LOCAL GOVERNMENT AMENDMENT BILL 2023

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Steve Martin) in the chair; Hon Jackie Jarvis (Minister for Agriculture and Food) in charge of the bill.

Clause 1: Short title —

Committee was interrupted after the clause had been partly considered.

Hon MARTIN ALDRIDGE: I assume that we do not have an update on the regulatory matter.

Hon Jackie Jarvis: I am told that it will be after the dinner break.

Hon MARTIN ALDRIDGE: Okay. The other issue I want to canvass at clause 1, and only because it relates across the bill, is the tiering of local governments. If I heard correctly, without the benefit of the uncorrected *Hansard*, the minister mentioned in her second reading reply speech that it was the government's intent that if the Salaries and Allowance Tribunal were to change its approach to the tiering of local government, the regulations that effectively mirror the tiers would be adjusted. Noting that it is really just a policy intent, not a legislative intent, will the government's codification of local government match that of the Salaries and Allowance Tribunal? Is what I have taken from the way the minister referred to that issue in the second reading debate correct?

Hon JACKIE JARVIS: I am advised that the regulation will be reviewed from time to time, particularly when there is a change by the Salaries and Allowances Tribunal, and it will be a change via regulation, which offers greater flexibility.

Hon MARTIN ALDRIDGE: Therefore, the intent is that the tiering model will effectively be one and the same except for the fact that there will be scope for it to be different and in the future the tribunal could take a different approach. I think I mentioned in my second reading contribution that at one point the Salaries and Allowances Tribunal established eight tiers of local government. I did not look back and do an extensive research project on the Salaries and Allowances Tribunal's determinations on local government, but I at least established that not that long ago there were eight tiers and there are now four. In the meantime, the policy intent is that the government's codification of tiers of local government, at least initially, will mirror the tribunal, notwithstanding that the government and the tribunal may well form different views in the future. There is no hard link between the bill and the codification that it will enable any future decisions of the tribunal.

Hon JACKIE JARVIS: Yes, that is correct.

Hon MARTIN ALDRIDGE: Can the minister elaborate any further on the way in which the Salaries and Allowances Tribunal currently codifies, and has in the past codified, local government into four bands? I understand that it is more than a measure of population; it is an assessment of other factors. It is relevant because some of the decisions that flow from the policy initiatives in this bill relate to that banding structure, and it comes up in the bill quite a few times. I want to get an understanding, or an appreciation, of that because it is not obvious. The current determination on local government basically sets out four bands based on a number of measures, and we do not really get any greater understanding than that. Is the minister in a position to elaborate on what in the tribunal's determination constitutes a band 1 local government versus a band 4 local government?

Hon JACKIE JARVIS: I am advised that the Salaries and Allowances Tribunal sets out in considerable detail its determinations and publishes the discussion material, but I am happy to provide a fuller response after dinner. We will get those details and the exact wording.

Hon MARTIN ALDRIDGE: Minister, that will be helpful because, as I said, there are many steps throughout the bill that relate to the tiers and I think it is important to understand that when we talk about tier 1 versus tier 4 local governments. On this note, we have touched on the changes to the number of elected members a couple of times. It might be the only provision that deviates from this banding approach and goes for a more arbitrary number—that is, zero to 5 000, 5 000 to 75 000 and 75 000-plus. Am I correct in my assessment that that is the only initiative in the bill that deviates from the banding approach and simply assesses local governments by, I assume, population? Could the minister check that for me?

Hon JACKIE JARVIS: The member is correct that it is by population. However, I am advised that SAT also considers population when considering banding.

Hon Martin Aldridge: Yes, but that is only one of the things that it considers in its banding, I'm pretty sure.

Hon JACKIE JARVIS: I am not quite clear on the member's question. The Salaries and Allowances Tribunal sets out the banding structure and, yes, it considers population, amongst other things. As the member pointed out, the act determines the number of elected members by population. I am not exactly sure what the question is.

Hon MARTIN ALDRIDGE: I am trying to understand why, at several points in the bill, we categorise a local government effectively by its SAT band. From my understanding, a SAT band is based on an assessment that is more than population, yet at this point in the bill, where we are determining whether a local government should have seven or another number of elected members, we are reverting back to a population figure, perhaps discounting those other factors that are considered in the context of a SAT classification. I hope that clarifies where I am going.

Hon JACKIE JARVIS: The member is correct that the number of elected officials is directly linked to population. That is because population is considered the key consideration to ensure representation along the lines of the way we use population to determine state and federal representation. In that regard, yes, it provides an easy mechanism so we can see whether an LGA will go into the next population tier.

Hon MARTIN ALDRIDGE: Perhaps I could conclude with a couple of comments on this issue, because I think we can explore it more deeply when we get to the clause. If we are dealing with the question of how many elected members are sufficient, the government could obviously adopt the approach it has taken, which is to go for an arbitrary population number. I will flag when we get to the clause that I would like to understand what is the population figure that is used to determine the classification of a local government. I would have thought other indices such as remoteness, geography and the number of communities would be considered. I would have thought a bunch of other factors would be contemplated in, effectively, the design of an electoral system that elects council members to represent the community rather than using just a blunt instrument, which is population.

I said in my contribution to the second reading debate that I guess we will deep dive into this issue more when we get to the clause; even the numbers are significant. It is zero to 5 000, then 5 000 to 75 000 and then 75 000-plus. There are some really big leaps. There could effectively be a council of 5 005 people and another of 74 998 people, and they will be limited to the same number of elected members. I wonder whether there might have been some consideration of perhaps another step, particularly between the 5 000 and the 75 000. I am happy for those points to be taken on notice and, when we get to the clause, those are the sorts of issues I want to consider a little bit more deeply.

Hon NEIL THOMSON: I think it is worthwhile addressing this, now we are on the subject. I know we will get to it in more detail but I want to touch on the issue of population a little bit more in the clause 1 debate, simply because it is hot off the press. It is curious that we have a process by which SAT determines the bands and obviously has a thoughtful process of taking in a multifactor assessment to determine the bands. I hear regularly in my region about how complex those local governments are and the types of issues that have to be addressed by local governments, vis-a-vis the issues that might be addressed by a metropolitan local government. I particularly note some of the commentary in the panel report on COVID and the issues there.

I will highlight a second part before I get to my question. It is also inconsistent with the views of the Western Australian Electoral Commission if, for example, we look at the issue of regional representation. We are currently undertaking a review at state level of the number of seats that will be applied to those regions. We assess it on the number of electors who are registered. Those who have taken the time to look at the submissions on the Electoral Commission's website will see I have made a short submission on the matter because I have put some thought into it. It is important to make the point that there is a very big discrepancy in the population of a region and the number of registered electors—the proportion—and the population of an urban seat and the number of registered electors. I think that is a fundamental problem that, unfortunately, the gentleman Professor Phillimore who was on the local government panel failed to address with the others who were part of that process of the electoral reform review. They failed to consider that there is a fundamental breakdown at the state level in making sure as high a proportion as possible of eligible electors is actually registered on the roll. That is creating a serious problem going forward. In that respect, by using population, I think the bill before us is somewhat better than using the assessment of registered electors at the state level. We look at the registered electors. I think it is really important for the chamber to understand the difference between the state and what is being proposed in this bill. There is an improvement in this bill compared with what the state is proposing. For example, in the seat of the Kimberley, 40 per cent of the population is enrolled to vote. There is a young demographic there at a certain level but it does not account for the fact that only 40 per cent is enrolled to vote. That is what the Western Australian Electoral Commission uses —

Hon Darren West: Is this a question?

Several members interjected.

Hon NEIL THOMSON: If members opposite would just listen for once, they may understand the difference between this bill and what is being implemented by the state. Yes, using population is a good thing as far as that but I ask why we have used just population because I do not think population properly accounts for the complexity when making these assessments, particularly given the dispersed nature of local governments. For example, a local

government like Ngaanyatjarraku is a massive area, yet we have issues around the number of elected members who can sit on that council. It is similarly the case with the Shire of Derby–West Kimberley, which covers a massive area and has complex issues, particularly given the state government's neglect in its disaster response. Why did the minister not consider the State Administrative Tribunal process and bring that more into the open—a stronger set of multi-criteria assessments in terms of how we assess the bands for local governments?

Hon JACKIE JARVIS: I have some notes on this. In the 2020 Local Government Review Panel report, which the member quoted on a number of occasions, recommendation 26 includes a proposal to determine the number of elected member positions based on the population of a district. The Local Government Review Panel proposed that for a population of up 5 000 people there be five councillors; for a population of between 5 000 and 75 000 there be five to nine councillors; and for a population of above 75 000 there be nine to 15 councillors. Through the consultation process and based on requests from the impacted councils received through the public consultation, the proposal was amended to allow local governments with a population of up to 5 000 to decide whether to have five, six or seven councillors. The amended position is five to nine councillors for a population up to 5 000 and five to nine councillors for a population between 5 000 and 75 000—the five to nine councillors accounts for the population difference between 5 000 and 75 000—and nine to 15 councillors for a population above 75 000. The member mentioned the regional perspective. Between 2019 and 2021, a number of local governments followed the example of this requirement and reduced councillor numbers, which reflects this trend. In 2019–20, the Shire of Perenjori abolished all wards and reduced councillor numbers from nine to seven; in 2020, the Shire of Dalwallinu reduced the number of councillors from nine to eight; in 2020, the Shire of Dumbleyung abolished wards and reduced the number of councillors from nine to seven; in 2020, the Shire of Katanning reduced the number of councillors from nine to seven; and in 2020, the Shire of Wagin reduced the number of councillors from 11 to nine. Individual councils will still be able to decide on the specific size of the council within the range. A similar policy principle has been established in the South Australian Local Government Act 1999 with regard to boundaries. I hope that assists.

Clause put and passed.

Clause 2: Commencement —

Hon MARTIN ALDRIDGE: Clause 2 is probably not the neatest commencement clause I have ever seen but nevertheless this is a big bill that will do many things so that is understandable. I want to briefly explore clauses 2(b) and (c). I might start with the easiest one first, which is clause 2(c). It reads —

> Part 3 (but only Division 2) on the day after assent day;

That is clauses 102 to 103 on my assessment, which are amendments to the Local Government Amendment (Auditing) Act 2017. Can the minister explain why these clauses have been set out separately from the rest of that part?

Hon JACKIE JARVIS: I think it is safe to say that this was written by someone much cleverer than me! I am advised that these are consequential amendments that will result in changes to the Local Government Amendment (Auditing) Act 2017. The reason for the number of days after assent is to make sure that it is consistent with that act.

Hon MARTIN ALDRIDGE: That is about as far as I got as well, minister! I think we can probably leave that as it is.

Clause 2(b) is a little more interesting in that it carves out a number of clauses of part 2 —that is, clauses 3, 60, 86, 87 and 99—as coming into operation on the day after assent day. Clause 60 will increase the signatures for special electors' meetings; clause 86 will confer power on the minister to set regulations to determine classes of local government, an issue we have just been canvassing; clause 87, which is an interesting clause that we will come to in due course, will insert a new section to allow the minister to grant exemptions from compliance with the act; and clause 99 will insert transitional provisions to assist in the transition to the new act. The latter one is probably self-explanatory, but how did the government identify the other clauses as a priority for implementation versus others?

Hon JACKIE JARVIS: I am advised that it was felt that those clauses would be required before the October local government elections and that the rest of them, where there is a fixed day, will allow for regulations to be prepared for the other clauses that are not included in part 2.

