

LOCAL GOVERNMENT AMENDMENT BILL 2003

Committee

Resumed from 1 July. The Chairman of Committees (Hon George Cash) in the Chair; Hon Tom Stephens (Minister for Local Government and Regional Development) in charge of the Bill.

Clause 34: Section 4.32 amended -

Progress was reported after the clause had been partly considered.

Hon RAY HALLIGAN: The minister is making a rod for his own back with this amendment to the Act. What the minister is trying to achieve would be accepted by a great number of people; however, I believe that it will be extremely difficult for him to provide this solution. It will involve all 144 local government authorities. The minister will have to respond to the two main aspects of this matter. One is that each of the local government authorities will have the opportunity to have input to how the money is derived. I also suggest that there will have to be some consistency between each of the 144 local government authorities. I do not know exactly how that will be achieved. The minister may have some idea of that, and I sincerely hope that he does, and he may be prepared to advise the House how that might occur. The Western Australian Local Government Association has some concerns with this area and it would have been far happier had certain things been placed in the principal Act, rather than in the regulations. I understand the complexity of the proposal. There will probably be many amendments to any formula that is provided in those regulations. Therefore, I understand why it needs to be in the regulations. I would like the minister to advise the committee what is being proposed, so that it is not just a feelgood statement but is something that the minister firmly believes he will be able to achieve and that will be meaningful in the end.

Hon TOM STEPHENS: I thank Hon Ray Halligan for that invitation. In response, I endeavoured to flesh this out in a discussion with WALGA. When I gave the first indication of what I had in mind for this regulation, WALGA immediately pinpointed the difficulties with it. In mind for the regulation was the thought of a minimum of \$5 000 for properties in the metropolitan area. That immediately highlighted the problem, because people in non-metropolitan areas, and maybe even in the metropolitan area, would have immediately been excluded from that process. We are not there yet. The member has pinpointed an absolutely legitimate criticism, and I accept that criticism. That is why we are leaving ourselves the flexibility to work up a regulation in consultation with WALGA and directly with local councils to try to get something that meets the needs of a broad range of councils across the State. There is a fair bit of water to pass under the bridge before that regulation will be available to the Chamber. I am not able to advance exactly how this will be shaped. The member will be in an ideal position in his role as a member of the Joint Standing Committee on Delegated Legislation. He will get to see the shape that emerges from that consultation and then he will be able to tell the Government and the Chamber whether we have it right or wrong. There is a lot of work to be done on that yet. The member has pinpointed a legitimate challenge. I am determined not to come forward with a regulation that does not have all the flexibility and responsiveness necessary to meet the critique that WALGA gave, specifically Councillor Bill Mitchell. He is from the blue team; he kicks for the blue team. Nonetheless, I have a good working relationship with him. I understand exactly the context within which he works and do not want to do anything that will mess up his entitlement to be a councillor, or that of other people in similar sets of circumstances.

Clause put and passed.

Clauses 35 to 43 put and passed.

Clause 44: Section 5.21 amended -

Hon RAY HALLIGAN: Clause 44 amends the Act to make it obligatory for the chairperson to cast a second vote in the case of an equality of votes. It appears that one organisation agrees with this proposal and another disagrees. Will the minister explain why he wishes to go down this path? The tradition of even this House dictates that when there is an equality of votes, any casting vote will be in the negative so that members can reconsider the arguments. Will the minister give some indication of why he wishes to go down this path?

Hon TOM STEPHENS: This issue emerged in discussion with my parliamentary colleagues who are experienced in the field of local government. They simply argued against the situation in which a tied vote is always resolved in a negative outcome. They have encouraged me to advance this amendment through the Bill and I accept responsibility for it. The suggestion is that rather than being bound by a set of circumstances that would lead to a proposition being lost through a tied vote, the chair will be required to exercise a casting vote one way or the other to bring an issue to resolution.

Hon MURRAY CRIDDLE: The minister referred to his colleagues. Has he widely consulted with local government? When he refers to his colleagues, whom does he mean? Who has made that view known to him, and why did he make that decision?

