LOCAL GOVERNMENT AMENDMENT (COVID-19 RESPONSE) BILL 2020

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Leader of the House)**, read a first time.

Second Reading

HON SUE ELLERY (South Metropolitan — Leader of the House) [11.23 am]: I move —

That the bill be now read a second time.

I rise to introduce the Local Government Amendment (COVID-19 Response) Bill 2020 to assist local governments to respond to the current emergency. This bill is designed to introduce provisions to streamline and support the operations of local governments for the purposes of responding to the direct and indirect impacts of COVID-19.

It is a challenging time for us all, and the impacts of COVID-19 are being felt by every member of our community, here and across the world. The state and federal governments are doing everything they can to take decisive action to support individuals, households and businesses. It is important that local governments can do the same for their communities.

This bill amends the Local Government Act 1995 to enable fit-for-purpose and agile responses by local governments during the COVID-19 pandemic. It allows the minister to issue an order to modify or suspend provisions in the act or regulations and provides local governments with the ability to suspend local laws.

Modification or suspension of provisions: This pandemic has shown that provisions in the Local Government Act severely limit the ability for local governments to respond quickly to the emerging and ongoing emergency. This can potentially put the health of the community at risk. This bill introduces the ability for the minister, by order, to modify or suspend provisions of the act or regulations when a state of emergency has been declared. The order can be made only while the COVID-19 emergency is in force and the minister must consider it necessary to deal with consequences of the pandemic. The order can have effect immediately but cannot be for a period any longer than three months after the emergency declaration is revoked or ceases to have effect.

Matters that could be dealt with under this power include: deferring any election or modifying provisions relating to in-person elections; suspending the need for public meetings; making provisions regarding access to information for members of the public when council offices are closed; deferring action against people for unpaid rates or charges; and amending, extending or removing time periods specified in the act.

Section 9.65 of the Local Government Act 1995 provides for ministerial orders and requires their publication in the *Government Gazette*. Orders made under this provision will be treated as regulations for the purposes of the Interpretation Act 1984, which requires them to be tabled in Parliament, making them subject to disallowance. This power is similar to that enacted in South Australia in its Local Government (Public Health Emergency) Amendment Act 2020. Other Australian jurisdictions are enacting similar powers in relation to their local government acts.

Local Laws: Changes are also being introduced to allow local governments to suspend, by absolute majority, a local law or parts of a local law during a state of emergency. This is an important tool to enable local governments to remove local restrictions that may be beneficial to the district, or part of a district. Local governments must consider that the suspension is necessary to deal with the consequences of the COVID-19 pandemic. Following a resolution, it must be published on the local government website and a copy provided to the minister. The suspension takes effect from the date of publication or such later date as specified in the notice. It cannot apply for a period longer than six months after the state of emergency ceases. These provisions will enable local governments to make changes to local laws covering such areas as parking restrictions, activities on footpaths, restrictions on businesses' operations, cemeteries and health to reduce red tape and to quickly respond to the emergency.

It is vital that local governments can provide a response to not only the health emergency but also the economic emergency. Once this pandemic is beaten, all levels of governments, businesses and households will need to work together in the recovery process.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 3801.]

HON DONNA FARAGHER (East Metropolitan) [11.27 am]: I rise as the lead speaker for the opposition on the Local Government Amendment (COVID-19 Response) Bill 2020. I indicate that the opposition will be supporting

the bill but I have some questions that I would like the minister to respond to. As the minister indicated, the bill amends the Local Government Act 1995 to firstly provide a power to the minister to waive or suspend the operation of any provision of the act during a declared state of emergency, in this instance the COVID-19 emergency declaration. This allows local governments to continue to operate and make decisions. Secondly, the bill will allow a local government to suspend local laws in whole or part for the purpose of responding to the direct or indirect impacts of the pandemic. In order to achieve this, the bill inserts new part 10, "Provisions for COVID-19 pandemic", which overrides other provisions of the Local Government Act. Proposed new section 10.3 provides a mechanism for the minister to modify or suspend by order specified provisions of the act or specified provisions of the regulations. An order can be made only in circumstances in which the minister considers the order is necessary to deal with the consequences of the pandemic and while the emergency declaration is in place. As I understand it, the order can be made applicable to a single local government, a class of local government or all local governments depending on the circumstances. Importantly, any order made must be gazetted, tabled in Parliament and will continue to be subject to disallowance. I know we do not refer to the other place, but there was some discussion on this matter in the other place and a question about how an order might be disallowed. As we know, any member in this place can move to disallow a regulation, on top of the role that is already in place through the Joint Standing Committee on Delegated Legislation. One concern raised was whether there could be an inordinate delay in considering an order made as a result of this legislation should Parliament be adjourned for a prolonged period. As I understand, the delegated legislation committee can still meet when Parliament is not in session and it can also provide a report to the President, and that will be tabled and published on the parliamentary website. The minister might want to go through that process so that everyone is clear on how that would be dealt with, notwithstanding that a delay could arise if there was a concern about a particular regulation, but that is not necessarily different to when we adjourn prior to the Christmas break and there is a delay before we return.

Proposed section 10.3(3) also outlines a process for the revocation of those orders. During the briefing, I asked for some examples of when an order may be required and the minister has already indicated some of those in her second reading speech. I was told at the time that that could include the deferment of an election, modifying provisions relating to in-person elections or amending, extending or removing time periods specified in the act. The minister's advisers indicated to me that some existing regulations were already amended by the minister prior to the introduction of this bill. That included the ability for local governments to conduct online meetings so that decisions could continue to be made. In that regard, I have a question for the minister. Given the inclusion of proposed section 10.3(1)(b), which relates to regulations, will the minister confirm that the regulations that have been made or amended already have been validly made? I presume they have, but I would like some clarity on that.

Proposed section 10.4 will enable local governments to suspend by absolute majority a local law or parts of a local law during a state of emergency. Effectively, this is designed to give local governments the power to respond to particular needs of their community and can cover a range of areas including matters relating to parking restrictions, business fees and other local laws relating to general business operations. This section is different from proposed section 10.3 as it allows only for a local law to be suspended—as I understand, it cannot be modified—and it will lapse after six months. Any resolution made under proposed subsections (1) or (4) must be published on the local government's official website and a copy must be provided to the minister, as the minister indicted in her second reading speech. As I understand from our briefing, if after six months a local government wishes to continue with a particular suspension of a local law, it will be required to go through the normal procedures for making local laws, which are identified in section 3.12 of the Local Government Act. The issue here, which is somewhat different from proposed section 10.3, is that this proposed section is not subject to parliamentary scrutiny. The minister's advisers informed me that the reason in this instance is that it is limited only to suspensions, because they are not able to make modifications or alterations—it is a suspension only and, therefore, it is not required. However, there are some concerns in relation to that. To assist me, I also seek some clarity from the minister on what local government decision-making has already occurred. As we know, and as people will have seen and heard, a number of local governments are already making changes —

Hon Sue Ellery: During COVID.

Hon DONNA FARAGHER: Yes, to be specific, in response to the COVID-19 pandemic, local governments have already made decisions relating to suspending certain functions, such as parking fees as I have already mentioned, or making changes to lease arrangements for local government–owned buildings when there might be a commercial lease arrangement or when it might relate to community facilities. I am not a subject expert on the Local Government Act, but as I understand, local governments already have an ability to undertake some forms of suspensions. In addition to that, an ability exists for certain powers to be delegated to the chief executive officer. That is already in the act at section 5.42. That power is limited, but I am interested to hear from the minister whether that power has already been utilised in this situation; and, if so, whether that is the correct procedure. If it is, I question why this section needs to be included in the bill. Questions have been asked about that matter and I think it is fair that we get some clarity on that.

I understand that with the bill as it stands at the moment, should a decision be made at the local government level that is not deemed by the minister to be COVID-19 related, the minister can make a regulation to override that change. The advisers kindly referenced section 9.60 of the act, which relates to regulations that operate as local laws. As I understand, the minister can use that section to make such a regulation, but if the minister could confirm that, that would be appreciated.

Finally, and importantly, through clause 5 the bill provides a mechanism for new part 10, which contains the provisions for the COVID-19 pandemic and those I have already outlined to be deleted by proclamation. The Western Australian Local Government Association and Local Government Professionals Australia WA have been briefed and support the bill. With that in mind, I indicate that the opposition supports the bill, but I am interested to get some greater clarity on some of the questions I have put, particularly relating to proposed section 10.4.

HON CHARLES SMITH (East Metropolitan) [11.37 am]: I will make a brief contribution this morning on the Local Government Amendment (COVID-19 Response) Bill 2020. I state at the outset that I will not be supporting this bill. Western Australians already understand that the Wuhan virus has resulted in many changes to stop the pandemic.

Hon Sue Ellery: Which virus are you referring to?

Hon CHARLES SMITH: The Wuhan virus.

Hon Sue Ellery: Do you mean COVID-19?

Hon CHARLES SMITH: Yes, it is the same thing.

Hon Sue Ellery: That is your point of view.

Hon CHARLES SMITH: That is where the virus originated, I believe—anyway. Western Australians are already under restrictions in their daily lives to stop the spread of this pandemic. The most important and most successful change is restricting the entry of persons to the state, and this should be maintained for as long as the Premier deems necessary. However, many members of the community, including me, have genuine concerns that people may use this pandemic as a means to conduct a power grab—a way of grabbing power from our democracy, with this bill stripping away powers from elected members and the community as a whole.

This bill seeks to amend the Local Government Act 1995 in response to the pandemic crisis. It inserts a number of sweeping powers, such as giving the Minister for Local Government the ability to amend the act in any way that he sees fit provided it loosely fits into the qualification of being "necessary" to deal with the consequences of the pandemic. It has two arms; an extension of ministerial powers to deal with the Local Government Act and the powers of local government. These new provisions will override any other provision of the Local Government Act.

The sweeping provision of proposed section 10.3(1) means that the minister can potentially hand over near unlimited power to local governments or completely cripple them. The minister can be selective of which local governments that can happen to under this bill. Members need to keep in mind that this vague wording essentially means that anything in the Local Government Act can be modified so any obligations or limitations put on a local government to protect ratepayers or limit its power could be completely stripped. I do not really care for this high-level ministerial discretion; it concerns me greatly. I remind members of the Minister for Planning's recent decision to approve over-height developments and push developments through local planning schemes despite community concerns. We must always be cautious when we expand ministerial powers. I fail to see why they are needed here.