Hon MARTIN ALDRIDGE: I can understand the local government election impact. One of the reasons that we are trying to move quickly with this bill is to have certainty before October. The main electoral provisions are not with the ones that I have just canvassed. Is that because those electoral provisions require regulations to be made and will therefore be postponed and done by proclamation?

Hon JACKIE JARVIS: I am advised that that is correct.

Hon MARTIN ALDRIDGE: This is my last question on the commencement clause. Obviously, a lot of provisions will be left to proclamation. What is interesting—we will encounter this as we go through the bill, minister—is that the detail is absent in many of the clauses because it will be a matter for the regulations. Because of the

extensive public consultation that has occurred on this reform process, we at least have an understanding of the intent—I would probably go further and say the agreed intent of the government with respect to regulation-making. Often we engage on a bill and everything will be speculation because it will be a matter of future government decisions as to what the regulations will look like and where they land on certain policy decisions, but to a significant extent this bill is different because we know where many of those landing points are with regulations, which will be useful. Can the minister provide any guidance on when proclamation and regulation making will occur and whether there is a time frame? The easy answer is that it will probably occur before October but I assume it will probably be more near term than that.

Hon JACKIE JARVIS: I am advised that proclamation and the regulations will need to be in place by June 2023 to allow them to be used in the October elections and the rest of the regulations throughout the rest of the year, so things like communications agreements et cetera will be progressed through the rest of the calendar year.

Hon MARTIN ALDRIDGE: I did say that was my last question. June is not far away. Has the drafting of regulations commenced?

Hon JACKIE JARVIS: Yes.

Hon MARTIN ALDRIDGE: That is most interesting. Usually the government's consistent position is that it cannot possibly contemplate regulation making until the sovereign power of Parliament has been exercised and it would not dare second-guess the outcome of the legislature before contemplating regulations. It is good to see that the government can be flexible when it chooses.

Hon Dr BRIAN WALKER: There has been a little bit of confusion on my part because I am not a lawyer, much less a constitutional lawyer. I am led to believe that section 52 of the WA Constitution states —

> The Legislature shall maintain a system of local governing bodies elected and constituted in such manner as the Legislature may from time to time provide.

If that is correct, it is in conflict with what the government has said. It stated —

> Parliament has charged the Minister and the DLGSC with the responsibility for the oversight of local government and the system of local government through the *Local Government Act 1995*.

We either have the legislature, which is not the Legislative Assembly alone but both houses of Parliament, and maintain a system of local governing bodies elected and constituted in such manner as we may from time to time provide. We have been asked in clause 2 to follow on from what the executive has said. This is not actually constitutional. I ask the minister to comment on that please.

The DEPUTY CHAIR (Hon Steve Martin): Just before the minister replies, honourable member, we are dealing with clause 2. The minister can respond but I believe the member is stretching the bounds of the clause 2 debate.

Hon JACKIE JARVIS: I am not sure I have an answer for the member. I have been advised that a group of people who perhaps refer to themselves as sovereign citizens have raised this issue. I have been advised that it is not relevant to clause 2 and it is not relevant in the circumstance.

Hon Dr BRIAN WALKER: I quoted directly from the WA Constitution, brought into contemplation by allowing this rather complex series of commencements to take place. I put to the minister that we ought to be removing this and replacing it with "this act comes into operation after the Legislative Council has formally adopted and implemented recommendation 5 of the report of the Select Committee on Local Government", Hon Simon O'Brien's committee. That says —

> The Legislative Council amend Standing Orders of the Legislative Council to expand the terms of reference of an existing parliamentary committee, or establish a new parliamentary committee, to address issues relating to the system of local government.

It has been noted that this was not rejected by the government in its response to this report.

Hon JACKIE JARVIS: I do not have any constitutional lawyers with me this evening, so I am not able to respond to that question.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 1.3 amended —

Hon MARTIN ALDRIDGE: On initial assessment of clause 4, it looks pretty benign. It states —

> Delete section 1.3(3).

Section 1.3(3) of the act states —

> In carrying out its functions, a local government is to use its best endeavours to meet the needs of current and future generations through an integration of environmental protection, social advancement and economic prosperity.

I guess the government is removing this from the content and intent provision and inserting a similar provision in clause 21 in an expanded form, which we will get to in the fullness of time. Why has the government chosen to split between section 1.3 and existing section 3.1? Is there a reason for the approach, apart from some sort of drafting reason and the way in which the bill flows?

Hon JACKIE JARVIS: I am advised that it is indeed only a drafting change. Part 1 relates to introductory matters, which mostly includes definitions. Part 3 is about functions of local government. Since the new principles are intended to inform how local governments perform their functions, it is appropriate that it be within part 3.

Hon Dr BRIAN WALKER: That refers to a part I mentioned in my second reading contribution. I would very much like a clarification. Again, I must stress that I am not a lawyer but my understanding is that the closer an element is brought to the front of the bill, the more weight it has. The further back we move it, the less weight it has. That is my understanding as expressed to me by a lawyer, not a so-called sovereign citizen. Is this true? Can the minister clarify this for me or am I completely wrong?

The DEPUTY CHAIR: Minister, I am waiting with bated breath.

Hon JACKIE JARVIS: I do not believe that to be true. I think the law is the law.

Point of Order

Hon SUE ELLERY: The honourable member is entitled to ask any questions he wants about the bill before us. The last two questions that he asked actually go to matters way beyond this particular piece of legislation. They go to the Constitution and other matters that might be deemed to be covered by many academic papers that have been written over the years about the role of legislation. I suggest that he seek advice from the clerks about those matters. They really go way beyond what the advisers have prepared to deal with in terms of the bill, with the greatest of respect to the advisers that the minister has with her, whom I know to be great advisers. They really do not go to the clause in front of us.

The DEPUTY CHAIR: After seeking advice, I do not believe there is a point of order but I advise the honourable member that I gave him some leeway on clause 2. I asked him to direct his questions to the relevant clause, and I think that would be good advice for future clauses.

Committee Resumed

Clause put and passed.

Clause 5 put and passed.

Clause 6: Section 1.4A inserted —

Hon NEIL THOMSON: This clause relates to the insertion of the caretaker period. I note that a Western Australian Local Government Association survey indicated a level of support for the caretaker period. I understand the reasons for it. In that survey, 52 per cent of the public supported it and 60 per cent of elected members supported it, but only 40 per cent of staff wanted a compulsory caretaker period because they thought it would be easier to work through it administratively. I guess there was a bit of a division between the staff of local governments and the general public and elected members. I understand some of those concerns. I think a caretaker period is in itself useful to the extent, as with the state government, that major decisions cannot be made by local government when in election mode.

I have a question on proposed section 1.4A(b)(i), which is about when the caretaker period ends. It states —

> … on the day after the day on which the returning officer declares the result of the relevant election under section 4.77 …

That is when the caretaker period ends. Was any consideration given by the minister relating to the swearing-in of councillors? There would potentially be a period of up to three weeks from the declaration of a result to the swearing-in of new councillors. I wonder whether that gap needs to be considered. Was any consideration given to extending the caretaker period until such time as those newly elected council members were sworn-in and were able to meet?

Hon JACKIE JARVIS: As we discussed, the caretaker period was implemented because some local government authorities already had one; it is about providing consistency. I appreciate the question being asked about why the caretaker period ends the day after an election. This is to ensure the smooth running of local government. Local governments have an election every two years, so it could potentially take a significant chunk of time if new councillors had to be sworn-in before the caretaker period ends. The caretaker period provision is to ensure that decisions are not being made that could influence the result of a poll. Once a result has been declared, I think it is

considered that the business of the council can continue with the continuing council members until such time as new councillors are sworn-in. It is about seeking a balance—not shutting down the business of local government for too long and ensuring that decisions being made by councils will not potentially influence polls.

Hon NEIL THOMSON: Thank you. That is very enlightening. The caretaker provision was there only to protect any influence over the result of the election within that close period; it is not there to protect a future council being committed to specific actions by local government staff. Staff could still potentially make decisions that might be within their authority but outside the scope of the caretaker period before the council meets. Is it correct that the minister's purpose was only to protect potential influence at the election?

Hon JACKIE JARVIS: To a certain extent. My understanding was that a significant number of complaints received around local governments reflected the idea that decisions were being made in the period leading up to an election. It is not only to prevent decisions being made that could influence the poll. It is similar to our state government caretaker provisions. They increase public confidence and trust in the integrity of government. However, we did not want to make it too long to prevent local governments from being able to make decisions. It is basically provided to deal with a significant number of complaints and to ensure a statewide standard caretaker period that all local governments will follow. There is current confusion about election periods resulting from individual councils having different policies and protocols for decision-making during ordinary elections. The idea is that local governments should not be making controversial decisions during an election period until the results of the poll are known.

Hon NEIL THOMSON: Could there be a situation in which an election was declared and the next council meeting was not for a couple weeks? It might be possible that staff, without imposing any motivation on them, could make decisions during that period that might not be to the liking of the new council. I am not sure why the caretaker period was not extended until the swearing-in process. I assume the state caretaker period does not end until after the swearing-in of new members, but I may be wrong. Maybe the minister could enlighten me. I wonder why there seems to be a gap. It may even accelerate decisions if there is a particular combination of local councillors who have a very different publicly expressed view from that of the previous councillors.

Hon JACKIE JARVIS: I will just point out that local governments already have elected representatives in place. Elections are every two years. There is a staggered system of councillors, so local government representatives will already be in place.

Hon Dr BRIAN WALKER: I have a quick question: is there a possibility that the majority of a council could be up for election at an extraordinary election?

Hon JACKIE JARVIS: Yes—if multiple councillors resigned at once.

Hon Dr BRIAN WALKER: Would it therefore follow that we ought to have a definition to include extraordinary elections at this phase?

Hon JACKIE JARVIS: I think I know where the member is heading with this. There is no caretaker period for extraordinary elections. Ordinary elections involve an election of half the council, so the campaign is significant and usually across a district. Extraordinary elections usually are often much smaller in scale and the remaining council can continue to operate. It would obviously be an extraordinary circumstance if there were an extraordinary election, and a commissioner may well be appointed in that instance. If a significant number of councillors resigned at once, a commissioner would most likely be put in place to manage the affairs of the local government. With the new backfilling provisions, there obviously will be less need for extraordinary elections. The circumstance that the member mentioned would be quite unusual. It is possible, but we would expect that in the case of large-scale resignations, a commissioner might be put in place.

Sitting suspended from 6.00 to 7.00 pm

Hon Dr BRIAN WALKER: State guidelines for the caretaker period are neither legally binding nor inflexible rules. What is the logic behind local government laws being inflexible?

Hon JACKIE JARVIS: We have taken the opportunity to include this in the bill in response to issues raised by local government. That is why it has been added to the bill. Some local governments were doing it and some were not, so it is to create consistency and respond to concerns.

Hon Dr BRIAN WALKER: Could we make it consistent by making it the same style of regulation as the state regulation? Would that not make more sense?

Hon JACKIE JARVIS: At the state level, it is a convention rather than a law. As I said, we have 139 local governments and it was included in the bill to create consistency. Some local governments were doing it and some were not, so it is to create consistency.

Hon Dr BRIAN WALKER: I take it that the official partners, the Western Australian Local Government Association and Local Government Professionals, have agreed to these changes and they are part of their recommendations.

Hon Jackie Jarvis: Can you say that again?