Hon TOM STEPHENS: I have widely consulted with local government. I have not won its endorsement for this proposition. This proposition has not been endorsed by WALGA, but it has not raised objections to the proposal. There is a process in my party whereby ministers, when they advance legislation into the cabinet room, consult with their caucus colleagues. I guess Hon Murray Criddle would have a similar process in his party room. A number of people on the caucus committee have served on local government councils, and some at the highest levels of a local government association, and they had views on the amendments that should be included in the Bill. This is one of those propositions. A number of Labor parliamentarians have a strong interest and background in local government and they pressed the view that this amendment should be pursued. As a result, I adopted their suggestion and took it to Cabinet. It was endorsed by Cabinet and therefore it is a government proposition. WALGA did not object to the amendment, but it is not one of the amendments that resulted from that forum.

Hon RAY HALLIGAN: I thank the minister for his candour in giving his reasons for this amendment. There are still some concerns, particularly with Local Government Managers Australia. One expects that when we make amendments to legislation, it is for the betterment of the legislation. I have difficulty being convinced by the minister that what is being proposed is very much for the betterment of local government operations. As we know, there are difficulties - some would say far too many difficulties - with many local government authorities. Some would say that many local government authorities are not as democratic as they possibly should be.

Hon Ken Travers: Who would say that?

Hon RAY HALLIGAN: Some people.

Hon Ken Travers: Some people say that?

Hon RAY HALLIGAN: There are some; that is correct. There are two ways to elect a mayor or president; that is, of course, by the elected councillors or by ratepayers. Has the minister given some consideration to those circumstances in relation to this amendment to the Act?

Hon TOM STEPHENS: This amendment will reinstitute a practice that was previously available to local government before the Act came into effect under the previous Government. There was no casting vote for a non-popularly elected mayor. I hear what the member is saying. Even in the committee stage he raises this issue. Yes, I cast my mind over the issue and think about it again, as I have done in previous discussions. Those circumstances will now be covered by the amendment that will be made through this clause.

I am comfortable with that outcome. I do not see a difficulty with the matter that the member has raised. I hope to attract his support for it.

Hon RAY HALLIGAN: I certainly hear what the minister is saying. However, I still have some very grave concerns that this will be an imposition on local government. The minister does not appear to have gotten everyone on side and has not convinced them that it is in their best interests and in the interests of the ratepayers of the 144 local government authorities. For that reason we cannot support the amendment.

Clause put and passed.

Clause 45: Section 5.36 amended -

Leave granted for the following amendments to be moved together.

Hon TOM STEPHENS: I move -

Page 30, line 13 - To insert before "The" the word "If".

Page 30, line 13 - To insert after "government" -

becomes vacant, it

This clause inserts a proposed subsection on the advertising of the position of chief executive officer. As the proposed subsection currently stands, the set of circumstances it provides would apply even when a CEO's position was being renewed. I was expecting Hon Robin Chapple to rise to speak on this amendment. I will explain exactly what this amendment is for. We are removing the obligation for advertising when a CEO's contract is renewed. I understood that the member had a view on this matter, and I was interested to hear that view. These amendments will remove the obligation for advertising when a CEO's position is up for renewal.

Hon ROBIN CHAPPLE: I did have a position on this matter. However, I have spoken to the minister's advisers and have been made aware that it is a recommendation of the working group. My concern was that every time

an appointment of a CEO was to be reviewed, the existing provision meant that the position would have to be advertised. I am now less concerned by the amendments because I understand that they have been through a review process. In that regard I do not oppose these amendments.

Amendments put and passed.

Hon TOM STEPHENS: I move -

Page 30, after line 17 - To insert -

- (5) For the avoidance of doubt, subsection (4) does not impose a requirement to advertise a position before the renewal of a contract referred to in section 5.39.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 46: Section 5.37 amended -

Hon TOM STEPHENS: I move -

Page 30, line 23 - To insert before "The" the word "If".

Page 30, line 24 - To insert before "is" -

becomes vacant, it

Page 30, after line 27 - To insert -

- (4) For the avoidance of doubt, subsection (3) does not impose a requirement to advertise a position where a contract referred to in section 5.39 is renewed.

These amendments are consequential and identical to the earlier amendments, but are for senior employees.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 47: Section 5.39 amended and consequential amendment -

Hon TOM STEPHENS: I move -

Page 31, after line 16 - To insert -

- (3) After section 5.39(6) the following subsection is inserted -

“

- (7) A report made by the Salaries and Allowances Tribunal, under section 7A of the *Salaries and Allowances Act 1975*, containing recommendations as to the remuneration to be paid or provided to a CEO is to be taken into account by the local government before entering into, or renewing, a contract of employment with a CEO.