There is a three-month sunset clause on these provisions in proposed section 10.3(3); however, the orders can be made in succession and there is no limit to the number of orders made. Similarly, I am also sceptical that anything brought before the committee under proposed sections 10.3, 10.4 and 10.5 would come with clean hands. I have no doubt whatsoever that political games will be played; therefore, should things continue for another six months, as many people suspect, the same order could be made at least twice. It is also worth noting the time frame for regulations inserted by the Interpretation Act 1984 because particular issues may arise when these orders are made at the end of a sitting week—before a recess, for example. A terrible order, even if it lasts for only three months, can have serious consequences for individuals and our communities. One must also ask: why did the explanatory memorandum note some modification of provisions to do with elections in local governments? Are these not typically postal votes anyway? Why does this need to be amended? I do not understand why that provision is in the bill.

With respect to local governments, the powers provided in proposed section 10.4(1) are far more wideranging and subject to less scrutiny. With an absolute majority, a local government can suspend the operation of a local law or provisions of the said law, and that will stay in place for six months, again, providing it fits the loose qualification of dealing with the consequences of this pandemic. This amendment applies despite any legislation stating something to the contrary under proposed section 10.4(2), something the house should have time to revise before we vote. A further example given in the explanatory memorandum for proposed section 10.4 is laws relating to parking. If members have been around Perth or West Perth lately, they may have already seen notes on parking metres stating

that there is no charge during the pandemic. This did not require a suspension of local laws, rather it was a choice by the local government to not enforce that law; that is, it has used its discretion, which a decision-making body already has.

The requirement of the publication of these amendments under proposed section 10.4(5) is also pointless. This provision notes that the local government must publish the amendments on its website. It does not say that they need to be on the front page clearly visible or even easily and readily accessible. A council could satisfy the requirements of the bill by simply putting the information on a page and not providing a link to it.

Finally, clause 5 outlines the sunset provisions of this bill. I have mixed feelings about this. It can mean that the minister or a local government can make significant change the day before a section is repealed and it may continue to exist for another three to six months because neither the clause nor the explanatory memorandum state that if any changes to orders made prior to the deletion of part 10 continue or come to an end on a date, that section is terminated.

To conclude, local government chief executive officers already have delegated powers of authority to respond quickly to emerging needs of the community and they are already doing that. I fail to see why this bill is required. Local governments already have the powers to make changes to deal with this pandemic; therefore, I will not be voting for this legislation. I fail to see a significant point or real reason for it and the examples provided by the government are largely insignificant or unnecessary. Members need to exercise caution when dealing with these power grabs, such as those by this government in recent months. Unless the government can provide real and proper good reasons about why local governments need this extra power, I cannot support this seemingly unnecessary legislation. I encourage members to ask themselves, "What is the real point of this bill?", because I cannot find one.

HON AARON STONEHOUSE (South Metropolitan) [11.45 am]: We are dealing with another rather extraordinary bill, the Local Government Amendment (COVID-19 Response) Bill 2020, which will grant the minister almost carte blanche power to change the law on the fly, to make any change he sees fit to the Local Government Act—to modify it or ignore sections of it—with the only oversight being the tabling of those changes in this place, allowing them to be disallowed. Although it may be a necessary power to grant, it should cause some concern to members that that level of oversight may not be sufficient in delegating such broad legislative powers to the minister. Indeed, if Parliament is suspended and does not sit due to the COVID-19 crisis, we will have no power to disallow orders that the minister makes under the granting of these new extraordinary powers. Proposed section 10.3 deals with the new powers granted to the minister that will allow the minister, by order, to modify or suspend the operation of —

> (a) specified provisions of this Act …
>
> (b) specified provisions of regulations made under this Act.

This is basically about giving a statute created by Parliament with very specific provisions to the minister and saying to him, "You can do more or less whatever you like with this. You can ignore parts of it. You can change parts of it, not just the primary legislation but the regulations, too." Of course, proposed subsection (2) puts some restrictions on that in that it states —

> The Minister can make an order under subsection (1) only if each of the following conditions is satisfied —
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> (a) the order is made while a COVID emergency declaration is in force;
>
> (b) the Minister considers that the order is necessary to deal with consequences of the COVID-19 pandemic.

It seems to me that proposed paragraph (b) is far too broad. It will be left to the minister's judgement as to whether he considers it necessary to deal with the consequences of the COVID-19 pandemic. The consequences of the COVID-19 pandemic could be anything; we could be talking about secondary or tertiary consequences of the COVID-19 pandemic. One of the consequences of the COVID-19 pandemic is that my lawn has not been mowed because by lawnmower lady is probably in isolation. Is that really the kind of urgent matter that we need the minister to consider at this time and for which we need to give him carte blanche power to change the law in this state? It really seems like an afterthought of a consequence of COVID-19 that my grass is getting a little bit long. It seems to me that it is far too broad. The bill could be narrower by specifying economic consequences or health consequences of the COVID-19 pandemic, because here we are giving the minister too long a leash to exercise those powers.

I am a little concerned about the sunset clause in this legislation, which is clause 5. I am glad that sunset clauses are being included as a standard in the new legislation that is being brought before us; that gives me some relief. But the sunset clause, clause 5, will come into operation on a day fixed by proclamation. Of course, the powers exercised under proposed sections 10.3 and 10.4 can be exercised only if they are made during the COVID-19 emergency declaration, but, again, it should be a little concerning that no hard date has been put on the operation of that sunset clause. The COVID-19 emergency could be extended for months and months on end, and certain emergency powers granted during that time could continue to be exercised. We do not have much oversight of

when a state of emergency is declared, and, particularly for this debate, the circumstances under which a state of emergency may be declared are really outside the scope of this bill. We do not know what consideration might be given to extending that state of emergency; it could go on for months or, if we buy into the more pessimistic view, a year or maybe more. I do not think that will be the case. But we are leaving the commencement of the sunset clause, which is clause 5 of this bill, completely in the hands of the government. It is less a sunset clause than a provision that gives the government discretion to decide when it would like to repeal the provisions of this bill. The bill is limited in scope to some degree, but I would feel much more comfortable if a hard date were fixed in the bill—a 12 or 24-month date perhaps at the outer limit—just in case.

My main concern with this bill is really around the undermining of parliamentary sovereignty. I think the bill does that on two counts. The first is in proposed section 10.3, as I just mentioned, by giving the minister carte blanche to change the law on the fly. It will be subject to some parliamentary oversight through disallowance; however, that can be exercised only if Parliament is actually sitting during that time. More worrying to me are the new powers in proposed section 10.4 that will allow local governments to suspend any law they like merely through a resolution of their local council. The extraordinary powers of the minister contained in proposed section 10.3 are, at least in proposed subsection (4), considered to be regulations for the purposes of section 42 of the Interpretation Act 1984, which means that they must be tabled in Parliament and are disallowable. However, the powers under proposed section 10.4 are not considered to be regulations and they are not considered to be local laws for the purposes of the Interpretation Act, which means that a local government can suspend one or many of its local laws for a period of up to six months without parliamentary oversight. I have heard some people say that that is not such a problem, because it is only a suspension; they are not really changing the law, they are only suspending it, and it is for a fixed period. However, I have an issue with that, because I think that is exercising legislative power. Let us not forget that local government does not really have legislative power in its own right. The only legislative power it has is delegated to it from Parliament. Parliament remains the supreme lawmaking body of the land, but it may delegate its powers to a minister to write regulations or, in this case, to a local government to write local laws. However, Parliament retains that legislative power in the form of a veto, shall we say. If a local government wants to write a local law, it has to provide that local law to the Parliament, and Parliament gets to say whether that local law is adopted. Of course, the paper sits on the table, and if it is not disallowed within a prescribed time, it is accepted that it becomes law, but it is still subject to parliamentary scrutiny. In this case, the suspension is not.

I think that writing a law is exercising legislative power. It is prescribing that people must do this or must not do that. We know that repealing a law is exercising legislative power—it removes that obligation or prohibition. Suspending a local law, even if it is for a fixed period, is exercising a legislative power. It has the same force and effect of the written law. It is the same thing to suspend a law; therefore, it should be subject to the same level of scrutiny that other local laws are subject to.

I understand the need for cutting away some red tape at this time. I am certainly a fan of removing red tape—the bureaucratic burden—and making things less onerous for local government and everybody wherever possible. An example has been given that if a local government wants to write a local law, it must undertake a mandatory six weeks of consultation and things like that. In this case, we could surely do away with that process but retain the requirement to table suspension resolutions, so that at least Parliament can see what is happening within local government during this time. That would ensure that there is accountability for the way in which local governments exercise their power. As currently proposed by the government in the bill, the only accountability under proposed section 10.4 is to the minister. Of course, the local government will have to publish the suspension on its website—as if anyone reads that—and it will have to give a copy of the suspension to the minister, but otherwise no-one will have any idea of what the law is on any particular day. There is no time frame either; a local government may resolve to suspend one of its laws but there is no requirement for when it must give a copy to the minister or publish it on its website. I think that is a really undesirable position to be in. One may enter a local government area and not know on that day what the law may or may not be. There is an easy solution to that, of course; that is, apply the provision in proposed section 10.3, which specifies that orders made by the minister under that proposed section are to be considered regulations for the purposes of section 42 of the Interpretation Act 1984, to proposed section 10.4. That would be fairly simple. It could be done by stating that resolutions by local government made under proposed sections 10.4(1) and 10.4(4) are local laws for the purposes of section 42 of the Interpretation Act. In fact, I have written an amendment to that effect, which is on the supplementary notice paper for members to look at and consider. It is essentially the same instrument that the government has used in proposed section 10.3, and I am not entirely sure why it was not included in proposed section 10.4.

It may be pointed out that local governments already have a discretionary power to suspend local laws to some extent. I am not too familiar with the principal act to be able to point to a specific part that states that they have that power, but I would be interested to know. If it is pointed out that we do not need the level of oversight that I am proposing because local governments already have that level of discretion, the question becomes: why on earth are we considering proposed section 10.4? If local governments already have that power, we do not need proposed

section 10.4. We can just retain proposed section 10.3, which gives the minister the power to modify as he needs, and retains the parliamentary oversight of his orders being disallowable.