Hon Dr BRIAN WALKER: Do WALGA and LGPro agree with this and is it part of their manifesto, if you like?

Hon JACKIE JARVIS: I am advised that they were consulted on the provisions in the act and their implementation and no objections were raised.

Hon Dr BRIAN WALKER: I think we will come back time and again to the question of costs. What estimated costs will local governments have to incur to ensure that they abide by this ruling?

Hon JACKIE JARVIS: We are not sure what additional costs a local government could incur around caretaker periods. No-one has raised issues, and we do not anticipate that there will be additional costs with regard to this.

Hon MARTIN ALDRIDGE: I want to ask a couple of questions at clause 6, which is one of two clauses about the caretaker period, the other relevant one being clause 23, which we will come to in due course. I will ask my question at this point to make it easier. The minister mentioned the issue of consistency of caretaker provisions across local governments and indicated that at least one local government has such a thing. Is the minister in a position to advise the chamber how many local governments currently have caretaker provisions and how those provisions might differ from what is proposed in this bill?

Hon JACKIE JARVIS: I am afraid we do not have that level of detail.

Hon MARTIN ALDRIDGE: I appreciate that the minister might not know the precise number, but is the minister aware of whether there are any material differences between what is proposed in this bill and what might already be in existence?

Hon JACKIE JARVIS: I do not have a quantum for the member, but I can tell the member that this has been driven by the fact there have been numerous complaints about inconsistencies between local governments. My understanding is that there are vastly different systems across different local government areas. This is being implemented to provide consistency. I do not have a quantum for which local governments have caretaker periods and which do not.

Hon MARTIN ALDRIDGE: I thank the minister. Does the minister have available to her what has been the experience in other jurisdictions? For example, I understand that in Victoria, local government caretaker provisions are effectively contained within the code of conduct, which provides more of a personal obligation on elected members as opposed to what is anticipated with the caretaker arrangement in this bill. Is this a new initiative in Australia in the local government context or are we following the experience of others?

Hon JACKIE JARVIS: In response to the member's earlier question about which local governments currently have a caretaker period, some examples are City of Perth, City of Fremantle, City of Joondalup, City of Stirling, Town of Mosman Park and Shire of Ashburton. I have not been able to get any advice on which particular states have this provision, but I have been told that Victoria, for example, is looking at the WA proposal. Councils in other states have caretaker periods. I am not aware that we have lifted this provision from any other state, but I am aware that Victoria is looking at the WA provision for consideration, presumably because it has similar issues with inconsistencies.

Hon MARTIN ALDRIDGE: This is one of those initiatives in which the government talks about adopting something that we obviously use at a state level and applying it to local government, albeit at a state level it is a convention. I understand there is no statutory underpinning for our caretaker arrangements at a state level; it is literally a convention that has long existed. The other observation I would make is that unlike our elections, which occur every four years, local government elections occur every two years, with only half of the elected members or thereabouts up for election. There are some obvious differences in comparing local and state jurisdictions. Clause 6 defines the caretaker period and when it would be applied, whereas clause 23 sets out the rest of the meat on the bones with what could or could not be done, and exceptions to those rules. The list of things under the definition of "significant act" nearly all relate to procurement in one way or another, either a financial decision, procurement decision or the making of a local law. There are some other things such as entering into, renewing or terminating a contract of employment of a CEO or a senior employee.

Could I confirm whether a local government would be prevented from having a council meeting during the caretaker period? Would it be prevented from making planning decisions or holding citizenship ceremonies during the caretaker period? Could the minister confirm that these sort of high-level significant transactions, with some exceptions, otherwise the ordinary business of councils, could continue on during that time?

Hon JACKIE JARVIS: The intent is that councils do not make any significant new decisions or actions during the caretaker period. That should not impact day-to-day service delivery. That should continue as usual. Clause 6 allows for local government to continue to work to implement decisions made before commencement of the caretaker period. It is intended that administration of a local government could still do operational things necessary

to continue its delivery of services. The definition of a "significant act" will allow for regulations to provide exclusions. For instance, a local government would be able to enter into routine contract for goods and services to continue daily operations such as renewing the contract for printer servicing or procuring office supplies. A local government could do a "significant act" to comply with the law, a court order or a pre-existing contract. The director general of the Department of Local Government, Sport and Cultural Industries could provide an exemption in an emergency or if there is a significant act for another reason. An example is that a local government might need to urgently enter into a new contract for IT services to address a cybersecurity issue. It could then apply to the director general to seek that exclusion or in case of an emergency.

Hon MARTIN ALDRIDGE: This is probably my last question on this clause. When we look at what constitutes a significant act, we see that it could be one person making the decision, but it is more likely to perhaps be the council itself making the decision, unless there is some sort of delegation in place. What will be the penalty or the outcome of somebody acting contrary to this proposed section? Will a penalty be applied to the person or persons who act ultra vires during the caretaker period? What would that mean in terms of the validation of the decision they made?

Hon JACKIE JARVIS: I am advised that there is not a specific offence in the act; it would be covered under the broader breach-of-act provisions and the council would be deemed noncompliant. With regard to what effect that would have on the decision that was made, it would depend on the individual circumstances. The matter would be reviewed by the department; it would look at such an issue as it would with any other noncompliance under the act.

Hon MARTIN ALDRIDGE: It would effectively constitute a breach and the provisions of the act would be applied. I forget the correct language, but this is in tranche 2 and we are dealing with conduct. Effectively, a person or persons could be reported for a minor breach or a major breach—I cannot remember the exact terminology—or is that specifically in relation to conduct?

Hon JACKIE JARVIS: I am advised that the discussion around minor and major breaches relates to the individual. In this case, it would be a breach by the local government—a case of noncompliance by the local government—and it could lead to the inspector intervening. Obviously, this will be covered in tranche 2 with regard to the powers of the inspector.

Hon MARTIN ALDRIDGE: The second part of my question referred to the validity of a decision that was made. If a local government enters into a contract, for example, that falls within the definition of a "significant act", what is the validity of the contract? Does the contract remain valid notwithstanding that it was entered into contrary to the Local Government Act or would it be subject to challenge and invalidation?

Hon JACKIE JARVIS: I am advised that the bill will not invalidate the decisions made by a council. With regard to whether a contract would stand up, that is more of a legal question under contract law and I am afraid that I do not have the advisers here to answer that.

Hon Dr BRIAN WALKER: Following on from that answer, if this bill were to be enacted, would we then potentially be putting people at risk of losing substantial sums due to the possibility of having legal action taken against them because we have not yet quite found out what the legal situation is?

Hon JACKIE JARVIS: It is important to note that professional CEOs of local governments are well aware that this clause is coming. We think that potential breaches of this proposed section, "Caretaker period", would be extremely rare, and we do not envisage that that would be a major risk.

Clause put and passed.

Clause 7: Section 2.2 amended —

Hon JACKIE JARVIS: I committed to provide some answers to Hon Martin Aldridge before the break. I refer to the local government reform better regulation unit. Earlier today, Hon Martin Aldridge raised questions about whether the local government reforms had been subject to assessment by the Department of Treasury better regulation unit. The Department of Local Government, Sport and Cultural Industries regularly engages with the better regulation unit to ensure that proposals and policies are considered against relevant policies and frameworks. Through engagement on these proposed reforms, it was identified that these proposals do not meet the criteria of "economically significant" as established by the better regulation unit.

I refer to a question about the Salaries and Allowances Tribunal. Each year, the tribunal publishes a determination that includes commentary on its processes and banding model. Page 3 of the 2018 determination, which I will table, includes a detailed list of factors that the tribunal considers. It considers things such as population, total FTE of employees, operating expenditure and three-year average capital expenditure. I will table the full document. Subsequent determinations also mention how the tribunal has considered specific factors, and the 2018 determination also outlines the four-band model that has been in place since 2012. I table that document.

[See paper 2196.]

Hon NEIL THOMSON: I rise to make some comments on this clause and raise a question. Under these provisions, regulations may provide that a district cannot be divided into wards. That is an interesting approach in that it is done through regulation. I note that wards in bands 3 and 4 are being abolished, and I note, as outlined in my second reading contribution, that these changes will compel the Shires of Shark Bay and Menzies to abolish wards. Anybody who has been out into those shires will know that it is an incredibly vast area of distance to travel from one end of the shire to the other. Notwithstanding some of the comments made by other members in this place on wards and their respective shires, those shires in particular cover a considerably vast distance.

I note that some shires have chosen to abolish their wards as part of their response to the communications that were put out for this bill. Certainly, having spoken to people within those shires, whether they streamlined or abolished their wards, I know that they did so under a perception that they were not going to be able to retain them, and they were effectively told what to do by ministerial communication. Notwithstanding all that, I ask: why have we chosen to have a regulatory power to effectively prohibit the establishment of wards? To me, it seems a bit like the minister is wanting to have a bet both ways. At some point, there may be a desire to change those rules by regulation. Shires like the Shire of East Pilbara have representation from Aboriginal communities specific to those regions. There might be small populations in those communities but it is a very distinct representation due to the diverse nature of that shire. I feel uncomfortable about the fact that this change will be set out in regulations and we have not provided any long-term guarantees to those shires, particularly the regional shires. I can understand why the government chose to target certain shires. There has been a bit of campaigning against certain local governments, such as the Town of Cottesloe. I can understand why the government has targeted that particular local government. I cannot say it is justified but there certainly has been a moving away from wards; that seems to be the minister's pet project. I do not really understand why the Shires of Shark Bay and Menzies will be eliminated. Why will this be put into regulations and what guarantees will be provided in the future for our local governments to retain wards in those very disperse shires?

Hon JACKIE JARVIS: Currently only 11 out of 95 band 2 and 3 local governments have wards. There has been a trend of smaller local governments looking to reduce the use of wards. I have a list of some councils that have done that. It was felt that wards increase the complexity of elections. It also requires multiple versions of ballot papers to be prepared, obviously at a cost to the local government, it makes elections simpler and it can deliver savings to ratepayers. There has also been a longstanding myth that ward councillors just represent the electors of their ward, and this is not the case, so we want to make it clear in the Local Government Act that decisions should be made in the interests of all people in the district.

The member gave the example of the Shire of Menzies. At the 2021 election, the Shire of Menzies rural ward was elected with just 26 votes, so 58 of the ward's 114 electors voted at that election. That ward councillor received only 26 votes.

Dividing a district into wards also tends to increase the likelihood that a vacancy will be unfilled and creates a need for an extraordinary election, which is obviously an additional cost to ratepayers. Eight vacancies across six councils were unfilled at the 2021 ordinary elections, so abolishing wards will reduce this risk and the cost.

The Shire of Shark Bay has 489 electors so, again, I am assuming it would have similar issues, with some wards being elected by a very low number of voters. I think this was obviously taken to stakeholders for consideration and that is why we have progressed with that.

Hon NEIL THOMSON: I appreciate the response. I do not agree with everything that the minister said. Reducing the number of electors in some of these wards in those particular shires is probably a function of the unique nature of those wards. There are not too many shires like the Shire of Menzies or the Shire of Shark Bay, particularly given there is a resident population in the town of Menzies.