”.

Hon RAY HALLIGAN: There appears to be some opposition to this proposal.

Hon Robin Chapple: By CEOs.

Hon RAY HALLIGAN: More than likely. The major concern is that individual local government authorities may be constrained by this amendment. They believe that the Salaries and Allowances Tribunal may not take into consideration all the issues associated with the work undertaken by certain CEOs in certain local government authorities. It comes down to comparing like with like. It is the usual situation if they are all to be included under one banner. It is said that some local authorities may have difficulty procuring CEOs. In addition, they believe that if they are taken down this path, although it is said that local governments need only take into account what the tribunal has to say, if a local government does not follow what the tribunal has recommended and it is made public that the local government deviated from the tribunal's recommendation, the local government will be inundated with questions and will have to spend an enormous amount of time and effort convincing the ratepayers and others of the reason it went down that path. Is there anything that the minister can say to allay their fears?

Hon TOM STEPHENS: I thank Hon Ray Halligan for his comments. Members will be aware of the origins of this proposal. It emerged as a recommendation of the parliamentary standing committee of this place, which responded to issues that came under its consideration regarding the City of Joondalup.

Hon Ray Halligan: That was somewhat specific.

Hon TOM STEPHENS: It was a very specific set of circumstances. Nevertheless, as the Minister for Local Government and Regional Development, the committee made a recommendation to me about how I should tackle it. I have told the Western Australian Local Government Association that I am a parliamentarian - despite what was said about me yesterday - and I have a responsibility to respond to the advice of parliamentary committees. That advice was multiparty advice. I was not able to advance an amendment that went the whole hog of that report. The report urged that the Salaries and Allowances Tribunal make determinations. I have not followed that suggestion. In part, I have not done that because I accept the advice of Local Government Managers Australia and others, including local councils in my own area, that have made it clear to me that they have difficulty attracting and recruiting CEOs from time to time. Sometimes they might note the advice of the Salaries and Allowances Tribunal but they are not able to embrace and make its recommendations mandatory in their set of circumstances. In those circumstances, why should they not be left with the final decision? Members are probably aware that, in other States, local government ministers put a cap on what chief executive officers can be paid. The councils are told that if they want to go above that figure, they will have to receive the approval of the minister. That is one way we could go. However, I am not proposing to go down that path. It is one option, and the second option is to leave it entirely as a decision of the Salaries and Allowances Tribunal. I am not happy with that because I think we can make this a transparent process by requiring the councils to seek its advice. A council may note the advice but it might be necessary to go one step further for certain reasons and to obtain a good CEO. It may propose to pay more for a CEO and set out the reasons for doing so. A council may be comfortable with that decision. As far as I am concerned, that is fine. It will be on the official record; the council will have received advice and noted it but decided that, in its circumstances, it will pay more. It will be a clear-cut decision and when anyone challenges it, the council will know its position in advance. It will state that it received advice from the Salaries and Allowances Tribunal but made its decision on the basis that it cannot obtain a CEO to meet its needs and, as such, it has to pay more. From time to time, the State Government is in similar circumstances. For example, there has been some media coverage of the child protection positions that we have been trying to fill in remote communities. We have discovered it is almost impossible to recruit child protection officers for some of the remote areas without increasing the salary packages. As such, we have had to increase the salary packages and defend the increases. The Shire of Sandstone council is an example. Hon Norman Moore is more familiar with that council than I have ever been. Its CEO position has fallen vacant because its very skilful CEO has been recruited by the Shire of Dundas. It is seeking to employ a new CEO. The advice of the Salaries and Allowances Tribunal will be sought and noted but the councillors will make the final decision about the salary package they want to put on the table to attract a new CEO.

I am often under attack in this Chamber for not knowing my portfolio. I know what I am talking about. The situation in New South Wales is such that the approval of the minister is required if a salary package exceeds a certain figure. Despite that, I thank my adviser for her advice.

Hon Norman Moore: What is happening?

Hon TOM STEPHENS: I know what is happening. I know what I have said. There has been considerable media coverage in New South Wales. Sorry, I have lost my train of thought. Hon Bruce Donaldson is about to interject on me.