I suppose that theme of why we are considering proposed section 10.4 leads me to another question. If parts of the act are unworkable during an emergency like this, we should probably think about the efficacy of those provisions of the act in the first place. Obviously, now is not the time to consider a root-and-branch reform of the Local Government Act—we do not have the time to do that today, of course—but it raises a question. We are experiencing quite modest restrictions in Western Australia, especially when compared with the eastern states. If local governments cannot carry out their normal functions under the current conditions and need to suspend parts of their laws, and the minister needs to suspend parts of the act, maybe that act and those laws are too prescriptive, too unwieldy and too bureaucratic and we should be reviewing them and ensuring that the law is simple, easy to follow and easy to comply with, even when people are subject to social distancing. If Coles, Woolworths and electronics retailers can stay open even with the conditions and restrictions we have put them under thanks to COVID-19, surely a local council's office can stay open to ensure that it can provide documents on request. Electorate offices are open. Parliament is open. Retailers and grocery stores are open. Cafes and restaurants are not open, but people should expect that if a lot of businesses are able to keep their doors open and functioning during this time, the government should also stay open and continue to provide the basic services that the people expect. That is the reason that I hope we do not end up suspending Parliament during this time. I know that there are health concerns but I would much rather be here and be able to do my job than sit at home and try to conduct my business on Zoom. I think that is what people expect. There should be an expectation that federal members of Parliament, state members of Parliament and local councils continue to carry out their roles and duties. Obviously, there will need to be changes. We may need to keep the seating spread out in the chamber, but that is a conversation for another day. For the time being, I think my concerns about proposed section 10.3 can be addressed by including my amendment that is on the supplementary notice paper, and I look forward to hearing the government's thoughts on that amendment.

HON ALISON XAMON (North Metropolitan) [12 noon]: I rise as the lead speaker for the Greens on the Local Government Amendment (COVID-19 Response) Bill 2020. I note, as I have with all the other COVID-19-related bills, that our capacity to consult on this bill has been severely truncated because of the necessity to try to address a range of legislative measures to deal with the current pandemic crisis. It is recognised that the Local Government Act is full of provisions that require certain things to be done by certain dates or within certain time frames, including what are necessarily long processes, and it is acknowledged that some time frames may not be fit for purpose during these times. This bill is obviously designed as a temporary addition to the Local Government Act while we are under the COVID-19 emergency provisions during the COVID-19 pandemic. I am pleased that this bill contains sunset provisions, which have been mentioned by previous speakers. That is very important and I am pleased that sunset provisions seem to be regularly included in the COVID-19-related bills that now come before us for our consideration. This bill will give the Minister for Local Government new powers to modify or suspend specific provisions in the Local Government Act or the regulations relating to it. Again, those modifications to the act have a built-in sunset clause that will be revoked, at the latest, three months after the day the COVID-19 emergency declaration is revoked. I have been told that it is anticipated that the powers will be used for things such as community access to information; the timing and modality of elections; deferring statutory time frames for items such as budget approvals, which we have had to do in the state Parliament; deferring general electors' meetings, and those sorts of similar activities. It does not allow the minister to direct a local government to expend its financial reserves to mitigate issues associated with the COVID-19 pandemic. I note that recent changes to regulations have dealt with this. I also note that should the minister use these new powers, the order must be must be gazetted and tabled in Parliament only during the COVID-19 emergency declaration. Therefore, it is a disallowable instrument. I will have more to say about that in a moment.

At the briefing, I asked about the sorts of specific matters that are expected to be dealt with by such ministerial orders and the response I got was that it would be used to defer any election or modifying provisions relating to in-person elections; suspending the need for public meetings, such as the annual electors' meeting; making provisions that provide alternative access to information for members of the public when council offices are closed due to the pandemic; deferring action against people for unpaid rates or charges; and amending, extending or removing time periods specified in the act for things such as extending the date that budgets need to be adopted. The bill will also give power to a local government to suspend the operation of part, or the whole, of a local law, and that must be resolved with an absolute majority. I recognise that local governments want to be able to respond quickly to the restrictions that they operate within under many of their local laws so that they can provide for business and community needs. Some of these important provisions that they need to get around include the time goods can be delivered to shops, parking restrictions and making sure that restaurants can shift to takeaway options. I note that the bill will not allow a council to modify a law; it will be able only to suspend part of it. As has been said by a previous

speaker, that effectively constitutes a change to the law. Again, changes to local laws made under this provision will sunset six months after the raising of the COVID-19 emergency declaration.

Having said that, the Greens have reservations about a number of provisions in this bill. Specifically, we have concerns around the minister's new powers under proposed section 10.3. Although I have been told the reasons for the intended purpose of the powers, the way the provision is written will enable the minister to have unlimited powers, effectively. It is limited only by what the minister considers to be necessary to deal with the COVID-19 pandemic. The scope by which the minister can determine whether he believes he is able to invoke these powers appears to me to be very broad. How much power is being handed to the minister to modify or suspend things that have nothing to do with COVID-19 but that the minister says are COVID-19-related? I note that the bill relates only to the Local Government Act so the minister has no powers under any planning legislation or town planning schemes. I will make some comments about that because I am getting a fair amount of correspondence on those issues. Although it is clear that the bill narrows the minister's powers to deal with the COVID-19 pandemic, again, the drafting itself simply uses the words what the "minister considers" is necessary, which provides a lot of room for interpretation. I am concerned that there is very little capacity for Parliament to challenge the minister's interpretation of what is necessary to deal with the COVID-19 pandemic should any concerns arise about any of the decisions that the minister has made under that guise. Although Parliament, as has been said, can move to disallow ministerial orders, the use of this instrument will potentially occur quite far down the track and via the regular processes, as outlined in the standing orders. Once a disallowance motion is moved, Parliament will not get an opportunity to deal with it for 14 sitting days. Given the current circumstances, there is much uncertainty about what the scheduled sitting weeks will be so we are not sure how far down the track the opportunity will arise when we can challenge a decision if a genuine concern arises about the way those unilateral powers have been exercised.

Apart from a convoluted and drawn-out disallowance process, there is no way to immediately challenge the minister's decision if we are not confident about the nature of it. I am concerned that the bill will not protect residents from potential abuses of the new powers given to local governments. As I mentioned on the issue of planning, I have been contacted by a large number of residents who are concerned about the Minister for Planning's letter encouraging councils to fast-track non-controversial development approvals. This concern is based on the definition of the term "non-controversial". There is a fear—a potentially legitimate fear—that corners will be cut for building and development approvals and the community will be stuck with the resulting built form for years, if not decades.

I note that the recent state of emergency amendments to the Planning and Development (Local Planning Schemes) Regulations have provided the Minister for Planning with the power to grant exemptions to planning requirements for a response to a recovery from the state of emergency arising out of the pandemic. Considering the level of concern that has been raised in my office from people who live in the North Metropolitan Region, most notably, people who are living in the western suburbs, I sincerely hope that the Minister for Local Government is not going to use these extraordinary variations from the principles of good governance to push through anything that is not going to align with the local community's vision of its own future, as I also hope that the Minister for Planning is not going to do. I recognise that this is beyond the scope of this bill; however, a lot of these concerns are being raised by similar people.

A range of other regulatory changes have, of course, occurred already. Local governments have already started to move in response to the COVID-19-related changes, which was necessary. We have seen changes to our regulations around administration, financial management, functions in general and long service leave regulations. The changes in these regulations, very sensibly, allow councils to bring forward a number of their planned maintenance and construction activities, which ensures that that work can be undertaken at a time of community need. I also note that councils are responding to the calls to finance these works with aggressive application of reserves for borrowing. I understand that the state government has basically put the call out and made it clear that now is the rainy day for which reserves, potentially, have been put aside, and I note that our local councils are, to the degree that they are able to, trying to respond accordingly. However, the culmination of removing requirements for advertising changes for the purposes of funds, or the seeking of loans, combined with substantial delegations to council staff, could easily mean that local communities will not be kept sufficiently apprised of how those funds are being both acquired and used. I think that is particularly concerning when there is a history of concerns being raised with members of Parliament and the minister regarding transparency and decision-making processes at the local government level. I am sure that every member in this place will have at least one council on their books about which residents are constantly raising concerns.

At the moment, the effect of a great deal of the activity in the local government sector is to ensure that local governments can move swiftly to economically support their local communities, and, obviously, I applaud this. The need is very real, and the need to respond in a timely fashion is also very real, but there are risks in that. We are making it possible for ministers and local governments to sidestep some of the basic principles of good governance. This bill and the regulations I have mentioned remove requirements for participation in what

transparency exists, and I am concerned that that transparency will almost entirely be in the aftermath of those decisions having been made.

We are ultimately relying on the skill, goodwill and wit of individuals rather than our solid governance structures to minimise the risk of poor decision-making. I want to say that of course I believe that the vast majority of local government staff are up to the task and will do their best to do an excellent job for their communities, but we have to acknowledge that this is far from an ideal way to operate. We have local government elected for a reason, and it is a concern if we bypass those governance processes. When the provisions provided by this bill are used, they will at least be time limited, assuming that the state of emergency is also time limited, and I certainly hope so! It is vitally important that when we remove elements of participation, accountability and transparency, we have a plan to ensure that we are swiftly putting those things back in place.

We are seeing in the legislation and the subsidiary legislation the possibility of multiple emergencies to be declared for COVID-19. We are also seeing substantial moves to expand the discretionary powers of our ministers in response to emergencies. There is already a great deal of unrest and uncertainty in the community about the way the planning and development approvals are taking place under the current structures, so I think it is incredibly important that the relevant ministers, local governments and local government staff consider very carefully the action that they take under this new regulatory regime. We want to ensure that we are not doing anything to aggravate the sense of disquiet that is already very much out there.

The PRESIDENT: Members, the question is that the bill be read a second time. Hon Martin Aldridge, given your circumstance with your charming moonboot, are you going to be able to stand or would you like, on this occasion, to perhaps speak from that seat and to stay seated?

HON MARTIN ALDRIDGE (Agricultural) [12.15 pm]: No, standing is fine. It may be quicker. Thanks, Madam President.

I rise as the lead speaker of the Nationals WA to make a contribution to the Local Government Amendment (COVID-19 Response) Bill 2020 second reading debate. I note that this bill has been brought to the Council in a very short time frame, and I thank the government and the department for the briefings and information that we have received in a very short time. I think it was only Tuesday morning that cabinet considered this matter, my briefing was sometime on Wednesday and here we are on Thursday debating the bill after it has already passed the Assembly, so it is quite extraordinary timing. I echo the sentiments of Hon Alison Xamon in that it has also restricted our ability to consult more fully across the community and, indeed, the local government sector, which is quite diverse in Western Australia.