I also wish to comment on the matter raised by the minister. Of course all councillors represent the whole shire once elected but they bring to the table specific understandings that cannot possibly be brought to the table by anyone else. I would hate to think that the minister has any view like that I just expressed now. For example, I think of those remote communities along the roads out in the East Pilbara. Specific people are represented by a shire councillor who brings specific knowledge to a community like Newman—otherwise, the Newman community may dominate that smaller community. However, I understand that there is an excellent working relationship and the East Pilbara has a great local council. Therefore, my question, which I do not believe the minister has answered, is: why are we choosing to go through a regulatory process rather than hardwiring this into the act?

Hon JACKIE JARVIS: Member, I have a couple of things. East Pilbara is not required to remove its ward system; it is retaining its ward system. It will be done through regulation so that it can be updated if required if anything changes to the tiering system.

Hon Dr BRIAN WALKER: Section 2.2 of the act empowers the minister to recommend changes to the Governor. Has the minister ever made such a recommendation?

Hon JACKIE JARVIS: I am advised that recommendations are made to the Governor via the advisory board. The advisory board would make a recommendation to the minister when a local government comes for a ward review or a representation review. The advice currently is that that happens about six to 12 times per annum. The advisory board makes a recommendation to the minister and the minister then recommends to the Governor.

Hon Dr BRIAN WALKER: In what way has the Governor acted on that advice, please?

Hon JACKIE JARVIS: I am advised that the Governor acts on the advice of the government in a similar way that the Governor does when we are preparing regulations.

Hon Dr BRIAN WALKER: That seems like a perfectly sensible regulation to me. What will proposed section 2.2A add to the existing legislation that we cannot achieve right now?

Hon JACKIE JARVIS: The effect of that provision will be to ensure that small band 3 and 4 councils cannot have wards.

Clause put and passed.

Clause 8: Section 2.2A inserted —

Hon MARTIN ALDRIDGE: The Local Government Review Panel found there was some merit to retaining wards. For instance, with respect to remote communities, it stated —

> … it is important to ensure there is balanced representation on council … local governments in bands 3 and 4 can apply to the new Local Government Commission for wards should it be necessary to enable local democracy in their districts.

Will there be an exemption provision that a tier 3 or 4 local government will be able to seek an exemption from the prohibition of wards?

Hon JACKIE JARVIS: The recommendations of the local government review panel did include a proposed limit to the use of wards in band 3 and 4 councils. With regard to exemptions, there is not a position for exemptions in the bill before us. As we said, there is a trend towards less use of wards in smaller councils. There has been a significant issue with vacancies under the ward system. As I said, only 11 councils at the moment still have wards that would be impacted by this clause. I have been advised that, in some councils, some wards have had vacancies for a significant period. I guess that is the issue we are trying to fix at this stage.

Hon MARTIN ALDRIDGE: I recognise that the bill before us does not have a provision of exemption but it also does not explicitly say that wards in band 3 or 4 councils will be abolished either. That is a matter for regulation. Does the government agree with the local government review panel that there will be circumstances that may exist in remote communities where wards do serve a purpose, particularly to ensure and enable local democracy in their districts, and that a local government should be able to seek an exemption via the regulations?

Hon JACKIE JARVIS: No, we are not considering it in this bill or in the regulations.

Clause put and passed.

Clause 9 put and passed.

Clause 10: Section 2.12B inserted —

Hon MARTIN ALDRIDGE: Clause 10 will effectively insert proposed section 2.12B that goes to the issue of the election method for a mayor or president. I understand that the intention here is that this will apply to band 1 and 2 councils. Can the minister confirm how many councils currently fall within band 1 and 2 that do not currently have a directly elected mayor or president?

Hon JACKIE JARVIS: I will take that question on notice and we will hopefully get it before the end of this evening's session. We are just trying to track down that data.

Hon NEIL THOMSON: WALGA did provide an assessment of that. I understand that there are 24 councils affected by this in one way or another —

Hon Jackie Jarvis: I have been given a response.

Hon NEIL THOMSON: The minister may give a response.

Hon JACKIE JARVIS: A number of band 1 and band 2 councils have already moved to a public vote to elect a mayor or president. Of the state's 23 band 1 councils, 15 already have a directly elected mayor. Of the state's 21 band 2 councils, seven already have a directly elected mayor. For band 1 councils, it is 65 per cent and for

band 2 councils, it is 33 per cent. Of the 22 local governments affected by this change, 18 have resolved to change the method of filing for the office of mayor or shire president prior to the October elections. I hope that assists.

Hon NEIL THOMSON: I thank the minister for providing an update. Her numbers are only slightly different to the ones I have from the Western Australian Local Government Association. I suggest that although a number of shires chose to do this, it was hardly a choice; they were effectively told this was happening and they took a proactive step to ensure that they comply when the changes occur. There will be significant changes. I raised this issue in my second reading contribution, and we have plenty of examples of directly elected mayors not necessarily resulting in the best outcome for governance. The main issue that has been raised with me is that having a shire president elected by peers provides a level of collaboration and cooperation in the council that is beneficial. I think this is an ideologically driven piece by the minister. I do not think there is any logic to it whatsoever. I put that on the record again. I predict that this will result in more conflict between presidents or mayors who may have been elected on a particular platform who fall foul of their council colleagues, about which very little can be done. That can create a more difficult situation. We should trust local governments that chose for their unique circumstances the tradition of electing their shire presidents via those band 1 and 2 councils, particularly band 2 councils because they are often regional centres like Broome, for example, where there has been an incredible wealth of shire presidents. There has been incredible quality and collaboration in our shires and hopefully that will continue regardless of the model and the fixation of the minister on a particular issue.

I note we are again using regulations to drive this process, contrary to the panel recommendation on their use. What guarantee have the people of Western Australia, and in particular local governments in band 3 and 4 councils, that there will not be a regulation passed under the cover of the regulatory process and we do not see this fixation by the minister continue to be promulgated in the scope of the so-called reform?

Hon JACKIE JARVIS: This is not a fixation of the minister. Ratepayers in large local governments have indicated they would prefer directly electing mayors and presidents. I am advised that ratepayers support this change. When councils have put this to the ratepayers, it has always been overwhelmingly supported. This is not just one person's fixation; this has been supported by the general public.

Does the member's question relate to why we are doing this just for local governments?

Hon Neil Thomson: Why are you doing it by regulation?

Hon JACKIE JARVIS: It is the same answer we gave previously, and that is because it is linked to tiering so that any changes to the tiering system can be done by regulation. Everything linked to those bands is done by regulation and is linked to that tiering system.

Hon Dr BRIAN WALKER: Did the local government review panel actually recommend this change?

Hon JACKIE JARVIS: I am afraid I do not have that information to hand, member. As I indicated earlier, a number of reports were considered for the whole raft of these reforms. This obviously was taken to public consultation and numerous submissions were received. I do not have information on what that panel reported on, but I referred to a number of different reviews that were considered.

Hon Dr BRIAN WALKER: I take it the same answer will apply to the next question: did the Select Committee into Local Government recommend this change? I will assume it will be the same answer, by interjection.

Hon Jackie Jarvis: Yes.

Hon Dr BRIAN WALKER: When it came down to the question of moving to directly elected mayors or presidents, who actually recommended that change?

Hon JACKIE JARVIS: I am advised that there is incredibly strong support for it amongst the general public, and every time it has been put to a vote in larger local governments, ratepayers have supported this change. This was one of the reforms that were put forward, and as I said, it went through the consultation process.

Hon Dr BRIAN WALKER: I thank the minister. In my contribution to the second reading debate I indicated that I personally also prefer the idea of directly elected mayors, but there comes with that a corollary. If this is now established in legislation, future changes could also occur. I am wondering whether the government is considering creating executive powers for elected presiding officers—mayors and presidents. Is the government considering creating executive powers for such elected officials?

Hon JACKIE JARVIS: We are not quite sure what the member is asking, but all the proposed reforms in tranches 1 and 2 have been released in that report and there are no other changes other than the ones that we are anticipating.

Hon Dr BRIAN WALKER: The drift of my question is, in essence, that if we are moving to having presidents and mayors popularly elected, which is not a bad idea, the question then arises that this person is now no longer

an ordinary councillor occupying that office, but a person with an elevated status. With that elevated status, one could probably expect more powers accruing to that individual. Is that a correct understanding?

Hon JACKIE JARVIS: I am advised that mayors and presidents already have a leadership role defined under the legislation, so nothing will change.

Hon MARTIN ALDRIDGE: I am trying to understand the motivation behind this change. I have heard the minister say a few times in response to some of my colleagues that this is almost like a consumer-driven thing; the ratepayers want it, so therefore it is a good thing. It is state budget week and I am sure that most of the electors in our electorates would probably want to pay less tax; that does not mean we should necessarily do that. Most ratepayers and electors probably want less restriction on road speed limits, but that does not mean we should do it. Has there been some research or experience to show that it will deliver more functional, higher-performing, collegiate councils if leaders are elected in this way as opposed to being elected by their peers? This is an interesting exception to the government's narrative on the Local Government Amendment Bill 2023, which has been to almost sync local governments with many of the things the state government does, assuming that state government actions are the right ones. This is an exception to that rule, so I want to try to understand the motivation for moving this way.

Hon JACKIE JARVIS: I cannot point to a single report other than obviously there have been numerous reviews and significant public consultation around these reforms. There are levels of dysfunction across many areas of local government. That is what the reforms will correct. A large number of local governments already have directly elected mayors and presidents. These reforms will bring consistency to those larger local government areas so that we have consistency across the board. As I said, there is significant public support for this and it has been through an extensive public consultation process.

Hon MARTIN ALDRIDGE: It does not fill me with confidence that we should proceed in this way, particularly in the context of the sector actually opposing this and the lack of the government's ability to substantiate the need for this reform. I think I heard comments during the course of the second reading debate, including the comments of Hon Steve Martin earlier today, that this could actually lead to greater dysfunction amongst some councils rather than the opposite. I think that having an elected member, a leader of a council, who is accountable to their fellow council members delivers a better relationship, in my experience. I have an extract from the City of Armadale's submission to the review panel that says —

> It is further noted that since 2000, the circumstances involving the dismissal of elected Councils have all involved local governments with a popularly elected Mayor or President.

Is the minister in a position to substantiate the extent to which that is the case?

Hon JACKIE JARVIS: We are not able to verify the quote that the member took from the City of Armadale's submission, so I cannot provide commentary on that. There already are a large number of local government authorities that have directly elected mayors and presidents who are accountable to the public in the same way that all elected members are. They are all accountable. We are introducing mandatory live streaming and recording of council meetings, which will increase transparency and hopefully assist in mitigating council dysfunction. But I cannot comment on the particular quote from the City of Armadale's submission.

Hon NEIL THOMSON: When I studied at university, one of the things I was taught was sampling bias and how it can lead people to the wrong conclusions. I think this is a classic example whereby the minister has been so single-minded on this reform that we have ended up with this one-eyed approach to the sample. I quote from the what the member said—or paraphrase it, at least—that whenever the community has voted on this matter, the community supported it. Maybe the minister could have taken the view that the council was able to make a wise judgement about the mood of the community and put it to the community and obviously supported it. It was on the basis of the decision of the particular community and its leadership group that the community acknowledged and supported it. The 20-odd communities that have chosen not to would understand that communities would not support it because they do not support it. They see that there is this collaboration. There has been an amazing lack of evidence. The City of Armadale was laid out as an example of the problems that arise when councils are dismissed. We have not been provided with a skerrick of evidence, other than this sampling bias that has been undertaken by the minister just to prove a point that has already been agreed to.