Hon Bruce Donaldson: I will give the minister an example of a concern when he sits down.

Hon Murray Criddle: You were talking about CEOs.

Hon TOM STEPHENS: Yes, I was talking about CEOs. There may be a set of circumstances in which the advice of the Salaries and Allowances Tribunal will be sought and noted. When a council wishes to divert from that advice, it will know what it is doing and it will be ready to defend its decision. I think that is a compromise; it is not what the parliamentary committee recommended. It is not what Local Government Managers Australia wants. However, it is my response to what I think is the best outcome at the moment.

Hon BRUCE DONALDSON: I will raise a point about the Salaries and Allowances Tribunal. For argument's sake, what is to stop a minister writing to the Salaries and Allowances Tribunal requesting that the salaries paid to council CEOs be frozen? A local government minister could do that. It would be exactly the same as the Premier has written. It is not the first time a Premier of the State has written to the Salaries and Allowances Tribunal and suggested there should be no increases. I know that the Salaries and Allowances Tribunal does not have to take any notice. Invariably, it does when a Premier requests that salaries be frozen. In this case, it was a

request to freeze the salaries of members of Parliament. I do not see a real problem with that. However, there may be a very aggressive minister in the future -

Hon Tom Stephens: It is hard to imagine an aggressive minister!

Hon BRUCE DONALDSON: Well, maybe. In the interests of the policy or philosophy of the Government of the day, the minister might suggest that the CEOs are being paid too much and that the Government does not want the Salaries and Allowances Tribunal to give a determination that an increase should be passed on in a current year.

Hon Tom Stephens: It would not be a determination; it would be advice.

Hon BRUCE DONALDSON: Okay. It was suggested that there might be advice from the tribunal to define groupings of councils of like size, revenue etc. I note what the minister said about councils often having to offer more to fill a CEO position. They often have to up the ante quite considerably to get someone. There is opportunity for that to occur, but I am not saying that it will. We know that Governments and Prime Ministers write to the so-called independent tribunals suggesting there be no increases. They will say that an election is coming up and they do not want front-page headlines about MPs with their snouts in the trough again or something like that.

Hon TOM STEPHENS: I hear what the member is saying. I will revisit the discussion briefly. I believe the advice from the Salaries and Allowances Tribunal will need to be couched in response to the sorts of commentary that will no doubt be given to them by councils and Local Government Managers Australia. The advice will be shaped by the circumstances that pertain to areas in which local councils find it difficult to attract CEOs of sufficient calibre without offering a high salary package. The Salaries and Allowances Tribunal will receive such information from the councils and give its advice in return. The councils will then make their decision, noting that advice. I have received very good advice from the Premier about the way in which I should handle this portfolio. He advises me that, in attempting to reform the field of local government, I will find the pathway littered with the bodies and skeletons of former local government ministers. He advises me to be cautious and aware. This is a very mild-mannered response to the strongly worded advice of the standing committee. It is a halfway house. I believe I have taken a reasonable step that does not go too far in making conditions inflexible or mandatory.

My confidence about the comments I made to the committee about the situation in New South Wales has been shattered. My officers have advised me that their understanding is different from mine.

Hon Bruce Donaldson: They used to cap rates in New South Wales.

Hon TOM STEPHENS: That is right. That is what my officers have advised me. I know that there is a cap on the salaries of CEOs in New South Wales and that councils must apply to the minister if they want to go beyond it. I know that because I use a clippings service whereby I read what is in the media about what goes on in other jurisdictions. I think that maybe the media got it wrong. I read a clipping that ministerial approval is necessary for increased salary levels for council CEOs. I relied upon that as my Bible.

Hon Bruce Donaldson: Capping rates is one way of stopping the revenue.

Hon TOM STEPHENS: As the member knows, rates are capped in a number of other jurisdictions; we do not do that here. I am not sure now which is the case. I will go on record about that.

Hon Murray Criddle: I know that with the salaries for the executive officers of the port authorities, the minister would write to the Salaries and Allowances Tribunal, get some advice, and go from there. Why is there a need to legislate?

Hon TOM STEPHENS: Effectively, I think that will happen. Basically, a local government will say that it is about to advertise for a chief executive officer, and it will seek the advice of the Salaries and Allowances Tribunal.