Local governments are currently under some significant pressure as a result of the pandemic and, certainly, are subject to some significant expectation from their ratepayers and their community about how they respond and support their community. They are certainly not isolated from other levels of government in that regard. In some cases, there is probably a greater demand facing local governments from their communities to solve problems arising from the pandemic, and I have seen that occurring in my electorate of the Agricultural Region over the last few weeks. I have often said in debates about local governments, particularly in regional and remote communities, that local governments are the service provider of last resort and, indeed, that is showing to be true again in the circumstances that the state currently faces.

I will speak briefly about the bill. There are two main provisions in the bill. The first is the modification or suspension of provisions of the act or regulations. When I first learnt of this matter, I thought that we will be giving pretty extraordinary powers to the Minister for Local Government if the bill passes in the form presented to the Legislative Council today. Indeed, if there were ever to be an argument about a Henry VIII clause, I think this entire bill would probably be the number one qualifier. It is interesting that these powers are needed in the local government context when the government has not sought these powers in other contexts. Last sitting week, we dealt with amendments to the Emergency Management Act. Certain modernisations were required to make certain things happen under the declaration of the state of emergency that exists in Western Australia, but no such provision was sought at that time by the Minister for Emergency Services to suspend or modify provisions of the Emergency Management Act. Similarly, another act that is in common use at the moment is the Public Health Act.

I balance those concerns with the act that we are amending—the Local Government Act 1995, which is quite a considerable, complex and detailed piece of legislation that principally regulates an entire level of government, being the local government sector in Western Australia. I balance my concern with some understanding around the need for government to respond in certain ways. I will probably seek to get a greater understanding of that when we move into Committee of the Whole.

I understand from the second reading speech that any order made under proposed section 10.3—although it is not a feature of the bill, it is a feature of the Local Government Act—will require publication of that order in the

Government Gazette. Yesterday, as per the uncorrected *Hansard*, the Minister for Local Government stated during his second reading speech —

> Section 9.65 of the Local Government Act 1995 provides for ministerial orders and requires their publication in the *Government Gazette*.

On that point, particularly noting that this is not a feature of the bill but it is something that relates to this bill, I would be interested to know what time frame is placed on the minister in those circumstances. Under section 9.65, which was quoted by the minister in his second reading speech, is there a time frame in which a ministerial order requires publication in the *Government Gazette*? Obviously, that would be important in understanding the amount of time in which we, the general public or, indeed, the Parliament would become aware of an order that has been made. Would it have effect prior to its publication? They are the two questions that I have around that area.

Hon Sue Ellery: I got those two questions. Just before you asked me, in respect of section 9.65, how soon an order can be published and then whether it can be an act before it is published, I think there was something before that. I am sorry I missed it.

Hon MARTIN ALDRIDGE: It might have been a general comment about why other acts such as the Emergency Management Act 2005 or the Public Health Act 2016, given that they are being used irregularly at the moment, did not need similar provisions that would allow the Minister for Emergency Services, for example, to modify, amend or suspend provisions of the Emergency Management Act in the current pandemic. It was probably more of a comment than a question of the Leader of the House, given that she is representing the Minister for Local Government.

During the briefing, I asked questions about the disallowance. Proposed section 10.3 has been drafted such that it would treat a ministerial order as if it were a regulation for the purpose of the Interpretation Act 1984 and therefore make it an instrument that needs to be tabled and able to be disallowed by either house of Parliament. I made the comment during my briefing that the disallowance would be somewhat difficult, particularly in times of a pandemic. This is a COVID-19 response bill. I think one of the members who spoke previously may have also touched on this. I think the ministerial adviser who was at the briefing said that recourse is available to members of the house under our standing orders to recall the house. As members would be aware, they are used in very limited circumstances and are available only to the President at the request of the Leader of the House. Members would be aware that I suggested a change to standing order 6(3) not that long ago, which would allow an absolute majority of the house to petition the President for its recall. Technically, there was nothing wrong with the proposition that I put to the house. The primary argument was that we did not need such a provision in the last 100 years so why would we need one in the next 100 years? Well, members, here we are in extraordinary circumstances only months after the house received a report from the Standing Committee on Procedure and Privileges on standing order 6(3). We are faced with an extraordinary situation. I remind members that standing order 6(3) allows the President, at the request of the Leader of the House, to vary the day and time on which the Council will next meet. Not only does it allow the President to recall the house, but it also allows the President to postpone a sitting of the house. Obviously, in current circumstances, it has already been observed in debates that some houses of Parliament have adjourned until September or much later in the year. Our ability to recall the house and be able to disallow a regulation, or in this case an order in the form of a regulation, would be extremely limited.

I wish to make another observation about proposed section 10.3(2), which states —

> The Minister can make an order under subsection (1) only if each of the following conditions is satisfied —
>
> (a) the order is made while a COVID emergency declaration is in force;
>
> (b) the Minister considers that the order is necessary to deal with consequences of the COVID-19 pandemic.

I will make an observation and then ask a question. The way that this proposed section has been drafted would lead me to believe that the minister need satisfy only himself that the order is necessary. That would probably make any order made under proposed section 10.3 non-justiciable because we would not be able to seek judicial review of whether the order was made and it was necessary to deal with the consequences of the COVID-19 pandemic. All we would need to satisfy ourselves is for the minister to be satisfied that the order is necessary. A similar provision applies, if I am not mistaken, in proposed section 10.4(3)(b), which states —

> the local government considers that the resolution is necessary to deal with consequences …

In those circumstances, if a resolution under proposed section 10.4 was subject to disallowance and the Joint Standing Committee on Delegated Legislation considered whether such a resolution was appropriate, it would need to satisfy only itself that the local government considered the resolution was necessary to deal with the consequence of the COVID-19 pandemic as opposed to expressing its own judgement about whether such a thing was necessary for that purpose.

With respect to proposed section 10.4(7)(a) and similarly proposed section 10.3(3)(a), different timing has been applied to the revocation of the resolution and the order respectively. For an order made under proposed section 10.3, the revocation is three months from the day on which the COVID-19 emergency declaration referred to in proposed subsection (2)(a) is revoked or otherwise ceases to have effect. A resolution under proposed section 10.4 sets that period at six months. I am interested to know the rationale for the drafting for the different periods of time. It would appear that local governments would have more flexibility for revocation than the minister would have for an order. Perhaps that relates to one being an instrument that amends a section of the act or a regulation under the act versus a local law. Perhaps that is the reasonable view that has been taken, but there may be another reason.

Hon Sue Ellery: The capacity of a local government is to suspend a local law, not to vary or do something that is different. It is for a certain period of time to suspend those provisions, as opposed to the more substantial power of the minister to do a greater range of things.

Hon MARTIN ALDRIDGE: I thank the Leader of the House.

Before I move on to proposed section 10.4, I would be interested to know, either during the minister's reply or maybe it is better dealt with during the consideration of clause 1, whether the government has a list of matters before it relating to when the minister may move early on the issues that have immediately arisen versus something that is not yet contemplated. I wonder whether, through this drafting process that has been evolutionary, the government sought some temporary changes to certain sections of the act and then reached a point at which it said, "This is getting too difficult. Maybe the best approach would be to seek a bill of this nature, which would give us greater flexibility into the future." Therefore, I would be interested to know to what extent the department is prepared to recommend to the minister certain orders and when that might take place, and whether any insight can be given beyond the minister's second reading speech, which I think gave five examples about matters that could be dealt with under this power.

I now move to proposed section 10.4, "Suspension of local law". My question today, which has been answered in part in the contributions of other members, is: the second reading speech and the explanatory memorandum did not provide me with, and I did not seek this in my briefing, an understanding of how proposed section 10.4 will be advantageous to the existing provisions within the Local Government Act, so what are the burdens that are currently upon local government to suspend a local law that will be set aside or streamlined through the provisions in proposed section 10.4 of the bill? I am also interested to know whether some local laws have been identified as barriers. I am not asking for a specific level of detail on what the City of Fremantle is concerned about, but whether there is a general category of local laws that the sector, or indeed the government or the department, has identified as being likely to receive benefit from proposed section 10.4. That would be valuable.

I have already touched on the threshold in proposed section 10.4(3)(b), so I will not do that again in speaking to proposed section 10.3.

One last matter I want to speak on today is the issue of rating and how it may be affected by the provisions of this bill. Members will be aware through numerous media reporting that as part of a broader government response to minimise the impact during this state of emergency, the government has called on the sector to freeze rates and charges. I refer now to a letter from the Premier of Western Australia to Mayor Tracey Roberts, dated 17 March 2020. I want to quote two paragraphs, which state —

> Local government can also play a significant role to relieve pressure on families and businesses. Local government rates form a significant part of family and business expenses. Rate relief will further assist with these pressures.
>
> I am requesting that you seek your members support and action to unilaterally freeze all local Government Household Rates, Fees and Charges in 2020–21.

I understand from my briefing that some 130-odd local governments have already made or are making a decision that reflects the Premier's request in that letter of 17 March, but the question I want to ask now and perhaps in the Committee of the Whole, is about the extent to which the minister will be empowered to modify or suspend sections of the act that relate to rating. I point out a particular issue that could arise very shortly, which is the revaluation of properties in Western Australia. I understand that as from the 2020–21 financial year, all metropolitan local governments will be subject to a new gross rental valuation revaluation, and, of course, all unimproved value land statewide will be subject to revaluation each year, as it always has been. I do not think that any regional or non-metro local government GRV revaluations will come into effect from this financial year, so it is particularly a UV statewide and a metro GRV revaluation issue. However, this will make delivering on the commitment to freeze rates in particular quite difficult for local governments to administer. I do not admit that I understand the full specifics and complexities of rating, but it is going to be quite difficult for local governments to freeze rates while also dealing with GRV and UV revaluations this coming financial year. I understand that in the debate that occurred in the

Legislative Assembly yesterday, the Minister for Lands weighed in on this issue and suggested that there would be opportunity for the Valuer-General in very limited circumstances to not deliver those revaluations. I also understand that this matter was considered by the government in terms of this bill in a broader context of freezing rates through elements of this bill that do not exist in this bill as we see it today. I am concerned that the government has made a decision to not require the freezing of rates and charges as a function of the Local Government Act for the next financial year, but at the same time it has probably done away with a part of what was being considered, which was requiring local governments to set their rates based on the 2019–20 financial year valuations rather than any new valuations that will come into play.