I put it to the minister again: other than the votes done by councils that have chosen to promote this in their community because they see this as being a positive thing, what evidence is there that this will result in more functional operations for the 20 or so shires and cities that will now be forced onto this pathway of a directly elected mayor?

Hon JACKIE JARVIS: With regard to the City of Armadale submission, I can confirm that the Shire of Donnybrook–Balingup was the council that was most recently dismissed. It had a council-elected president, not a directly elected president. I cannot go back further than that, but I can provide that information. Obviously, there

has been extensive consultation on all the reforms. The minister and the government are comfortable that this is supported by the majority of people in Western Australia.

Hon Dr BRIAN WALKER: It seems that we are offering differing solutions for the same problem—for example, local governments having directly elected mayors. I would not say that is a bad idea, but I would probably guarantee that the government would not suggest that at the next state election the Premier be elected by popular acclaim. There are two very good reasons for that.

Several members interjected.

Hon Dr BRIAN WALKER: That is very well likely. One reason is that the government would not want it because it would want to have one of its own whom it could trust and stand behind, knowing that person better. The other reason is a very sensible one—the direct costs. The Electoral Commission operates on full cost recovery for local government elections. What will be the cost of this change?

Hon JACKIE JARVIS: The reform will give electors in large local governments a direct line of sight of the person who will fulfil this important leadership role. At state and federal elections, voters have clear visibility of who is going to be the Premier or the Prime Minister and they have a clear understanding of the parties and the policies. They know whom they are voting for when they vote for their local member. I am sure the member will agree that there is not the same level of visibility in local government. Ratepayers do not necessarily know each of the candidates or council members and what they stand for. Requiring a public vote for mayor or president will give people a clear and direct choice of the leadership of their council, and we cannot see any additional costs. The main cost in local government elections is sending out the ballot papers. The ballot papers sent out will give people an opportunity to vote for the mayor or the president, so we cannot see any additional costs.

Hon MARTIN ALDRIDGE: On the issue of costs, it occurred to me while listening to Hon Dr Brian Walker ask his questions that in time we will deal with the issue of backfilling, which is primarily to avoid or minimise costs to local government. If we force a bunch of band 1 and 2 local governments to directly elect their mayors and presidents, will that create a situation in which a new election will be needed to replace a person who does not fulfil their term of office, because that will increase costs, or does the government anticipate another way to replace a directly elected mayor or president?

If a local government has elected its mayor or president from amongst its councillors after an election and that mayor or president resigns from office or simply wants to stand down and become an ordinary member again, would they be able to do that under this model? My reading of the legislation is that unless the government is going to draft some sort of special regulations that provide for that situation, there would have to be a new election, and that means costs.

Hon JACKIE JARVIS: I am advised that because preferential voting is part of the reform, the same backfilling provisions for councillors will exist for the mayor or president.

Hon MARTIN ALDRIDGE: The minister might have to assist me—how? Let us say there is a band 1 council that is required to have a directly elected mayor. Hon Neil Thomson becomes the mayor. Two years into his term, he says, "This isn't for me. I'm out of here."

Several members interjected.

Hon MARTIN ALDRIDGE: That was a bad example.

Several members interjected.

The DEPUTY CHAIR (Hon Stephen Pratt): Order, members!

Hon MARTIN ALDRIDGE: Is the minister saying that the backfilling provisions are intended to replace not just ordinary council members, but also a mayor or a president? If, three years into a term, the mayor stands down—another bad example. If it is two years into a term, will they need to call the mayor who did not win and say, "We've got a job for you"? If it happens in the third year, will they be off to an election? I must have missed the nuance there. I thought backfilling was simply for elected members or ordinary councillors, and it has to be a direct election for a mayor or president, but I now hear that the backfilling arrangements will apply in the same way to a mayor or president. That obviously assumes that there was more than one nomination for the position as well.

Hon JACKIE JARVIS: The same backfilling provisions will apply. If a mayor or a president resigns in the first 12 months, the backfilling provisions will come into play. If it is in the second year, an acting mayor or president can be appointed because there will be another election at the two-year point. The backfilling provisions are the same as for councillors.

Hon MARTIN ALDRIDGE: Let us say that a person lives in a tier 1 local government that needs to have a directly elected mayor, and there are two nominees for that position. In my experience, there is often not a laundry list of nominees for the position of directly elected mayor. One of the nominees is a good candidate and gets 10 000 votes, and the other is a dud and gets 10 votes. The candidate who gets 10 000 votes is clearly elected, but six months in they have a family emergency or health crisis and decide to leave. What will happen then?

Hon JACKIE JARVIS: The backfilling provisions will apply. The scenario that the member gave is highly unlikely, but it could happen. It is also highly likely that the second person would have also run for council and would already be a councillor—in the Shire of Menzies, perhaps—so the backfilling provisions would then apply.

Hon MARTIN ALDRIDGE: In that case, the council could end up with a dud mayor. In the example that the minister just gave, the person might already be an elected member. That is a real possibility. As I understand it, a person could run for council and also for the position of mayor. If the council member were to backfill the position of mayor, would there then be a double backfill? Is that what would happen?

Hon JACKIE JARVIS: In the scenario that the member gave of only two candidates, if they have not exhausted the backfilling provision, the councillor would move to the position of mayor and other people would be able to be backfilled into the councillor position. No. I need to get more advice. I have given the member wrong information. I apologise. There are two separate election processes. A person who has run for mayor and also run for council but has been elected only to council cannot backfill as mayor. I am advised that they could go to an extraordinary election if the backfilling has been exhausted. I apologise for that misunderstanding. I need a whiteboard!

Hon MARTIN ALDRIDGE: We now have three candidates for mayor. That is not unbelievable. The first gets 10 000 votes and is elected to mayor. The second gets 5 000 votes and is elected to council. The third gets five votes. The popular mayor then pulls out after six months because of a family emergency. However, the next person, who received significant support from the electorate but was not as popular as the popular mayor, cannot fill the vacancy of mayor because they have been elected to the office of councillor. In that circumstance, the backfilling would go to the candidate with five votes. If that is where we are at with clause 10, this is going to be a disaster.

Hon JACKIE JARVIS: The member is correct in that scenario. The third candidate would backfill as the mayor. I am advised though that obviously this would be for only tier 1 or 2 councils and it would be a very rare scenario. It is very rare for a mayor to resign before 12 months.

Hon TJORN SIBMA: It would appear that I have entered proceedings at an interesting juncture in the debate. With all the best intention of the world, I think the intent of the drafters behind the operation of this provision is well understood, but through the minister I would encourage representations being made to the relevant minister to apply some political logic to this kind of scenario, because there might be around 40 band 1 or band 2 local governments for which this would apply. I think the kind of very reasonable hypothetical scenario that has been laid out is one that we can anticipate, and the kinds of outcomes that the minister is relaying to the chamber that would arise are, frankly put, completely and utterly unacceptable, bordering on the ridiculous. I might encourage the minister to reconsider this and provide some clarification to the chamber at another point

Hon JACKIE JARVIS: I thank the member for his comments. I am happy to take that on notice and raise the issue with the minister. I am advised that the advisers can only remember one occasion in the last decade in which a mayor resigned in this scenario, and that was due to being elected to federal Parliament, I believe. I am happy to speak to the relevant minister. I assume we are not going to race through the rest of the clauses this evening, so I will see members here tomorrow for the response.

Hon NEIL THOMSON: I would like to add my weight of voice to this issue. I would not say it is bordering on ridiculous—this is ridiculous. Let us take the Shire of Derby–West Kimberley. I think the population is 5 500, it might be 7 000; I do not know, but it is a very small number that creeps into band 2. It is a small shire that has a collegiately elected shire president. I hope the Western Australian Local Government Association and people in local government land are watching this, because this is really serious. It is quite likely that at the next election there will be one or two candidates for mayor, possibly two. We have had a situation in which a couple of popular councillors who do a lot of hard work put up their hand and decide to go head-to-head. Often people have a nod to each other and say, "You have a go." That is fine because there is an expectation of filling that position if something happens. This is what collegial government is all about. We could end up in a situation with someone with one vote. It could be the most outrageously radical or ridiculous person coming third or fourth at the recount because the other ones are already elected to council.

This is an outrageous provision. I guarantee that not a single member in this place knew that this is how the provision will work. I would like members opposite to comment on it. This is outrageous. If the Western Australian Local Government Association had comprehended this, I do not think it would have supported it. We cannot possibly support this provision. I cannot vote for it. I will be saying no when it comes the vote on this clause. It is

outrageous and it cannot be supported. I ask the advisers who are watching right now to get down here and make a commitment. The question is: will the minister's advisers come into this place and advise the acting minister on this matter in order to put forward an amendment to remove this provision so that we can make sensible government for future generations of local government?

Hon JACKIE JARVIS: I am not the acting minister; I am the representing minister. I have already committed to speak to the relevant minister on this matter.

Hon Dr BRIAN WALKER: Moving back onto topic, can the minister advise whether the Western Australian Electoral Commission will be able to conduct these elections along with the scheduled elections later this year?

Hon JACKIE JARVIS: Yes; the WA Electoral Commission has been consulted throughout this process.

Clause put and passed.

Clause 11 put and passed.

Clause 12 put and passed.

Clause 13: Section 2.17 replaced —

Hon Dr BRIAN WALKER: Perhaps this is a minor point, but what is the difference between election day and ordinary election day?

Hon JACKIE JARVIS: I am advised that an ordinary election is the two-year cycle of elections and election day refers to an extraordinary election or when an election has been deferred for some reason.

Hon MARTIN ALDRIDGE: Clause 13 is quite a substantial clause. In addition to the new section, "Terms used", it includes the new section, "Population estimates", which then flows into "Members of council where mayor or president elected by electors" and "Members of council where mayor or president elected by council". These are the provisions that effectively put limitations on the number of elected members based on the population size of a council. It is in this part of the bill that we deviate from the Salaries and Allowances Tribunal–banded approach and shift to population estimates. Perhaps we can start with the population estimates. Proposed section 2.16B(1) provides for a power via regulations that —

> The Governor may … by order —
>
> (a) specify an estimate of a district's population; and
>
> (b) provide that the specified estimate is taken to be the district's population for the purposes of sections 2.17 and 2.17A.

We will come to those proposed sections shortly. Proposed section 2.16B(4) states —

> Before making a recommendation under subsection (1), the Minister must consult the Government Statistician.

The proposed section continues. I have a couple of questions I can ask here, but I will start with the obvious ones. The population estimate will be done in this way, whereby the minister will have a chat to the Government Statistician and then ask the Governor to make an order. What alternatives were contemplated to estimate population within a local government district?

Hon JACKIE JARVIS: Just to be clear, the timing reflects the use of Australian Bureau of Statistics data. The Government Statistician refers to the use of ABS census data, so the five-year provision is obviously for new population estimates that will be made through census data, if that assists.

Hon MARTIN ALDRIDGE: Not exactly. I do not see the direct link to the census data. For example, proposed section 2.16B(8) states —

> ***Government Statistician*** means the Government Statistician appointed under the *Statistics Act 1907*.

Is that a commonwealth act? My understanding is that the state has a Government Statistician. I think that person sits as a commissioner on the Office of the Electoral Distribution Commissioners. Is that a commonwealth act? Usually, it will stipulate if it is a commonwealth act and that is a reference to some senior office holder within the ABS.