Hon Murray Criddle: But that can be done anyway, can't it?

Hon TOM STEPHENS: No, it cannot - not by local government. This is to give local government access to the Salaries and Allowances Tribunal, which, as the member accurately stated, is available under the ports authority legislation.

Hon Murray Criddle: As the minister, where -

Hon TOM STEPHENS: This will give councils the same access to the Salaries and Allowances Tribunal that the port authorities have. They will get advice from the tribunal and then make their own decisions.

Hon RAY HALLIGAN: Obviously, there must be further amendments in the Bill to provide for what the minister just stated. Are they in the schedule?

Hon Tom Stephens: In the schedule; correct.

Hon RAY HALLIGAN: As the minister mentioned, the councils will seek advice. The amendment refers to a report. It is probably advisable that I look at the schedule for the detail. The minister has probably described it sufficiently. However, to confirm that for me, is the minister saying that it is not intended that the Salaries and Allowances Tribunal will go forth and come up with a template for each local government authority, but will wait until a local government authority requests advice from it?

Hon TOM STEPHENS: It will give the tribunal the opportunity from time to time to inquire into and make a report containing recommendations on the remuneration to be paid or provided to CEOs of local governments. The report made under the section shall be in writing and signed by the members of the tribunal. They will do a report from time to time about what they think CEOs -

Hon Ray Halligan interjected.

Hon TOM STEPHENS: No, it will be regular, from time to time. Their advice will have to be noted by local councils.

Hon RAY HALLIGAN: This is exactly what I am getting at. If the tribunal members are waiting on individual requests -

Hon Tom Stephens: No, they are not.

Hon RAY HALLIGAN: That means they will have to determine a figure for all 144 local authorities, so that they can take all things into consideration. If they go down a particular path and deal with only the first 10, and then they are advised by other councils of certain additional considerations, it may affect their earlier decisions.

Hon TOM STEPHENS: It is envisaged that they would have bands or groupings of what would be a reasonable remuneration package for a CEO of a council of a particular size in a certain location, taking into account its remoteness.

Hon Ray Halligan: Staff numbers.

Hon TOM STEPHENS: Yes. If their advice is wrong, I can imagine that there would be robust discussion between CEOs or the councils and the Salaries and Allowances Tribunal to the effect that the tribunal members should change their recommendation and determination. Councils will have direct access to the Salaries and Allowances Tribunal, so they will be able to give the tribunal their advice, and determinations can be made from time to time about changing the band allocations. Nothing more than advice will go back to councils - not the final word, just advice.

Hon RAY HALLIGAN: It will be most interesting if there is such advice. As the minister rightly said, the advice should change from time to time to take into consideration changing circumstances, such as inflation and the like. Most of the CEOs will be under contract for a specific time. Changes may be made so that the salary of the CEOs should be increased. Of course, there is nothing they can do because of the contractual arrangement they have. All I am suggesting is that this has the potential to cause considerable problems.

Hon TOM STEPHENS: I agree with the member. There is that potential. However, to leave it otherwise would put us in a situation in which we would be subject to the criticism that was identified in the parliamentary report. As a parliamentarian, I accept that multi-party report, and I have accepted my colleagues' advice on a better way forward to do something in this area. I could not go the whole hog; I am going part of the way. I believe that is my obligation as a parliamentarian. I have heard some of my parliamentary colleagues in cabinet say that parliamentary reports can go hang. I am really trying to be responsive and to accept that all the parties represented on the committee endeavoured to distil their collective wisdom in that report. There were lengthy inquiries into an issue that they did not want to get involved in, but they did it. As a cabinet minister, I will not thumb my nose at them and ignore their advice. I am accepting their advice. Something had to happen. I believe this is a halfway house. It might cause some problems. However, it will be a matter of advice being given, and I think it is not a bad step.

Hon RAY HALLIGAN: I thank the minister for that. I understand what the minister is saying. However, it has already been brought to our attention that in other areas, salaries and allowances over and above a certain cap need to be agreed to by a minister. It could be done by the Salaries and Allowances Tribunal. There are potential problem areas. We received a report in this place that provided recommendations on one local government authority out of 144. Would it not have been better to allow another standing committee to look into the issue and all the concerns that have discussed today, as well as many other concerns that local government

authorities and their associations could put forward, so that the Government came up with a template that the great majority of people could accept?

