some councils would offer a specific service for multi-residential. It is one of those services that does vary between councils. I do not think this would be a problem because it is about the local government advertising the verge collection, so giving the invitation to residents. In certain areas they may not give that invitation and, as I say, in certain places they may have special arrangements for multi-residential.

Mr G.M. CASTRILLI: So they can mix and match and do exemptions within their own jurisdiction, can they?

Ms Brown: That would be my reading of this.

The CHAIR: Just on clause 2.10 still, the (a), (b), (c) where we had the “interfere” issue, just wondering whether paragraph (b) could be expressed to be subject to paragraph (c) and paragraph (c) could be subject to (a) only. That is the other way around it. Perhaps you can just take that onboard and sort out that “interfere” business.

Ms Brown: We will have a look at that.

The CHAIR: Okay. Moving on to part 3. The word “ensure” under clause 3.1(a) could perhaps be changed to “take all reasonable steps that a sufficient number of receptacles are provided” et cetera.

Ms Brown: Yes.

The CHAIR: Just wondering on clause 3.1(c)(iii), it says —

ensure that each receptacle does not cause a nuisance to an occupier of adjoining premises;

Some people can be totally unreasonable and they say, “You’re causing us a nuisance.” A reasonable person would say, “That is not a nuisance.” Should the word “reasonable” perhaps be in there somewhere just to define the nuisance a little bit?

Ms Brown: I am informed that “cause a nuisance” is a legal term. It is not a subjective—that is why it has been used.

The CHAIR: That sounds reasonable to me. Any other bits that anyone wants to draw attention to?

Ms S.F. McGURK: The definition of “custodian”.

The CHAIR: Yes, that is clause 3.2(2). What is a custodian?

Ms Brown: It is a common term and it means someone who has the care or the responsibility for the receptacle.

Ms S.F. McGURK: I guess the response to say these are common terms, like verge collection, it is not until they are in dispute in court essentially that these definitions may come into play. I mean, most words have a common understanding and common use, but it is how they would then apply within the context of the act or being tested in a court that would be the concern.

The CHAIR: The type of thing we were thinking of there is, say, somebody is housesitting, for example; does that mean that they are the custodian of that bin or not, or owners’ agents?

Ms Brown: If someone was looking after a house, they have been given approval, they are the custodian of the bin for their time in residence.

Hon PETER KATSAMBANIS: Would all householders be custodians of the local government—provided bin in ordinary circumstances?

Ms Brown: Yes. The phrase is —

... an authorised person or the owner or custodian of the receptacle ...

So, whoever has got the property. And the point about this is giving approval for people to remove waste from the receptacle.

Hon PETER KATSAMBANIS: Sure, I understand, but if the owner of the receptacle is not the householder in the ordinary course of events. My question is the average householder, if someone comes and says, “Can I take that out of your bin?”, can I say to them, “Yes, go ahead and do it”, and am I authorised under the term “custodian”? Am I empowered to do that?

Ms Brown: Yes. The custodian would.

The CHAIR: That is covered.

Ms S.F. McGURK: So the decision was that you do not think it is necessary to define “custodian”?

Ms Brown: No.

The CHAIR: Clause 3.3—what is the rationale for making it an offence to remove waste from a public waste receptacle? Because I was thinking the council sometimes puts bins, say, at a shopping centre, for example, or at the end of a bus stop or whatever it is, and you often see people who are a bit down-and-out, they rummage through and pull out the aluminium cans and take them off for recycling. That would appear to be prohibited under clause 3.3.

Ms Brown: Yes, it is prohibited. The reason being is that it creates potentially a nuisance, a littering issue, occupational health and safety, and it is also a risk for the local government.

Mr G.M. CASTRILLI: I know people like Girl Guides and Scouts who actually go and collect the rings off the cans because they are made of a special metal they use in prosthetics, I think. They use it for something anyway. That for them is like doing a good humanitarian thing. Surely that would be —

Ms Brown: So that is the provision—they could get the approval of the local government to do it.

Mr G.M. CASTRILLI: People do it out of the goodness of their heart. Everything is becoming that administrated these days you cannot get out of bed unless you ask permission. Surely there has got to be an element of commonsense in this. If you see Scouts or Girl Guides going around collecting cans or the rings off the cans and they have not got permission, surely they are not —

Ms Brown: The issue is collecting them from the public bins. As a local government, you do not know what has been put in that bin. If it is in a public area, it could be a whole range of different materials.

Mr G.M. CASTRILLI: There could be needles.