Giving effect to what the Premier has asked, and what many local governments have committed to, would almost require—I cannot see any other way—an individual rating calculation. Imagine a person has a property that is subject to revaluation, whether it is GRV or UV, and there is an increase or decrease in its valuation. That will have a direct relationship to the rate in the dollar at which a local government levies across its rate base. If ratepayers are expecting that their rate notices will be exactly the same as their rate notices were last year, because that is the commitment that has been given by nearly all local governments, and, indeed, the state government with respect to household fees and charges, it will require some significant work on behalf of local governments, if it is even possible. I am not even sure whether it is possible to provide that level of rating with regard to GRV and UV with also the rate in the dollar system that has been established. I think that in getting this bill in a very short time frame, elements were obviously removed along the way. Perhaps this element with respect to using the current valuations that exist on properties and deferring new valuations could significantly assist local governments in their rating exercise in 2020–21 and help them to deliver on the commitment that the state has asked them to make to freeze their rates and charges. I know of the pressure that the state government is under. We see it here in the chamber when we see delays in answering questions. Departmental briefings have been refused because of the significant demand on our public service at the moment. I think that, equally, our local governments are under similar pressure. Certainly, the exercise that has been explained to me for them to implement the commitment to a rating freeze in the context of revaluation of land across the metropolitan area for GRV and UV statewide presents some significant challenges for the local government sector going into the 2020–21 financial year. With those few words, I look forward to the minister's reply and also indicate the Nationals WA's support for the bill.

HON DR STEVE THOMAS (South West) [12.38 pm]: Thank you, Madam President, for the opportunity to make a very brief contribution today to the debate on the Local Government Amendment (COVID-19 Response) Bill 2020. I have been around the Parliament, intermittently, for a fair time now. I remember the days in the chamber that shall not be named when there used to be some robust arguments across the chamber about who was a greater supporter of local government. I think that that was a very positive period. In the intervening period and upon my return, my view is that we have gone from having a great support of local government through to a period of having, let us say, some contempt for local government. I still detect some measure of that around the chamber and in odd debates today. Without pointing fingers, there is a view that gets expressed not infrequently that local government is not only beneath us, but also beneath contempt. It is a very unfortunate situation. It may well be the reason that local government campaigned very heavily for recognition under both the federal and state Constitutions, as it thought that state Parliament in particular started to hold local government in lower regard. I am very pleased with the debate generally in the house today that recognises that local government makes a significant contribution to the welfare of its people. Obviously, the opposition supports the bill and I think the bill is worthy of support.

I want to make a couple of quick comments. It was mentioned before that the government has requested that local governments access several funds to promote activity that would support the people in their local government areas. In particular, I am interested in the suggestion that was put to me that the Minister for Local Government has suggested that local governments should be using their contingency funds and their reserves—that now is the time. It has been reflected to me by a number of local governments. Although it is only hearsay, I understand that the Minister for Local Government said fairly similar words in a link-up with local governments around Western Australia. I would be interested to know whether that was accurate, because it seems to reflect that the Minister for Local Government perhaps did not have a great understanding of the use of contingency funds and the purpose for which they are put together. Contingency funds are not just little pots of extra money that get doled out every now and again by state and commonwealth governments for local governments and others to make use of at their whim. Contingency funds are generally applied to specific projects, and those specific projects often come at some risk. That is the reason that contingency funds exist; they exist because there are some risks in the delivery of projects. It is often the case that contingency funds are negotiated between the various levels of government that invest in projects. For major projects, we tend to find that the local government and the state government in particular, but sometimes the commonwealth government, are involved in making sure that the budget is set right, and that budget will include some contingencies. Is the government suggesting that the risk factors associated with the current process for the development of contingencies—a process that has been overseen by the Office of the Auditor General, both state and federal, for many years—are to be thrown out of the window? If that is the case—

it may well be that the government has decided that there needs to be more economic activity going on—will the same rules apply to the state as apply to local governments? Is the state government going to suggest that its contingencies should be spent in response to the COVID-19 crisis, as well as those of local governments? I think there might be something of a double standard here. Perhaps it reflects a lack of understanding by the minister when he suggested that this is simply a pot of money available for the funding of activity. What activity does the Minister for Local Government expect this pot of money to fund? I presume that when he says that he wants local governments to invest in job-retaining and perhaps even job-creating infrastructure projects, he is talking about the sort of infrastructure that local governments are trying to engage in any way and would be very happy to deliver. As part of those projects, they have contingencies, and those contingencies are in place to manage the risk.

I would be very interested if the minister could confirm that the Minister for Local Government is suggesting to local governments that they should spend contingency funds and reserve funds. Is that where the state government expects local governments to stimulate activity? If that is the case, will the same rules apply? I am not sure what contingency reserve is in place for the Metronet projects, but it is probably quite significant. It would be a pretty useful pool of money that could be spent on the COVID-19 response. Are we going to apply the same rules? There is an alternative. If the state government decides that it is going to suggest that local governments spend their contingency reserves on activity to prop up economies and jobs in response to COVID-19, perhaps it might consider underwriting the contingency reserves of local governments that it is suggesting should be spent stimulating activity. If the government is suggesting that it is not needed, surely it would have no problem underwriting those reserves. That would be a really sensible solution to the problem. Go out to local governments and say, "Spend your contingency reserves now on COVID-19 activity, but if budgets run over on these various projects, which we, as a state government, were probably involved in negotiating, we will underwrite those. We will make sure that the contingencies that you have spent on this activity are covered from state revenue." That would be a great solution to the problem if the government genuinely believes that this is effectively free money available to be spent.

Honourable members, I would like to see us support local government. There has been too much rock throwing in the process. Here is a way that we can support local government along the lines suggested by the Minister for Local Government, if indeed that is exactly what he said.

HON SUE ELLERY (South Metropolitan — Leader of the House) [12.45 pm] — in reply: I thank members for their contributions to the debate and I thank those who are supporting the Local Government Amendment (COVID-19 Response) Bill 2020 for their support. I will make a general comment at the outset of my reply; that is, a couple of members have made the point that these are extraordinary powers. They have used other language to describe them that I think is perhaps a bit inflammatory; for example, "power grab" was one expression that was used. However, the general proposition is correct: these are absolutely extraordinary powers because we are in extraordinary times. We are in a state of emergency. We are in an international pandemic. We also have a public health crisis. We have enacted our emergency powers for both a public health critical incident and a state of emergency. That is an extraordinary situation for us to find ourselves in. I say to those members who contributed and made the point that they feel uncomfortable about these extraordinary powers that I understand their discomfort, but I do not shy away from the fact that these are extraordinary powers for extraordinary times.

I will address the issues raised by members in the order that they were raised. Hon Donna Faragher made a point about issuing a disallowance and possible delays. It is correct that the minister may make an order that is gazetted and it can come into effect only on the day following, at the earliest. The notice must be lodged with the Joint Standing Committee on Delegated Legislation within 10 working days. That committee can then provide a report to Parliament, including when Parliament is not sitting, but the members who drew attention to the fact that that could potentially be for a longer than normal period are also correct. That is correct. I understand that that might cause people some angst, but I go back to the proposition that I started my commentary with: we are in extraordinary times, and that is why it is not a power that the government would seek to use lightly. I think the comment by Hon Charles Smith about whether the order would come before the Joint Standing Committee on Delegated Legislation with clean hands—that was the expression he used—is a bit insulting to the Minister for Local Government. He went on to make the point that he expected that political games would be played. I can give the member the assurance that that is not the intention. That has not been the case with anything we have done in response to COVID-19, and it will not be the case. I wish that we were not in a COVID-19 pandemic. I wish I were not sitting in meetings of the State Disaster Council, which is a subcommittee of cabinet, having discussions about things that I never contemplated I would have discussions about. I never contemplated that I might be having discussions about the number of ventilators we have and what that might mean if the number of people who require ventilators goes to point X. I never imagined I would be sitting in a meeting having a discussion like that. I find it a stressful and, at times, distressing process to go through, but we are in extraordinary times. For a member to suggest that my good mate the member for Mandurah, Hon David Templeman, might come to the Joint Standing Committee on Delegated Legislation without clean hands or to make an order as part of some kind of power grab or political game playing is disrespectful

to him, and indicates that the member does not know the man. One could not find a more affable, genuine and properly and duly motivated person than Hon David Templeman. I think those comments by the member were unnecessary.

Let me return to the questions that were raised in the course of the second reading debate. Hon Donna Faragher asked whether the regulations that have already been made were validly made. I am advised that yes, the necessary head of power existed for those changes that have already progressed. With respect to the local law power, some local governments have been proactive in changing their processes and enforcement provisions to respond to the effects of the pandemic. Some may also have been suspending the application of local laws without legislative backing at this point. However, I am advised that the decisions that have been made were made by councils rather than chief executive officers.

Hon Charles Smith made a point about elections. It is not the case that all elections are conducted via postal vote; however, the powers that are sought to be included in the act as a result of the bill before us will allow the minister to determine that the vote, for example, is by postal vote only. Members might imagine that might be done if we were still dealing with the health issues around social distancing and the like.

The question was also raised about whether the local law suspension was required. Local governments currently do not have the power to legally suspend a local law. By creating that power, it will allow local governments to indeed legally suspend a local law for a period to support the community or businesses within their district. The proposition was put by Hon Charles Smith, and perhaps Hon Aaron Stonehouse as well, whether we need the bill at all. The legislation is designed to introduce provisions to streamline and support the operations of local government for the purposes of being able to respond to direct and indirect consequences of COVID-19. There is no question that COVID-19 is impacting every level of our society and our community and, as members have made the point, it is important that local governments that are closest to those they represent can be adaptable to the needs of their community. The bill will enable fit-for-purpose and agile decision-making to be made by local governments during this period.

The proposition was put that essentially the legislation was too broad. As I said, it is broad and it is extraordinary. It is extraordinary because we are in extraordinary times. It can be exercised only when a state of emergency declaration is in place for COVID-19. The minister must consider that the order is necessary to deal with the consequences. I outlined earlier the reference to the gazettal process.

A question was raised about an end date to the sunset clause. There is no indication of when the state of emergency on COVID-19 will end. I wish—I wish—that there was, but there is not. We are yet to go into winter and we do not know what consequence winter will have on the development and spread of the virus in Western Australia. People are working extraordinarily hard to develop a vaccine, but we do not know when there might be a vaccine. We cannot predict the future with this virus, so it is safer to remove those provisions by way of the proclamation provisions that are set out in the legislation.

Hon Alison Xamon raised the breadth and expanse of the ministerial power. This is about exercising an extraordinary power only in extraordinary circumstances. It will enable the minister, during the course of the COVID-19 situation, to address legislative restrictions under the Local Government Act to ensure a quick and agile response.