Hon JACKIE JARVIS: I am advised that there is indeed a state act, and there is indeed a WA Government Statistician. They provide advice to government outside this act; they also provide advice when it comes to state election redistributions, but it is my understanding that they provide advice using the ABS census data. That is why it refers to the fact that population estimates will be made every five years. Yes, indeed, the WA state Government Statistician provides advice, but using ABS data.

Hon MARTIN ALDRIDGE: I thank the minister for clarifying that. Obviously, the most obvious dataset will be the one that is available through the ABS.

Before I move on to proposed sections 2.17 and 2.17A, I go back to this issue of why we are deviating from the Salaries and Allowances Tribunal banding just in relation to these provisions. I think I asked a question earlier; I do not think that the minister has identified any other clauses in the bill except this one in which this is relevant. We effectively use the four-band approach everywhere else, but here we are using population estimates alone.

After the dinner break, the minister kindly tabled what I think was the latest determination of the Salaries and Allowances Tribunal for local government, chief executive officers and elected members. That was dated 10 April 2018. Page 3 of that determination makes reference to paragraph 14, which states —

> The Tribunal continues to utilise the four band classification model adopted in its 2012 determination. The model provides for a range of factors to be taken into account including:
>
> - major growth and development;
> - strategic planning, including risk management;
> - infrastructure development and asset management;
> - significant social/economic/environmental issues;
> - population;
> - significant demand to service and support non-resident needs;
> - diversity of services;
> - community involvement and advocacy;
> - state or national negotiations;
> - operational and managerial requirements;
> - capacity to pay;
> - total expenditure; and
> - FTEs.

There are 13 factors, one of which is population. The tribunal has identified 13 factors—we could probably argue that there are others—that effectively assess the complexity of a local government.

This bill and these reforms have deviated from the rule with respect to the number of elected members who can be elected to represent a council. We are using one measure, and that is population alone. I will ask the question that I asked earlier: why has the government deviated from the four-band SAT approach to the number of elected members?

Hon JACKIE JARVIS: Obviously, across the reforms we have drawn a number of recommendations. In this instance, we have directly lifted recommendation 26 of the 2020 *Local government review panel: Final report* to include a proposal that determines the number of elected members based on population. The ABS data is being used to reflect population as it was identified by that Local Government Review Panel report as a suitable benchmark and was largely accepted through public consultation. It also provides a level of consistency across the three tiers of government that use population as a measure of the number of representatives.

Hon MARTIN ALDRIDGE: I accept the minister's last point, to a point, because, as the minister would know, there are allowances within our electoral system that provide, for example, for geography and the challenges of representing remote parts of Western Australia. There are seats in Western Australia that are substantially and significantly allowed to be below the average thresholds in those matters. Here we are using population alone as the sole determining factor of how many elected members shall represent a district. This concerns me because when we flow into new sections 2.17 and 2.17A, obviously they will have to be split because we will have to take into account the direct election of mayors or presidents. That is probably the only reason they will be split.

Earlier I made the point that exacerbating that are the steps that the government has landed on with respect to the number of councillors that can be elected, when we go from a population of 5 000 to 75 000 people. I think that below 5 000 and above 75 000 people is probably of less concern, but there is enormous diversity when we consider the local governments that are potentially in that category of 5 000 to 75 000 people.

The bill also does not recognise many of the other things that will be recognised through the adoption of the SAT banding, and I will not mention them all again, but one that really stood out, for example, is major growth and development. The bill does not recognise areas of the state that are growing or developing very rapidly. It does not recognise infrastructure development, significant social, economic or environmental issues, diversity of services, community involvement and advocacy, or state and national negotiations in an area. The tribunal will take into consideration a range of things when it bands a local government. But through this bill and the government's decisions, we will literally just say, "Based on the population, this is what the computer says." There will be a small

amount of discretion—it sets minimums and maximums—but this is a very arbitrary approach and it has not been explained to me why the government has chosen to deviate from the SAT banded approach that is adopted throughout the rest of the bill.

Hon JACKIE JARVIS: The member asks why we are not using the SAT banding. It is because not using it will give the councils some flexibility. As the member pointed out, if a smaller council of up to 5 000 people has geographic challenges or the other scenarios that the member presented, it will have a choice of between five and seven councillors. Again, a population of 5 000 to 75 000 people is quite a big leap, but again councils will get a choice of between five and nine councillors, and for populations of over 75 000 people, councils will get a choice of between nine and 15 councillors. Therefore, although population is the measure, individual councils will have the opportunity to have that broad range of flexibility. I think the range of five to nine councillors for that middle population of between 5 000 to 75 000 people will allow local governments to have the number of councillors that they think is suitable.

Hon Dr BRIAN WALKER: I take the minister back to proposed section 2.16B. Why will the Governor be given the role to specify an estimate of a district's population?

Hon JACKIE JARVIS: Member, can I clarify the question? We were not clear what it was.

Hon Dr BRIAN WALKER: Yes. Proposed section 2.16B states —

> (1) The Governor may, on the recommendation of the Minister, by order —
>
> (a) specify an estimate of a district's population …

Why is this?

Hon JACKIE JARVIS: It is just to enable these provisions. The bill states —

> The Governor may, on the recommendation of the Minister, … specify … a district's population …

The state's statistician looks at the Australian Bureau of Statistics data and provides that advice.

Hon Dr BRIAN WALKER: The wording the minister used, however, is "The Governor may", which means that he also may choose to not follow the minister's recommendation.

Hon JACKIE JARVIS: I am advised that it is standard drafting for these clauses.

Hon NEIL THOMSON: I would just like to come back to this issue of population generally and the challenges that exist around it. I support the comments on having a multifaceted approach to the assessment of the levels that are used. It is important, for the record, to understand that population estimates in the bush are not the most reliable estimates, even though, as I said earlier, we have the situation of the Western Australia Electoral Commission assessing our state boundaries based on voter registration, which is even worse. The neglect of the regions has a compounding effect and ensuring that all eligible adults register to vote is affecting the distribution of representation in the bush. It is a chicken-and-egg situation that is self-fulfilling in its own way as we further neglect the bush in terms of the work of the commission. There has been a lack of registering people to vote. We are seeing a falling away of voter numbers.

The population count itself is also terribly flawed, because we have such high numbers of FIFO workers in some of these communities. My understanding is that when someone completes a census through the Australian Bureau of Statistics, they need to nominate the place in which they spend most of their time as their primary residence. In many cases, a FIFO worker in the Pilbara, should be saying they are in the Pilbara. This does not happen in practice. It is something that I have had people speak to me about. We have a situation in East Pilbara where the snapshot says there are 15 353 jobs—24 per cent of all jobs in the Pilbara are actually based there—which probably does not account for all the jobs in mining and construction. If a full estimate of the number of people actually employed in that community was calculated, it could be much higher. The population of East Pilbara is only 10 591. To me, that is symptomatic of the problem of the very city-centric approach on this minister to local government reform. It highlights that Minister Carey has a Town of Cambridge approach to reform across our regions.

We are seeing the way that the Labor Party operates with its city-centric approach to electoral reform. It is a one-size-fits-all approach that does not take regions into consideration. I again ask why the minister did not consider the broader multifactorial approach taken through the Salaries and Allowances Tribunal. It is not perfect, but at least it takes into consideration a range of issues. This one-size-fits-all approach to population is flawed in its own right, notwithstanding the fact that the figures are greater than the WA Electoral Commission uses. Again, I think that is quite sad in a way because of the erosion of our democratic system in the bush. I ask why the minister will not take a multifactorial approach to assessing the needs of and the tiers of our local governments?

Hon JACKIE JARVIS: As I advised, this reform was taken directly from the Local Government Review Panel report, which the member previously quoted. There is flexibility built into it. As the member noted, ABS data is the best data to use for population. If we did not use ABS data for population, I am not sure what we would use. The member gave the scenario of a local government area with a population of 10 000 people. That local government would have the option of having between five and nine elected representatives based on their population size to take into account the different geographic and economic factors that the member outlined.

Hon Dr BRIAN WALKER: I have to confess that my OCD demands I go back a little because I am out of sync at the moment. I have been noticing here that the state Electoral Act requires that the state reviews after every election. Local government elections are every two years. Why is the review in five years?

Hon JACKIE JARVIS: It is to align with Australian Bureau of Statistics census data.

Hon Dr BRIAN WALKER: I apologise; this will carry on a bit. I refer to the population cut-off of 75 000. Who had input into that decision? How was 75 000 come to? What was the thinking behind that?

Hon JACKIE JARVIS: That was taken directly from the 2020 local government review panel report.

Hon Dr BRIAN WALKER: Did the body representing councillors, Local Government Managers Australia, have any input into any of these decisions?

Hon JACKIE JARVIS: I understand it provided a submission, but I do not have the details of that submission to hand.

Clause put and passed.

Clauses 14 and 15 put and passed.

Clause 16: Section 2.18A inserted —

Hon MARTIN ALDRIDGE: Clause 16 will insert a new section that will give effect to change orders. This is a matter that flows subsequently from the issues previously canvassed with respect to the abolition of wards and when councils need to adjust their level of representation under proposed sections 2.17 and 2.17A. This is quite an extensive clause. Can the minister give us some examples of when a minister may seek the Governor to exercise a change order?

Hon JACKIE JARVIS: Change orders provide for the implementation of changes to council representation, such as in relation to population estimates. Specifically, and significantly, change orders are required to be made ahead of the October 2023 elections to allow new council member numbers and other representation changes to come into effect.

Hon MARTIN ALDRIDGE: Could a change order be used to override the provisions we have previously discussed; for example, when a band 3 or 4 local government has to abolish wards, would a change order be used to prevent that from occurring? Equally, when a local government is required to reduce the number of elected members to comply with proposed sections 2.17 or 2.17A, could a change order be used arrive at a different number?

Hon Jackie Jarvis: Could you repeat that last bit—sorry?

Hon MARTIN ALDRIDGE: My last bit was about elected council members. Proposed sections 2.17 and 2.17A will determine the range—say, between five and seven members for a small local government. Could the minister use change orders to say there are special circumstances that a council that would ordinarily need between five and seven members could instead have eight?

Hon JACKIE JARVIS: The change orders will not give the minister unfettered powers; the purpose of a change order is to implement changes to how councils are elected, and change orders are specifically limited by the requirements of proposed section 2.18A.

Hon MARTIN ALDRIDGE: I think the intent is that it will effectively give the minister the power to direct a council to comply in the lead-up to the next election. I think some councils will do that voluntarily; in fact, I think some already are adjusting their elected member numbers and abolishing wards and the like. This will, I guess, allow the minister to deal with the others, or for the Governor to do so on the minister's advice.

Hon Jackie Jarvis: By interjection, yes.

Hon MARTIN ALDRIDGE: In respect of the restriction the minister talked about, could the minister point out where in this provision the minister is restricted in using that power for the circumstances I talked about? Proposed section 2.18A(3) states —

> A change order must provide for the increase or decrease in the number of councillors to have effect —

(a) on and from an ordinary election day for the local government; or

(b) subject to subsection (6), on and from an election day for the local government that is not an ordinary election day.

Obviously, that is the trigger for the change order, but what will prevent the minister from saying, "I know what the act says, but I actually think this local government's made a good case and it should have eight council members rather than seven"?

Hon JACKIE JARVIS: Proposed section 2.18A(11) states —

> The *Interpretation Act 1984* section 42 applies to a change order as if the change order were regulations made under this Act.

That is what I am advised.