Ms S.F. McGURK: For instance, do you really want to be prosecuting homeless people for looking in bins? I do not know that you would, but I can understand the liability or the issues —

The CHAIR: Is the council liable, though? If some clown puts their hand in a rubbish bin, that is their choice. I hardly think the council would be held liable for —

Ms S.F. McGURK: I would say there would be a protection here because the council has put this regulation in place that prohibits you doing that.

Ms Brown: My legal advice is that there would be an issue for the council and having a prohibition reduces the liability. But as you point out in your notes, there is not actually a penalty attached to that in the scheme.

Mr G.M. CASTRILLI: I just hope that the local government exercises a degree of common sense.

The CHAIR: We will try to wrap it up by 11 o'clock. Which other ones are we looking at? Clause 4.3(3) —

The local government or an authorised person may direct a person who commits, or is reasonably suspected by the local government or the authorised person of having committed, an offence under this clause to leave the waste facility immediately.

The local government does not actually issue the notice saying, “You’ve got to get off this waste facility.” It would actually be an authorised person who has to do the communication, or not?

Ms Brown: The intent is that the local government can delegate the ability to do that to one of its officers. In a practical sense the person who is manning the site would have that authorisation.

The CHAIR: Can “the local government or” be deleted or not?

[10.50 am]

Ms Brown: No, “the local government” cannot because the intent is that the local government can delegate.

The CHAIR: So it is a legal way of saying that—okay. Clause 4.6(1)(b) states —

deposit at a waste facility that is a landfill site any waste that is toxic, poisonous or hazardous, or the depositing of which is regulated or prohibited by any written law;

Is “toxic, poisonous or hazardous” defined somewhere or not? Who defines that?

Ms Brown: No, it is not defined. We do define some of the various things but we could look at that definition.

Mr G.M. CASTRILLI: Is there a defence to that provision?

Ms Brown: The local government can authorise people to do it.

Mr G.M. CASTRILLI: So if somebody did it and they did not know that it was—I am just shooting the breeze. Is there a defence in the local law to say that that person has a defence?

Ms Brown: If you find an unknown bottle of something in your cupboard left over from when you bought the house and you do not know what it is, you probably have a reasonable defence to say,

“I do not know what it is and I am going to take it to somewhere where people can work out what it is.” I am not sure —

Mr G.M. CASTRILLI: But legally have people got a defence? I mean, obviously they have to prove it, but have they got a defence legally to say, “Look, I was not aware that this was toxic” or whatever?

Ms Brown: My legal counsel informs me there is a general defence of mistaken facts. So, yes, if you did not know something was toxic —

The CHAIR: Under clause 4.6(c), “light a fire in a waste facility”, that is pretty serious. We thought that is probably more like arson and we were surprised at how light the penalty is for lighting it and just wondering what the rationale was for such a light penalty.

Ms Brown: We are happy to increase it.

The CHAIR: It is only \$300 for lighting a fire in a waste collection facility.

Ms Brown: The legal opinion is that if it was a serious offence, you would actually prosecute. So if you were just lighting a small fire, it might —

The CHAIR: We thought that might be the case. You would be charged with arson rather than lighting a fire in a waste facility. Okay, over the page. “Offences and general penalty”, clause 5.1(2), a bin that is left out for too long—it seems a pretty stiff penalty.

Ms Brown: Sorry, is this under the schedule?

Ms S.F. McGURK: It is about the quantum of penalty under clause 5.1(2), \$5 000 —

Ms Brown: This has been prescribed by Parliament and we do have the option of infringement notices. I understand this has been applied by Parliament.

The CHAIR: Parliament put that in, has it?

Hon MARK LEWIS: Very wise.

Hon PETER KATSAMBANIS: My concern with clause 5.1(2) is the wording around the daily penalty, where it states —

and if the offence is of a continuing nature, to a further penalty not exceeding \$500 in respect of each day or part of a day during which the offence has continued

From which date do we start counting the days that the offence has continued? Is it from the date of the issuing of a notice for the offence or from the date of conviction?

Ms Brown: It would be from the date of the offence, but these are apparently standard legal provisions that are applied in every local law.

Hon PETER KATSAMBANIS: In local laws?

Ms Brown: Yes.

Hon PETER KATSAMBANIS: It almost is creating by design a strict liability offence because someone may dispute the fact that they are committing an offence, which is why we need to move to a conviction stage. And if it takes weeks, months or even years to get to court, the clock is ticking on the possible fine.

Ms Brown: The daily penalty applies only after the date of conviction.

Ms S.F. McGURK: If they were getting fined for something and it took a year or longer to be resolved, presumably what they were getting fined for would have been resolved or removed.

Ms Brown: These are longstanding provisions and the courts have interpreted them. They come from the Local Government Act, so Parliament has determined the penalties and the ongoing nature.