The question was asked: is this not a Henry VIII clause? Of course, the Legislative Council has a view about Henry VIII clauses. Indeed, it is entirely arguable that it is the biggest of the Henry VIII clauses ever made. That is an entirely arguable point to make. I go back to where I started: we are in extraordinary times—extraordinary times—and we have ensured with the legislation before the house that measures are in place to end the decision-making powers as soon as we are able when we are through the COVID-19 emergency.

A question was raised about different time frames for the ministerial order and the local laws. I responded by way of interjection to that during the course of debate. I make the point that the power of a local government to suspend for a period the provisions of a validly made local law are different from the powers of the minister to do a much broader range of things under the provisions of the act. That is essentially why there is a difference in the time frame. The minister could not use proposed section 10.3 to suspend or vary the contents of a local law as there is not any provision within the act to which this could apply. The government has an existing power under section 9.60 of the Local Government Act to make regulations and they are to operate as local laws.

The matter of revaluations was raised and whether a ministerial order could be used to hold the valuations. The Valuation of Land Act, which is separate legislation to that with which we are dealing today, requires the valuations to proceed. The Valuer-General is an independent statutory officer and is required to act in accordance with the act. The land valuations have broader implications for others, not just local government, including determining the emergency services levy and water service charges. Land valuations can also decline and it is unreasonable to maintain valuations that do not reflect the market value. On average, gross rental valuations and unimproved valuations will decrease next financial year. Progressing with the revaluation will ease the burden on ratepayers by ensuring that they are not, on average, paying more in 2020–21. The minister can issue an order under proposed

section 10.3 only if the order is necessary to deal with the consequences of COVID-19, and holding revaluations at last year's levels would not, in the government's view, seem to meet that criteria.

I was asked by Hon Dr Steve Thomas to provide confirmation of what he suggests the minister may have said to some groups of people. I am not in a position to confirm one way or the other what the minister may or may not have said to a particular group of people.

Hon Dr Steve Thomas: I'll take that as a yes.

Hon SUE ELLERY: Well, the honourable member should not take it as a yes because I cannot answer that question. I have been sitting here—how could I have dealt with that question? I will take the honourable member at face value and assume that it was not simply a little political flight of whimsy and I give him an undertaking that I will raise with the minister the issue that Hon Dr Steve Thomas raised. I am absolutely not in a position to respond to that now.

Hon Aaron Stonehouse in his comments referred to an amendment in his name on supplementary notice paper 185, issue 1. The government is not in a position to support that amendment and it needs to be identified clearly for two reasons: first, it is not sound policy; and, second, we do not think it will do what the member wants it to do. It is important to note that the Parliament has already determined that the local law is sound. The local law has already been through the parliamentary process. Any local law that a current local government might seek to suspend has already been determined by this Parliament to be sound. Under this provision, the local government does not have the power to change the terms within that local law. It does not have the power to do anything other than to suspend that local law for a period. Local government is not being given the power to modify the provisions. It can suspend only what is an existing local law. There is no need for the Parliament to oversee the temporary suspension of a provision in the local law because it is not looking at the detail of the law—it is already a sound law; it is whether or not it should apply at a particular point in time. For those reasons, I will not support the amendment, but I commend the bill to the house.

Division

Question put and a division taken with the following result —

Ayes (28)

Hon Martin Aldridge	Hon Stephen Dawson	Hon Colin Holt	Hon Robin Scott
Hon Ken Baston	Hon Colin de Grussa	Hon Alannah MacTiernan	Hon Matthew Swinbourn
Hon Jacqui Boydell	Hon Sue Ellery	Hon Rick Mazza	Hon Dr Sally Talbot
Hon Jim Chown	Hon Diane Evers	Hon Kyle McGinn	Hon Dr Steve Thomas
Hon Tim Clifford	Hon Donna Faragher	Hon Simon O'Brien	Hon Darren West
Hon Alanna Clohesy	Hon Adele Farina	Hon Martin Pritchard	Hon Alison Xamon
Hon Peter Collier	Hon Nick Goiran	Hon Samantha Rowe	Hon Pierre Yang *(Teller)*

Noes (2)

Hon Aaron Stonehouse	Hon Charles Smith *(Teller)*

Question thus passed.

Bill read a second time.

Sitting suspended from 1.05 to 2.00 pm

Committee

The Deputy Chair of Committees (Hon Dr Steve Thomas) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 1: Short title —

Hon MARTIN ALDRIDGE: I wanted to follow up on a couple of things that were mentioned during the second reading reply of the Leader of the House. I asked a question about section 9.65 of the Local Government Act relating to the minister's requirement to publish an order in the *Government Gazette*. I do not recall whether she gave me an answer in her reply. I asked for an understanding of the time frame in which the minister is required to publish in the *Government Gazette* and whether the order has lawful effect until it is gazetted.

Hon SUE ELLERY: The member wanted two things. The first was the time frame within which the minister needs to publish. What was the other question?

Hon Martin Aldridge: And if it had lawful effect prior to publishing.

Hon SUE ELLERY: The member is right; he did ask that question, and I am sorry that I did not provide him with an answer. The minister is required to table the order within 10 days. It comes into effect the day after. The answer to the second question about whether it can come into effect before it is published is no.

Hon MARTIN ALDRIDGE: During the second reading debate, I asked about the evolution of this bill, and whether the approach to address the sections of the act that require amending was, "This is too complex; let us create a big whopping Henry VIII clause to allow us to do whatever we like." How advanced is the department in identifying the sections of the act that need immediate attention and is there something more than the five dot points in the second reading speech that might give us an insight into that?

Hon SUE ELLERY: I will provide examples of possible use, citing the relevant sections of the act. With respect to elections, section 4.91 could be varied so the minister could set the date for an election. Section 4.92 could be modified so an election could be held more than four months after the vacancy occurs. Section 4.20 could be varied so that an in-person election could be changed to a postal election. The time frames in section 4.61 could potentially be varied for the calling of an election. Section 4.62(1) could be varied such that no polling place is required to be open on election day.

With respect to meetings, section 5.27 requires that a general meeting of electors be held once every financial year and within 56 days after the local government accepts the annual report for the previous financial year. A ministerial order could be issued to suspend these for the period of the emergency plus three months or waive the requirement. Under section 5.28, a local government is to hold an electors' special meeting within 35 days of receiving a request from five per cent of electors or 100 electors, if that is fewer. A ministerial order could be issued in relation to the requirement to hold an electors' special meeting, given the requirement for no public meetings. Section 5.94 provides the list of information that must be available for inspection free of charge. A ministerial order could be issued such that during any period, the office is closed due to the pandemic and free copies are provided unless the information is on the website. We could amend the regulations to provide an extension for the period of training for this year if it seems necessary, depending on the length of the lockdown.

Section 6.22 provides that the budget is to have regard to the contents of a plan for the future. There is a potential for a ministerial order for local governments to have regard to the COVID-19 pandemic in drafting their budgets for next year. Section 6.34 provides that local governments must set their rates at a level to cover between 90 and 110 per cent of the estimated budget deficiency unless the minister otherwise approves. A ministerial order could be issued that reduces the percentage to, say, 80 per cent of the 2020–21 financial year. Section 6.36 sets out the process that a local government must go through to advertise and set its rates. A ministerial order could be made varying the effect of section 6.36 so that local governments that freeze their rates and have minimum payments are only required to publish details on their website, and therefore remove the requirement for objects and reasons in this circumstance. The minister could also extend the requirement to publish on the website, rather than advertise, the fees and charges when a local government also freezes these.

Section 6.45(3) allows a local government to charge an additional amount if a payment of rates or service charges is made in instalments. That is capped at 5.5 per cent. A ministerial order could be issued for this year to limit or prevent the additional charge. Section 6.51 allows local governments to charge interest on overdue amounts of rates and service charges. The rate is capped at 11 per cent in the regulations. The rate is set by the local government by resolution when it imposes the rate of service charge. A ministerial order could be issued for this year to reduce the interest rate.

With respect to interest on money owing to local governments, section 6.13 allows local governments to charge interest on overdue amounts, and that rate is capped at 11 per cent. The actual rate is set by the local government in its budget, and a ministerial order could be issued for this year to reduce that interest rate.

Hon MARTIN ALDRIDGE: They are things that are likely to have been contemplated at this point in time, so it is not an exhaustive list of possibilities; they are things that the minister may need to consider during this period, but there could be other things that are not on that list.

Hon Sue Ellery: Correct.

Hon MARTIN ALDRIDGE: I would like to clarify the answer to my first question about section 9.65. After the minister makes an order, the minister will have 10 days to publish it in the *Government Gazette*. Will it have effect one day after it is published or one day after the order is made? Could the minister clarify that?

Hon SUE ELLERY: I am glad the member sought clarification because I think that I might have misled him earlier. There is no time provision within which the minister must publish. However, once published, it must be provided to the Parliament within 10 days, and it cannot take effect until one day after it has been published. That is correct.

Hon MARTIN ALDRIDGE: In effect, the minister can make an order and then publish the order whenever he or she chooses, but it will not have effect until the day after it is published in the *Gazette*.

I have one last point on clause 1 on the issue of rating, which I raised. I want it to be clear in my mind, because I think I raised an issue about valuations that may not be an issue were I to have a better understanding of the government's position on rating. Is the government's position on rating that local governments are expected, or asked, to freeze their rates for the next financial year at the current financial year's level at a local government level, rather than at a ratepayer level? I will elaborate on that. If I lived in the Shire of Ashburton, say, and the rate revenue the Shire of Ashburton receives is $10 million per annum, is the state government's expectation that the Shire of Ashburton would charge $10 million in rates next financial year, or is it much more specific than that and that each ratepayer within the Shire of Ashburton would pay exactly what they have paid this financial year and, therefore, the issue of valuations would be a difficult one for the sector to encounter?

Hon SUE ELLERY: I understand the question. I am advised that the Minister for Local Government has expressed the view that the individual rate in the dollar would be frozen by local governments at a local level. I hope that is clear to the member, because it is not clear to me!

Hon MARTIN ALDRIDGE: Will that mean, as I understand it, that local government will have full discretion to determine the rate in the dollar and that that would link to the Valuer-General's gross rental value or unimproved value assessment of a property? There would be different classes of the rate in the dollar depending upon different things. If there is, as we are expecting to see, a diminution across the board in GRV and UV from the next financial year for properties being revalued by the Valuer-General but the rate in the dollar is being maintained, would that likely result in a significant reduction in some, or probably most, local governments' rate revenue base; is that a fair statement?