Hon MARTIN ALDRIDGE: It is disallowable by the Parliament; I am not going to hazard a guess as to how many of the government's regulations the government will allow us to disallow in this term of government. I think in providing that answer the minister is saying that, as long as Parliament does not disallow it, a minister could use a change order to provide for a number of elected council members, notwithstanding proposed sections 2.17 and 2.17A, which set limits.

While the minister is taking advice, the answer to my question could be that the situation I have anticipated is limited by proposed section 2.18A(2)(b) which states, in part —

(ii) decreasing the number of councillors to ensure that that number is, or will be, not more than the maximum number that applies, or will apply, to the local government under section 2.17 or 2.17A in consequence of the order made under section 2.16B.

Proposed subparagraph (i) provides that the number will not be below the minimum. Is it the case that proposed section 2.18A(2)(b) provides that limitation—that the minister can make a change order, but it has to be within the threshold established by proposed sections 2.17 and 2.17A?

Hon JACKIE JARVIS: Yes. As I said, change orders are specifically limited to the requirements of that provision. Furthermore, section 42 of the Interpretation Act provides for regulations to be laid before each house of Parliament. This allows for motions to amend or disallow new regulations to be made or considered. The member is correct in that the provision he mentioned is where it is stated that the change orders are specifically limited to the other requirements of the provision.

Hon Dr BRIAN WALKER: I raised this in my second reading contribution and I was very pleased to hear the answer. I understand that a change order issued by the Governor could be disallowed in the legislature here, which I think basically confirms what the Western Australian Constitution says. If that is not possible, what avenues of appeal are available to local government, or indeed the ratepayers, who may have concerns about such a decision?

Hon JACKIE JARVIS: We have set the bands in this bill, so there is no provision for an appeal to that within the bill. As I said, motions to amend or disallow new regulations are laid before the house of Parliament.

Clause put and passed.

Clause 17: Section 2.19 amended —

Hon NEIL THOMSON: This provision appears to relate to trying to get rid of phantom or sham leases. That is the intention. Although the Shire of Wickepin, I believe, does not have too many phantom leases trying to stack the Shire of Wickepin council, that may have occurred in the City of Perth, potentially. My first question on this is: was any analysis done on the eligibility of this provision and the impact it would have on the eligibility of voters, to the extent to which that problem does occur within the City of Perth, for example?

Hon JACKIE JARVIS: This provision was included after the City of Perth inquiry and sham leases were identified as an issue. My advisers have indicated that this is more likely to be an issue in a large city where there are a number of leased properties, such as in the City of Perth or the City of Fremantle, for example. The purpose of this clause, as outlined, is to prevent candidates from running for office on the basis of a sham lease, as identified by the City of Perth inquiry.

Hon NEIL THOMSON: My understanding of the disqualification requirements is that a leaseholder—I am trying to find the provision in my notes—is required to hold a lease for at least 12 months in order to not be disqualified from enrolling. If that is the case, is there a risk that this provision might also disqualify a genuine business holder of a lease who has just moved into an area to participate in local government decision-making?

Hon JACKIE JARVIS: The member is correct. They will be required to have a lease that has existed for at least 12 months prior to the claim being made. This is about trying to seek a balance. We know from previous inquiries

that there have been situations in which people have had a three-month lease for a hot desk in a shared office. In that circumstance, there were questions around whether it was a sham lease. Someone will be required to have had a lease for 12 months before the claim can be made. There can also be additional requirements. Regulations may prohibit the leasing of, say, a toilet, a cupboard or a parking bay. It is designed to get that balance right. It is not intended to exclude genuine business owners who pay rates and are impacted by local government decisions, but it will fix the problem that was identified in the City of Perth inquiry.

Hon NEIL THOMSON: That is interesting. We all hope it will fix the problem. In terms of the evidentiary situation, are we going to rely on leases that might be registered through Landgate? Will the onus still be on the elector or will it be centrally controlled through some sort of process through Landgate?

Hon JACKIE JARVIS: My understanding is that a person needs to submit a claim to be considered to vote in an election and they will have to submit the evidence to the local government for the purpose of claiming eligibility to vote or run in an election.

Hon NEIL THOMSON: The minister mentioned hot-desking. We know that a lease can be taken out for a shared office. There are plenty of those on the Terrace. Will someone who has a lease agreement just to have a desk be eligible, notwithstanding the clarity around toilets and car parking bays? Will they be eligible if it is meant to be a 12-month provision?

Hon JACKIE JARVIS: I mentioned the scenario of someone having a hot-desk lease for only three months. It is not intended to exclude sole traders by any means. Provisions will require that the lease must have been in place prior. They will need to be a genuine business operating in the local government area. The scenario was of someone who has a hot-desk lease for three months. We put in the 12-month provision. Obviously, an office is quite different from a parking bay; for example, someone might have a lease arrangement for a parking bay. My example of a hot desk was simply to point out that a three-month hot-desk lease would not apply, but if someone was running a legitimate business from part of an office and they could provide evidence of that, they would be allowed to vote.

Hon Dr BRIAN WALKER: I must confess that this sticks in my craw a little bit. Perhaps it is my sense of justice. I would have thought that the more appropriate approach to local government elections would be to use the electoral rolls. I have a fundamental problem with the eighteenth century idea of buildings voting. What is it precisely that makes us want to be concerned about giving people who own or lease buildings permission to vote in a place where they do not live?

Hon JACKIE JARVIS: We need a mechanism. People need an address to enrol to vote. Likewise, small business owners need to identify where they operate their small business from. I am the Minister for Small Business, so I appreciate that businesses come in all shapes and sizes. The provisions in the bill will ensure that businesses that pay rates and contribute to the local government area through the economic activities that they undertake can vote. Although I note the member's comments about linking it to property, I guess that is a measure. We need an address where someone operates a business from or lives for them to be eligible to vote.

Hon Dr BRIAN WALKER: I thank the minister for that. I appreciate the point she made, but I assume that the government has taken on board and considered the views in the City of Perth inquiry and undertaken further consultation. Is it possible for the minister to table the results of the consultation?

Hon JACKIE JARVIS: That consultation has already been published. We referred earlier to the report that listed all the submissions.

Hon MARTIN ALDRIDGE: Clause 17 amends section 2.19 of the act, which is concerned with the qualifications required for election to council. I think the debate has ranged into some other areas that I anticipate we will get to shortly on voting in council elections, but this provision is about the qualifications required for election to council. Proposed section 2.19(2A) will create a regulation-making power and refers to prescribed requirements. That flows into proposed section 2.19(2C), which states —

> The requirements that may be prescribed for the purposes of subsection (2A) include (without limitation) the following —
>
> (a) requirements relating to whether any person is enrolled, or is regarded under section 4.29(2) as being enrolled, as an elector for the Legislative Assembly in respect of a residence that is the rateable property;

I am trying to get my head around this provision. Are we effectively creating a regulation-making power that will make regulations in some form saying that a person who intends to run for council at an election first has to be a registered elector in the Legislative Assembly district for a residence that is a rateable property? Am I following the sequence of events correctly; and, if not, can the minister explain them better?

Hon JACKIE JARVIS: I am advised that section 2.19, "Qualifications for election to council", outlines a number of ways that people can qualify—that is, as an owner-occupier, as a resident or as a business owner. Proposed section 2.19(2C)(a), which the member referred to, deals with a resident, but that is just one of the ways that an elector will be deemed qualified to vote in a local government election—that is, they are enrolled to vote for the Legislative Assembly in respect of a particular residence. It does not say that they must be; it is basically saying that that is one of the provisions that relate to a resident. It does not exclude. The person does not have to be enrolled to vote for a residence that is a rateable property to meet the business owner provision. Does that make sense? I am not being very clear. A person could qualify for election to council if they own a property in the local government area, or because of the fact that they live in a property within the local government area. The proof is that they are on the electoral roll and therefore entitled to vote.

Hon MARTIN ALDRIDGE: The subtlety that I am struggling with here is that a person could be eligible to stand for election to council by nature of their state electoral status, for example. No; that does not make sense either. The person would still need to be an elector. Section 2.19(1) currently states —

> A person is qualified to be elected as a member of a council if the person —
>
> (a) is of or over the age of 18 years; and
>
> (b) is an elector of the district …

Those two things are not negotiable. I am trying to understand what these regulations are intended to do. Do we have visibility through the consultation process of what the regulations will look like in a policy sense? Is there some intent here that is known or can be known? Maybe that is where we should start in order to understand. I am struggling with the link between proposed subsections (2A) and (2C).

Hon JACKIE JARVIS: Proposed subsection (2A) states that regulations "may" provide. I am advised that this is to provide a head of power so that regulations may be made if required. It became clear when the issue of sham leases came up that there was no provision to create regulations around who could qualify to be an elector and who could not, or who could be elected. Proposed subsection (2A) states that regulations "may" provide that an elector is not qualified. I am advised that there will not be a substantive change, other than with regard to sham leases. This is just to provide a head of power to make regulations if an issue were to arise in the future.

Hon Dr BRIAN WALKER: I will give Hon Martin Aldridge a bit of a rest. Proposed subsection (2C) contains the phrase "without limitation". Is this just a drafting style or does it have actual meaning? What does that phrase mean?

Hon JACKIE JARVIS: It is saying that a local government may wish to create a regulation. If an issue arose, a regulation could be made with the requirement that a person be enrolled to vote to confirm that they are in residence at a rateable property. The phrase "without limitation" is a drafting mechanism to say that these are examples. It is saying that these are not the only examples, but if there was an issue with, perhaps, sham rentals—for want of a better word—on residential properties, an example could be that a regulation may be required to say that someone could provide evidence that they are enrolled to vote.

Hon MARTIN ALDRIDGE: I understand the current arrangements are that someone can be an elector of a district in multiple districts. Does that mean that someone could stand for election in multiple districts? If so, will this change limit that?

Hon JACKIE JARVIS: I am advised that there is no change. The example given is that the Lord Mayor of Perth does not need to live in the City of Perth if they operate a business or meet the criteria in another way. There is no change. As I said, it is providing that head of power so that if an issue arose in the future, they could make some provisions.

Clause put and passed.

Clause 18: Section 2.25 amended —

Hon MARTIN ALDRIDGE: Clause 18 will insert some provisions into section 2.25 of the act. I believe this is the clause on parental leave. The explanatory memorandum states —

> Clause 18 amends the existing section relating to leave of absence by council members by permitting a council member to take parental leave where the council member gives birth or adopts a child, for a period up to 6 months on each occasion.

Can I get an understanding of what we are doing here? At the moment, if an elected member wanted to take a period of leave for the circumstances as envisaged, which is the birth or adoption of a child, that would require some form or formal motion and the agreement of their fellow council members, whereas what we are doing here is inserting an entitlement, for want of a better word, to allow that to occur, notwithstanding the view of the council.

Hon JACKIE JARVIS: Yes—in a nutshell. The provision provides up to six months of parental leave that does not require council approval. It provides exemptions from disqualification from council for failure to attend council meetings if the non-attendance is related to parental leave.

Hon MARTIN ALDRIDGE: What impact might that have on an elected member's entitlement to receive remuneration and fees and access services or other benefits that they would ordinarily be entitled to if they were not accessing parental leave?

Hon JACKIE JARVIS: I am advised that that is a matter for individual councils. The amendments do not specifically deal with attendance at meetings; they do not create an entitlement to be paid. Council members are not employees. A council member might have outside employment. It is up to individual councils.