The CHAIR: The WARR act sets the maximum penalty. Does that impose an obligation on local government to have that as the maximum penalty as well or can they lower it?

Ms Brown: They can lower it for specific offences if they like.

Hon LJILJANNA RAVLICH: How often has somebody been charged under this particular section, across the board?

Ms Brown: For all local laws?

Hon LJILJANNA RAVLICH: Yes. It may well be a provision that is there because it is a standard drafting provision but no-one has ever been captured or there are probably only one or two people ever captured by it, so we are just really talking about semantics.

Ms Brown: I am informed that it is used regularly in building and town planning, so it is used, it is not just there to —

Ms S.F. McGURK: I still think it is reasonable for us to say that in the context of these issues before us in the waste local laws that \$5 500 a day, even though you are talking about a maximum and it is a facilitative or catch-all provision, that that might be too high for the issues we are talking about in the context of these laws.

Ms Brown: It depends very much on the severity of the action. I provided some photos to the committee, one of which includes a verge collection where people had put out asbestos. The council very clearly told the household that they needed to take it in, how they needed to treat the material and where they needed to dispose of it. If the person had not taken that asbestos back in, that would have been a very hazardous material that the council had to deal with. The \$5 000 for some is not an issue, but for the really serious instances, it is. In the US there have been cases of people putting very hazardous acids on their verge side and that has the potential to severely injure workers. Those are the kinds of examples when you would want maximum penalties to apply.

The CHAIR: All the penalties are just “Bang, that’s the penalty.” Under the Waste Avoidance and Resource Recovery Act there is provision in section 64(6) for different penalties for first and subsequent offences so that if somebody does the wrong thing the first time, there is more lenience. Was that considered when drafting this?

[11.00 am]

Ms Brown: We did have a look at that. Basically, we will have the single penalty and if there are repeat offences it is probable that the local government would not just continue to infringe people for it, it would be taken further.

The CHAIR: I see, so the infringement notice is the much lower penalty and then the council can choose not to just issue an infringement notice but to actually take it to court so they can get a high penalty.

Ms Brown: Yes, in the photos I have used the verge collection example just so you have an idea of the practice. The verge collection information and pictures are from the City of Rockingham. They have a very progressive enforcement program with their verge side collections because they do not want to see the amount of waste continually skyrocketing and posing an additional cost on the community. They are very clear about how much waste households are allowed and if they put out more than that amount of waste they will go through and mark it with a big pink cross and issue an infringement notice which says, “Please remove this material from your verge. If you don’t, there will be consequences.” They have a very high success rate. I think in their recent verge collection—they are a pretty large council—they issued monetarily very few infringements. If you tell people that they are not allowed to do this, most of the time people do the right thing. They did have a few incidents of illegal dumping but because they take photos of every pile, they were able to identify where the material came from and go back and get those people to pay for the clean up. Yes, these penalties are necessary, but are they going to be used all the time? Practice at the

moment suggests probably not. If you give people the correct information and let them know there is going to be a consequence, they will change their behaviour.

Mr G.M. CASTRILLI: In the case of a house that is in the course of construction and has not been officially handed over to the owner, so the building company is still in control, is that then deemed a commercial operation? If there is a lot of rubbish on the verge, does that prohibit council from having any say whilst that house is under construction? How does that scenario work there?

Ms Brown: That would usually be through other provisions. Builders have to take all reasonable steps to prevent windblown litter and they must ensure that they are not leaching materials from the site into the waterways, for example. There are provisions under a different local law, and also building licences, that deal with that. And the issue of people illegally dumping material in a skip bin is an issue for the building industry and one they are very well aware of.

The CHAIR: I think we have probably just about wrapped it up. Is there anything you want to raise with us? You gave us some very interesting photos to look at.

Ms Brown: And a copy of our better practice verge collection guidelines that we have recently completed, funded by the waste avoidance and resource recovery account. This is just to show that we are really working on this idea of getting consistency and reducing waste, first of all at the household level and moving forward. There are lots of things that support the local law. It is not a standalone document.

The CHAIR: Thanks for providing those. If we think of something in the next week or two, perhaps we can send any questions through to you for further consideration. We did not deal with them all, so if the staff could flick those through to you for comment, that might be helpful, if that is okay with you.

Ms Brown: Yes, thank you very much for your time.

The CHAIR: We will draw this hearing to a conclusion. The transcript will be forwarded to you and you will have seven days from receiving it to return it with any corrections. If you do not return it, we will assume it is all correct. Thank you very much to you, Rebecca, and your team.

Hearing concluded at 11.04 am