Hon SUE ELLERY: I am advised that that is a fair description.

Hon MARTIN ALDRIDGE: I certainly had not anticipated that. I thought that perhaps the government's approach was to basically cap the rate revenue at this year's level for next year and that that would dispense with the Valuer-General issue as it stands at the moment. I know it is something that the government contemplated, because, as I said in in my second reading contribution, there is clear evidence that the government pursued a freeze on the valuation as well as a potential capping of council rates and charges, which is not in the bill before us now but was something that the government contemplated. If the rate in the dollar were frozen, I wonder whether some other areas would be affected. I think the Minister for Lands, as the minister responsible for the Valuer-General and Landgate, said in the other house yesterday that about 90 per cent of valuations would decrease, but that some would increase. I think the figure he mentioned was 10 to 20 per cent. Would the ratepayers of those local governments whose GRV has increased this coming financial year see an increase in their rates notices if the rate of the dollar is frozen?

Hon SUE ELLERY: The advice I have is yes. I am going to ask the member to bear with me. I am handling this bill representing the Minister for Local Government, so I am going to take at face value the member's description of what the Minister for Lands said in the Assembly.

Hon MARTIN ALDRIDGE: I guess that I will just make the point that the issue of freezing local government rates in this financial year at this financial year's level is very difficult; in fact, it is impossible to achieve for the reasons that I have just explored unless those valuations are frozen. I think ratepayers now have a reasonable expectation that their rates notices next year will be the same as their rates notices this year. I think that is the expectation that has been delivered to ratepayers, and, by and large, most local governments—I think 130-odd—have indicated that that is their intention also. I think the only way that that would truly be achieved would be by freezing the valuation of properties or requiring local governments to use the valuation of properties that exist in this financial year for next financial year to get through this period. I think all other circumstances that could be contemplated would result in some reductions and some increases in rates, and probably many would not fall in that middle range of being at the same level as this year.

Hon SUE ELLERY: I appreciate the member's analysis, but please bear with me. I am advised that there is an average of a 13 per cent decrease in the metropolitan area in the GRV and an average of a 1.2 per cent decrease for unimproved values. If we take into account the valuation, the rate in the dollar, the valuation decrease and the same rate in the dollar, it does result in a lesser rate burden on the individual.

Hon Martin Aldridge: What if there are GRV differences?

Hon SUE ELLERY: I am advised, on average, the majority will decrease.

I was going to provide some information for Hon Donna Faragher.

Hon Donna Faragher: Is this relating to —

Hon SUE ELLERY: It is about the number of local laws —

Hon Donna Faragher: I might ask about that later on when we get to it, if you are happy for me to do that then.

Hon SUE ELLERY: Sure.

Clause put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Part 10 inserted —

Hon DONNA FARAGHER: I have a couple of questions and obviously there is a supplementary notice paper. I go to proposed section 10.3(1)(b). I know that the minister responded to my comments during the second reading debate about the minister having already made some amendments to regulations. I want some clarity here, because this proposed section provides that the minister may, by order, modify or suspend the operation of specified provisions of regulations made under this legislation. I want to be clear about the regulations that he has already amended and how they differ from what will be required under this bill.

Hon SUE ELLERY: The ones that have been through the normal Executive Council process to date include providing for electronic meetings during the emergency; removing the need for local governments to give local public notice if they need to repurpose money in reserve accounts or borrowings for the purpose of responding to COVID-19; increasing the tender threshold to $250 000 in line with the state government's tender threshold limits; removing the need for the formal tender process when sourcing and securing essential goods and services to respond to the state of emergency, and, by way of an aside, the state has also done that in its procurement processes; giving local governments the discretion to renew or extend a contract that expires when a state of emergency is in force; allowing local government employees to use any accrued long service leave if they have completed at least seven years of continuous service and are required to take leave; and ensuring that long service leave continues to accrue if employees are absent from work due to the consequences of the state of emergency. I will tell the member how they are different.

Hon Donna Faragher interjected.

Hon SUE ELLERY: He used the normal processes that I will outline to the member to do that—approval to draft, drafting by parliamentary counsel, approval of amendments, Exco consideration, Governor's approval and then gazettal. That is a very short process. Getting approval to draft and then approval to print within three weeks is a very short process. So let us say that it is a minimum of three weeks.

Hon DONNA FARAGHER: I am right with that, but what provisions will the minister be able to utilise under this part of the bill? What regulations are we referring to? To assist, I am seeking some clarification here. Are they different forms of regulations or is this simply another mechanism to expedite the changes to the regulations other than through the process that the minister has already referred to?

Hon SUE ELLERY: I thank the member for clarifying that. It is the second option. The elements of the normal process that would effectively be circumvented would be Exco consideration, the Governor's approval et cetera.

Hon MARTIN ALDRIDGE: I want to ask about the construction of proposed section 10.3(2)(b). Why is it necessary to include the words "the minister considers" when it could simply say "the order is necessary to deal with the consequences of the COVID-19 pandemic"? The reason I ask this is that although this order will effectively become a regulation, disallowable by the chamber, is it not important for the Joint Standing Committee on Delegated Legislation to make a judgement about the appropriateness of an order and its relationship to the COVID-19 pandemic, rather than simply considering the minister's consideration of such a matter?

Hon SUE ELLERY: The honourable member is right, but the provision he is talking about—the reference to the joint standing committee—is the second part of the process. In the first instance, someone needs to make an initial threshold decision that this is indeed related to, and is appropriate for, the COVID-19 pandemic. The minister will do that. That will then go to the Joint Standing Committee on Delegated Legislation, which will cast its eye over it and make its judgement about whether it should proceed.

Hon MARTIN ALDRIDGE: I take the point. At the end of the day, the chamber has taken decisions before about regulations that have been lawfully made and has allowed or disallowed them. Our decisions are not going to rise and fall on whether the minister's decision is lawful, although it is helpful when it is not lawful, because it is much easier to disallow. I just think that those words are not necessary. It states —

> The Minister can make an order under subsection (1) only if each of the following conditions is satisfied —

It then has two conditions. I would have thought that those words were superfluous, but I am not going to move an amendment.

Hon AARON STONEHOUSE: Just to pick up on the comments made by Hon Martin Aldridge, in his remarks during the second reading debate, he pinned down one of the problems with the broadness of proposed section 10.3(2)(b); that is, it makes it non-justiciable. It leaves it wholly to the discretion of the minister, so the avenues for appeal by anyone who may have an issue with an order made under proposed section 10.3 are rather

limited. It leaves it solely to Parliament to ensure that orders made under proposed section 10.3 are practical and just and are in keeping with the objects of the legislation.

My question goes to proposed section 10.4 in clause 4. Before I get into my main critique of proposed section 10.4, I would like to clarify something that was mentioned in the minister's second reading reply. Local governments do not currently have the power to suspend local laws. They do not have that level of discretion under the Local Government Act 1995. I accept that assertion on face value; I am happy to accept that that is the case. As I pointed out in my second reading remarks, I am not intimately familiar with the principal act; however, it sits in somewhat contradiction to advice I was given during my briefing on the bill that local governments are currently exercising a level of discretion and are ignoring—in effect, suspending—aspects of local law. I do not have a particular issue with that. I think local governments should have a level of discretion. They obviously have limited resources. A local government obviously has only so many rangers available to it. They have to be directed to target the priority areas of law enforcement for their local government area. Does the minister care to respond to that seeming contradiction that, at law, they do not have that level of discretion; however, they are currently, in practice, exercising that discretion?

Hon SUE ELLERY: It is correct that they cannot already suspend. However, if they wanted to no longer apply a particular part of a local law, they could draft a brand-new law with the bits they do not want to apply anymore taken out, and put that brand-new local law through the process—the Joint Standing Committee on Delegated Legislation et cetera.

I am not in a position to comment on what advice the member may or may not have been given during the briefing, unless there is further advice to me.

Hon Aaron Stonehouse raises the threshold issue and asks: do they have the power currently to suspend? No, they do not. If they wanted to change something about it, they would start the whole process again with a new local law that did not include whatever the offending bits were within it. Obviously in the current circumstances of a state of emergency, we want local government to be a lot more agile and a lot more flexible than that.

Hon AARON STONEHOUSE: I accept the key policy objective here, which is to remove a level of red tape involved in amending local law when we are in a state of emergency. Six weeks of consultation to amend the local law would be inappropriate at this time. We need local governments to be agile in their response. I am willing to accept the process that has been proposed—that is, that a local law be suspended by mere resolution. I am willing to accept that process in place. However, I still take issue with the lack of oversight involved in that process. The only level of oversight provided is the local government giving a copy of the resolution to the minister. From there, the minister could file it away and not tell anybody else. There would be no further oversight beyond that. It would be published on the local government's website. The minister would be informed, but there would otherwise be no parliamentary oversight. In my second reading contribution, I outlined that I see this as an undermining of the primary role of Parliament, which is to be a lawmaking body. It is the body with legislative power and it delegates that legislative power in certain circumstances, but it always comes with strings attached. One of those strings is that typically Parliament retains a veto power, in effect, to disallow regulations or local laws in those instances in which it has delegated its legislative power to a subordinate or other agency or body. The minister in her second reading reply responded to my concerns about that by saying that such an objective is not sound because the local law that a local government seeks to suspend has already been determined by Parliament to be sound; therefore, we do not need additional parliamentary oversight or scrutiny of the suspension of that law because Parliament has already agreed to that law. Okay, sure—but Parliament has agreed to that law in an affirmative sense. We want that law to be the law; we want that local law in effect. That is the decision Parliament has made. Parliament has not yet made a decision that it wants to repeal, suspend or modify that law. Indeed, if a local government wants to repeal a local law, it does not get to just do it. It has to come back to Parliament to seek approval from Parliament to do that. If it wants to modify that local law, it has to come back to Parliament.

I am sure it will be pointed out that this is merely a suspension. We are not repealing or modifying; we are only suspending, and it is for only a fixed period—for as long as the emergency period lasts. But what is a suspension? In effect, we are repealing for a limited period. It will come back again later, but the law Parliament has approved, the law that Parliament has deemed to be sound, will not have effect for that fixed period. It has the same legislative effect as modifying or repealing or, indeed, writing a new law. If members accept that premise—that the effect is the same—we must consider it to be an exercise of legislative power. If it is an exercise of legislative power, it should have the same level of scrutiny applied to it. I am not talking about the scrutiny that is exercised at the local government level. I am happy for that to be dispensed with and I think it is appropriate that the six weeks' consultation is done away with in those cases. However, as a Parliament, when we delegate that power, it is our responsibility to ensure that that power is exercised appropriately. The only way we can do that is when the local laws are tabled in the house and gazetted and we have the capacity to disallow them if we think it is appropriate.