Hon NEIL THOMSON: I can see why the provision has been included in the bill. I assume that it has been included so that a member going through the personal experience of becoming a parent does not need to go cap in hand to council. I would have thought that 99.9 per cent of councils would be very accommodating. Has the minister considered other issues that would warrant entitlement—for example, a serious illness or another major event in a person's life that results in the person needing to spend time on leave? Was consideration given beyond parental leave?

Hon JACKIE JARVIS: There are already provisions by which a person can seek leave from council for other extenuating circumstances. This formalises the parental leave as a set period of six months. Other provisions under the act allow council members to seek leave from council for various reasons.

Clause put and passed.

Clauses 19 and 20 put and passed.

Clause 21: Section 3.1 amended —

Hon MARTIN ALDRIDGE: We made a brief reference to this earlier—clause 4 to be exact. We are now at clause 21, which will insert new words into the Local Government Act in part 3, "Functions of local government", "Division 1—General", section 3.1, "General function". At the moment, section 3.1 reads —

> (1) The general function of a local government is to provide for the good government of persons in its district.

After section 3.1(1)—we will not delete those words, but add to them—proposed section (1A), which will form part of the general functions, is to be inserted. Can the minister share with us how the government arrived at these words in this form? As I understand it, the consultation process that occurred probably did not have the level of detail that we now have before us in this bill. I think that much simpler information was provided through the consultation process. How did the government prioritise and arrive at these matters as adding to the general function provisions of the act?

Hon JACKIE JARVIS: I am advised that these principles were consulted on and the wording of the section was informed by workshops with WALGA and Local Government Professionals Australia WA.

Hon MARTIN ALDRIDGE: Perhaps I should have started with an earlier question: What is the purpose of proposed section 3.1 of the Local Government Act? Is it really just to guide readers in the general function of local government? Will it have a legal or interpretation purpose? Are there provisions within the Local Government Act that will reflect on or relate directly to proposed section 3.1 of the act, or are they simply there to inform the reader—to be symbolic in nature and provide guidance but not necessarily direction?

Hon JACKIE JARVIS: The local government is asked to consider these principles in decision-making. Section 3.1(3) of the current act states —

> A liberal approach is to be taken to the construction of the scope of the general function of a local government.

Hon MARTIN ALDRIDGE: One thing that I think has caused some concern here amongst local governments has also been reflected by some of the feedback that I have had from the Western Australian Local Government Association and has also attracted some media coverage. I raised it at my briefing and I would like to try to get some confirmation on the record. I refer to proposed section 3.1(1A)(b), which refers to —

> … the need —
>
> (i) to recognise the particular interests of Aboriginal people; and
>
> (ii) to involve Aboriginal people in decision-making processes;

I asked a couple of questions at the briefing. I asked for some examples of what a local government would be expected to do to achieve that intent, noting that the start of this proposed section states —

> Without limiting subsection (1), the general function of a local government must be performed having regard to the following —

I raised this at the briefing following some media coverage of this issue. I wrote down three things in my notes: first, the provisions in this section are drafted in very broad terms; second, they are broad and principle based; and, third, they are not justiciable. Can I get some confirmation of those things and also the government's view on the general function provision? If they are not correct, what is the correct interpretation of this provision?

Hon JACKIE JARVIS: Yes, these are indeed broad principles. Local governments across the state already engage with Aboriginal people through a range of local government businesses. I have some examples. Many local governments have already developed or are developing reconciliation action plans. Local governments may work with Aboriginal people on caring for country and native title matters. Local governments may involve Aboriginal people in decision-making processes through appropriate community and stakeholder engagement. In addition, there will be a new requirement to establish a community engagement charter. We will also provide an avenue for local governments to individually consider how they work towards this principle. This section will encourage local governments to work towards broad participation in local government elections and council meetings and support the inclusion and involvement of Aboriginal people. The diversity of Aboriginal people and cultures across WA will require LGAs to specifically consider the best way they can work towards this principle. For this reason, the bill inserts a broad principle and avoids excessive detail and description. I have been advised that the Western Australian Local Government Association has been working hard for many years to advance Aboriginal engagement and reconciliation in local government across WA. Last year, WALGA held the sixth Aboriginal Reconciliation Engagement Forum for over 200 delegates.

Hon MARTIN ALDRIDGE: I agree with the minister that some local governments are doing some really good things in this space, but I guess my concern is whether amending section 3.1 of the act will allow somebody to hold a local government accountable—potentially legally accountable—for the decisions it makes.

I have just focused on one part of this, which is to involve Aboriginal people in the decision-making processes. Would that allow a local government to be challenged if it made a decision when Aboriginal people were evidently not involved in a decision-making process? We should keep in mind that this clause states —

> … a local government must be performed having regard to the following —
>
> …
>
> (ii) to plan for, and to plan for mitigating, risks associated with climate change …

If somebody felt that a local government took a decision that was contrary to mitigating the risks associated with climate change, could a local government be challenged or be held accountable, legally or otherwise?

Hon JACKIE JARVIS: I am advised that these broad principles cannot be challenged in a legal sense. However, local governments must consider and work towards whatever best reflects their local context and circumstances. I guess the ultimate test is that they need to explain to electors if they have not met these broad principles. It is a broad provision that I guess the council will be held accountable for at the next local government election.

Hon Dr BRIAN WALKER: We understand very well the honourable intent in this part of the bill. Let us not be too kind about this. These are actually weasel words. They may be politically correct weasel words but they do give a lot of —

Hon Kate Doust: Member, if you don't like them, just vote against them. That's the simple solution.

Hon Dr BRIAN WALKER: Yes. We can look at them as being politically correct, which also means that under certain circumstances they can be ignored with impunity. For example, let us take the economic and social needs of a community having a firefighting centre and the issue of environmental sustainability. In this example, a bit of polychlorinated biphenyls in the soil would not hurt. People being people will go for the easiest option if they can, especially if costs or difficulties are involved. This gives us a fair amount of wiggle room to say that we have considered the options but then the wrong thing happens. We can justify it over time; we have been doing this for a long time. My statement recaps a situation in which we say that we would like to do something, but we are in hard times and we will have to do something different. Does the minister agree with that characterisation? I assume she does not, but I will put my question on the record.

Hon JACKIE JARVIS: I do not agree with the member's assessment. As I said, there will be a new requirement to establish a community engagement charter. These are broad principles. We have 139 unique local governments that will determine how they will apply these broad principles, and they will be held accountable at the ballot box.

Hon NEIL THOMSON: I will go back to the issue that my colleague raised. I refer specifically to proposed section 3.1(1A)(b). Will this provision provide some legal protection if there is a legal challenge? Clause 21 will insert —

> (1A) Without limiting subsection (1), the general function of a local government must be performed having regard to the following —
>
> …
>
> (b) the need —
>
> …
>
> (ii) to involve Aboriginal people in decision-making processes;

Having intent is fine. A lot of local governments have reconciliation action plans. Some do not, and I think it would be a good move to push those forward. I assume the community engagement charter will outline the procedures around some of that. Local governments make many decisions on a daily basis. I am concerned about the potential for a litigious approach to this. Over the years, we have seen litigation against the state for its decisions on matters. It sends a very strong message to involve Aboriginal people in the decision-making processes; I am thinking of a planning decision beyond the normal permits that may be required under the Aboriginal Cultural Heritage Act. My concern, which is reflective of the concern raised by my colleague, is that we could find ourselves in a situation in which a decision is made and it ends up in court. How will this provision work, given that there is no definition in it, on local planning decisions?

Hon JACKIE JARVIS: I will not go into the intricacies of what may happen in different scenarios. I can tell the member that the bill will insert a broad principle while avoiding excessive detail or prescription. The provision is a broad principle that local governments can consider and work towards in whatever way best reflects their local context and circumstances. The amendment supports a general principle of increased community engagement with a diverse range of community stakeholders, and recognises the specific interests and importance of First Nations people across WA. As I said previously, this provision will not open up LGAs to a legal challenge. They will be judged at the ballot box.

Hon Dr BRIAN WALKER: As I said, the aims are admirable and I fully support them, but what oversight is proposed for these changes?

Hon JACKIE JARVIS: As I said, they are broad principles. There is no regulatory body overseeing this. Local government councils will need to explain to their electors if they have not met these broad principles.

Hon Dr BRIAN WALKER: I take it that what the minister is saying is that there are no enforcement powers available to require these to occur?

Hon JACKIE JARVIS: That is correct. Local governments will work towards these broad principles in whatever way best reflects their local context.

Hon NEIL THOMSON: I will come back to the recommendation of the Local Government Review Panel that suggested that the act be simplified and condensed by 50 per cent.

This seems rather odd. What I find particularly odd relates to proposed section 21(1A)(c). It states —

> (1A) Without limiting subsection (1), the general function of a local government must be performed having regard to the following —
>
> …
>
> (c) the need to consider collaboration with other local governments.

That seems to be a tautology in the sense that it is really repetitive. We have seen the amazing work done by the WALGA zones that are already in place. I do not know of a single local government that does not already operate in collaboration. The wording of proposed section 21(1A)(c) almost looks like someone did their school project and just put it in. There is a very light-handed approach in the wording of "need to consider collaboration". Collaboration with other local governments is already embedded into the structure of local governments yet we have the very hardwired wording—notwithstanding "without limitation"—in proposed section 21(1A)(b), which states "the need … to involve Aboriginal people in decision-making processes". There seems to be a disjunct. If it were a general principle, I would have thought there would have been some sort of outlining of said principle in a way in which the encouragement was consistent. The wording in this proposed section certainly does not appear to be drafted by parliamentary counsel with any expertise, because it is just put together by —

Hon Kate Doust interjected.

Point of Order

Hon JACKIE JARVIS: Point of order.

The DEPUTY CHAIR (Hon Dr Sally Talbot): Hon Neil Thomson still has the call as long as there is still a question in progress.

Committee Resumed

Hon NEIL THOMSON: Thank you. My question is: why is there an inconsistency in the style of wording between proposed section 21(1A)(b)(ii) and 21(1A)(c)? Why is there such a light-handed approach when this is already something —

Hon Kate Doust: What is your problem, member? You just don't want people to have a say in their local patch; is that the problem? That is what it is coming across as.

The DEPUTY CHAIR: The member's question is finished.

Hon JACKIE JARVIS: I am advised that the wording the member is referring to, "the need to consider collaboration with other local governments.", was specifically asked for by WALGA. I reject the claim that the parliamentary drafters were somehow not doing an excellent job.

Clause put and passed.

Clauses 22 to 28 put and passed.

Clause 29: Section 4.31 amended —

Hon MARTIN ALDRIDGE: According to my notes, clauses 29 to 32 is where we enter the sham lease realm, about which we had some discussion earlier. The discussion earlier centred around qualification for election. That was a provision we were dealing with then. I do not intend to go through those clauses one by one, but I am hoping I can ask a couple of questions about the package, if you like. We previously dealt with qualification for election. Are clauses 29 to 32 around qualification to be an elector in a local government district or is it more than that?

Hon JACKIE JARVIS: I am advised that this relates to both candidates and voters, and, again, provides a new head of power for regulations to deal with enrolment based on occupation, provides that regulations can be made to the owner–occupier role and provides the power to specify requirements to claim eligibility for enrolment in the base of ownership or occupancy of a property. These requirements are to deal with dubious lease arrangements for the purpose of voting and/or nominating as a candidate in a district.

Progress reported and leave granted to sit again, pursuant to standing orders.