My argument is that the suspension is an exercise of legislative power, just like a repeal, a modification or a new law would be. If members accept that premise, they really should see the merit in the objective of my amendment.

Members will note that my amendment mirrors the provision in proposed section 10.3(4). It is exactly the same, but in this case rather than applying to orders and treating them as though they are regulations, we would be applying section 42 of the Interpretation Act to resolutions made by a local government as if they are local laws. Therefore, I move —

Page 5, after line 8 — To insert —

(8) The *Interpretation Act 1984* section 42 applies to a resolution made under subsection (1) or (4) as if the resolution were local laws made under this Act.

Hon SUE ELLERY: As I indicated in my reply to the second reading debate, the government cannot support this amendment. I think the critical word the honourable member used in his advocacy just now in support of his amendment was "typically". He was quite right when he set out the process by which typical parliamentary scrutiny is applied to local laws. However, we are not in typical circumstances. That is the whole purpose for today's unusual sitting and for the arrangements we have in place about how we give consideration to important legislation. We have applied to ourselves a different set of rules because we are dealing with an extraordinary set of circumstances and we are in a state of emergency. That is point number one. I agree with Hon Aaron Stonehouse when he describes the typical normal process under which parliamentary scrutiny applies.

It is also important to note exactly what the terms of reference of the Joint Standing Committee on Delegated Legislation do and do not do. In consideration of a local law, the committee looks at whether that local law is within power, has no unintended effect on any person's existing rights or interests, provides an effective mechanism for the review of administrative decisions, and contains only matter that is appropriate for the subsidiary legislation. It does not look at the merit of the particular policy component within the local law.

The second point I made reference to when I touched on this amendment in my reply to the second reading debate was that the amendment as drafted does not have the effect the honourable member would like it to have. The amendment as it stands requires the resolution to be tabled once it is gazetted. There is no requirement for gazettal. The requirement is for notification to be provided on the local government's website and for a copy to be provided to the minister. Frankly, if we were of a view to support the policy of the member's amendment, we could probably fix the second part, but we are not of a view to support the policy of the amendment because we are dealing with atypical circumstances. We are dealing with a different set of arrangements.

What we are doing is enabling local governments to act swiftly—to have the flexibility to quickly deal with a local law that might of its very nature make it impossible for them to respond appropriately to the needs of their local community in a state of emergency. Applying the same length of time to the process in the normal way that local laws are dealt with would not have that effect. What we are trying to do, and what local governments want us to do, is to help them be able to act swiftly, to be flexible and to act with agility to meet the needs of their communities. For those reasons, the government will not be supporting the amendment.

Hon DONNA FARAGHER: I am trying to work through the workability of the requirement that is being proposed. On face value, as I have indicated behind the Chair to Hon Aaron Stonehouse, I understand the reasoning and why the member wants to put it forward, but I am trying to get an understanding of, I suppose, its workability. We have a number of local governments in Western Australia, and it would obviously depend on the local government in question, but do we have an idea—it may be just an estimate—of how many local laws may be suspended; and, if that were the case, how many could then end up being considered by the Joint Standing Committee on Delegated Legislation? I suppose I am trying to work through whether that process would be workable.

Hon SUE ELLERY: There are a number of local laws that could be impacted across the 137 local governments. For example, all regional local governments have a cemeteries local law. Local governments could require the suspension of access times to cemeteries. Most local governments have parking local laws. Many local governments have activities on thoroughfares and trading local laws. Some also have urban environmental and nuisance local laws, which deal with delivery times, for example, and—this is another person who was studying to be a doctor—there are also local laws around public places and local government property. We can see there is potentially a significant number of them.

Hon DONNA FARAGHER: I mentioned this point very briefly in my second reading contribution, and I asked similar questions in the briefing, which was provided by the government earlier this week, about why this section is different from proposed section 10.3. I would like to have my understanding confirmed, because I do not think the Leader of the House responded to this in her reply. As I understand it, if the Minister for Local Government receives a change and is not satisfied that the suspension is related to the pandemic, the minister, in fact, has the ability to override that suspension, and that can be done under provisions within the act. I think that is under section 9.60 of the Local Government Act. I think it is important for us to understand that there may be another process through

which people can raise concerns, and I presume it would be directly to the minister, who could then consider it as well.

Hon SUE ELLERY: If the minister considers, or it is brought to the attention of the minister and the minister is asked to consider, that a suspension is not for the purpose of responding to the COVID-19 pandemic, the minister could issue a direction requesting that a local government reinstate the local law or lift the suspension on parts of the local law. Alternatively, a regulation could be drafted that operates as a local law using the current provisions in section 9.60 of the act.

Hon DONNA FARAGHER: I think Hon Charles Smith in his second reading contribution—forgive me if it was not Hon Charles Smith—referred to the fact that a local government could just put the notice somewhere on its website, which might be difficult to find.

Hon Sue Ellery: As opposed to the front page.

Hon DONNA FARAGHER: Yes, that is right. Is there a mechanism to allay a legitimate concern that has been raised? Should this legislation pass, can the minister make a request or requirement that should any suspensions be made, they are placed somewhere very clear—not necessarily on the front page, but it may well be so—so that anyone who takes an interest in this will know that a particular suspension has been made? If we could get an undertaking, I think that would be helpful.

Hon SUE ELLERY: I am happy to give an undertaking. I have just asked for advice about whether that is a reasonable undertaking that I can give. I give that undertaking that I will raise that with the minister and ask that he ask local government authorities to ensure that notice of any such suspension is easily found and easily visible on the local government authority's website.

Hon AARON STONEHOUSE: I would like to respond to some of the concerns outlined by the Leader of the House just now by clarifying, firstly, that the Leader of the House pointed out that the Joint Standing Committee on Delegated Legislation does not look into the merit of a local law. That is true; it is not in the standing orders, as far as I can see. However, the Parliament and this chamber in particular has taken a view on the merit of delegated legislation, regulation and local laws and has at times moved to disallow them. I have utmost faith in that process; this chamber is rather proactive when it comes to scrutinising delegated legislation. It may indeed be the case that the Joint Standing Committee on Delegated Legislation would not have ample time to consider local laws being suspended if my amendment were successful. However, it is not clear to me at this time that the Joint Standing Committee on Delegated Legislation is obligated to look into every local law or every regulation that is tabled—I could be wrong—but it is a function of that standing committee. Perhaps, if there is a member available who has some experience of that committee, they can correct me if I am wrong.

The Leader of the House critiqued my use of the language that in typical scenarios, we would have a level of parliamentary scrutiny of local law, but that this is an emergency, so normal circumstances do not apply. The normal level of scrutiny does not apply here. I am willing to concede that to an extent, but what I am proposing is not necessarily the normal level of scrutiny—just the absolute bare minimum, at the very least, to have local law suspensions tabled. That does not mean that they will be forensically analysed and scrutinised to the same degree that any primary legislation would be, but they would at least be tabled, and Parliament would perhaps have an opportunity, if it were sitting at the time, to move to disallow if there was a suspension that did not have merit, was deemed to be unjust or impractical, or was absurd for some other reason. It would not be ideal. It is not the level of scrutiny that I would like; it is merely the bare minimum. It is the bare minimum that has been insisted upon in proposed section 10.3 for the minister when he exercises his far, far broader powers under that proposed section.

The Leader of the House raised a critique about my amendment—that the resolutions would not be gazetted; therefore, what I am asking for would have no effect. If the resolution were not gazetted, there would be no tabling and there would be no disallowance. I disagree. I think that section 42(1) of the Interpretation Act is implicit enough about a need for gazettal. I think a reading of that would imply pretty clearly that the resolution would need to be gazetted as if it were a regulation, which is defined under section 42 of the Interpretation Act as including local laws. It would need to be gazetted and once it was gazetted, it would need to be tabled and be subject to disallowance. As I said when I rose a moment ago, I think this is the very least we can do. I do not think anyone is questioning my claim that it is an exercise of legislative power. If it is and we are doing away with most of the oversight that would normally be provided for and insisted upon if legislative power is being exercised, this amendment would retain the absolute bare minimum, which is to give Parliament the power to veto that exercise if it deemed it necessary.

Hon MARTIN ALDRIDGE: I want some clarity around this issue. I think the minister or the department is best placed to provide this advice. I understand that local governments do not have the power to suspend local laws. They have the power to revoke a law, and I understand that that is subject to a process similar to, if not the same as, making a local law, which requires the local government to consult and things like that. If a local government decided that

a local law was simply no longer required on its statute book and should be revoked, would that decision be disallowable by Parliament? Could the revocation of a local law, as opposed to amending the substance of a local law, be disallowed by either chamber of Parliament?

Hon SUE ELLERY: The current process for local governments to make a local law is the same process as required to revoke a law—that is, making a draft, providing public notice and a six-week submission period, sending a copy of the proposed law to the relevant minister, considering any submissions received, making the local law, publishing it in the *Government Gazette*, and providing the local law and explanatory material to Parliament. That is the process, and the same process applies when revoking a local law.

Hon MARTIN ALDRIDGE: Would the revocation be disallowable as well?

Hon SUE ELLERY: That is what I am advised; yes.

Hon DONNA FARAGHER: On the basis of the information that has been provided by the minister on the technical elements of whether the amendment achieves what Hon Aaron Stonehouse seeks to achieve, as well as having some concerns about the workability of it, I indicate that the opposition will not support the amendment.

I appreciate the minister agreeing to put a request to the minister in the other place that local governments place a suspension notice prominently on their website. One thing that is within the minister's power is his department's own website. It may be prudent, given that the minister will receive a copy, for the department's website to very prominently display a list of all suspensions that are provided to the minister. That would be one reference point for everybody, including members of this chamber who are taking an interest in this. Instead of having to trawl through every local government authority, a central point for that to occur would be useful. If the Leader of the House will relay that to the minister, I will inform our shadow minister in the other place of this request and suggest that a conversation needs to be had between the minister and the shadow minister. I think that would be useful.

Hon SUE ELLERY: I think that is an eminently sensible proposition and I am happy to take it up directly with the minister.

Amendment put and negatived.

Clause put and passed.

Clause 5 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by **Hon Sue Ellery (Leader of the House)**, and passed.