Hon TOM STEPHENS: I note the member's advice. I accept that that is one way of going about it. I have chosen another.

Amendment put and passed.

Hon TOM STEPHENS: I move -

Page 31, line 18 - To delete "an" and insert instead "a senior".

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 48 to 53 put and passed.

Clause 54: Section 5.69 amended -

Hon ROBIN CHAPPLE: This clause relates to section 5.69, which deals with disclosure of interests. It is my belief - I still hold it, but I will not die in a ditch over it - that to provide a blanket ability for a pecuniary interest to be declared on the same matter over time could lead to some misunderstanding by councillors and/or mayors and CEOs in such a way that, inadvertently, an interest that is seen to be the same might be misconstrued on following occasions. For example, if I were a councillor and I had an interest in a mining company, the minister might give blanket approval for that interest to be declared and to then apply over several council meetings. My concern is that although that interest might be relevant to one area of council debate, it might not be relevant to later debates and councillors might find themselves trapped at some stage in the future by having declared that interest. I believe the department should be required to determine on each occasion the interest of the individual.

Hon TOM STEPHENS: I ask the committee to support the clause and reject the argument that has been put by Hon Robin Chapple. To give an example of something with which I am familiar, councillors who have Wesfarmers Ltd shares find themselves regularly faced with the Wesfarmers conglomerate and wonder whether their circumstances prevent them from being able to vote on a specific matter involving their council, so they will declare their interest for that specific matter at a specific meeting. However, the debate may continue over a series of meetings. This clause will allow the declaration of interest to be relevant to the handling of that specific issue throughout the full consideration of that issue. It will apply only to that specific issue. It will not be broadened to include any matter that relates to the Wesfarmers conglomerate. The issue may be a silo on one occasion and a store on another. In that case, the councillors will need to declare their interest for both of those sets of circumstances. This clause will allow councillors, on a specific issue, to declare their interest once and for that declaration to apply all the way through the handling of that issue, otherwise for every meeting they would need to come back and declare their interest. That is considered to be cumbersome. It is for councillors to decide whether they have a conflict of interest that they need to declare. It happens pretty regularly, as members can imagine. Councillors in a small town often have a range of interests, and they have to work out whether, in the specific set of circumstances in front of them, they need to declare a conflict of interest. We are all shaped by various experiences. I half know what is shaping the input from Hon Robin Chapple. It arises out of the set of circumstances in Kalgoorlie, in which people have an involvement in the Superpit and a concern about environmental issues and want to make sure that they are not caught up in cumbersome paperwork with the department or are caught out by not adequately declaring their interest. I assure the member that this clause refers to a specific set of circumstances in which councillors may have a conflict of interest. It will give them the power to declare that interest once, and that will cover them all the way through the council's handling of that specific matter.

Hon Murray Criddle: Are they allowed to take part in the debate from then on?

Hon TOM STEPHENS: If they have declared their interest, they are allowed to take part in the debate, if they get approval.

Hon Murray Criddle: From whom?

Hon TOM STEPHENS: On the advice of the department to me as the minister, and I then give them that approval.

Hon Robin Chapple: I understood that it was the council that gave the permission once the interest had been declared. I did not think it was the minister's role to be involved in that.

Hon TOM STEPHENS: I am talking about when all of the councillors have declared an interest, because they are all living in the main street, or whatever, so the council cannot make a decision because no-one is left to make the decision.

Hon Robin Chapple: I did not think this was specific to that instance. I thought this was referring to someone declaring an interest in X, Y or Z and that person being given permission by the minister with regard to that particular interest.

Hon TOM STEPHENS: This refers to when the council cannot make a decision because so many of the councillors have declared an interest.

Hon Robin Chapple: It does not read that way.

Hon RAY HALLIGAN: It certainly does not read that the way. Section 5.69 is headed "Minister may allow members disclosing interests to participate etc. in meetings". Subsection (1) states -

If a member has disclosed, under section 5.65, an interest in a matter, the council or the CEO may apply to the Minister to allow the disclosing member -

That is singular -

to participate in the part of the meeting relating to the matter.

The minister's explanation certainly fits with what is in the Act; namely, that a member who has an interest discloses it because he wishes to participate, and the council or the CEO applies to the minister for that to happen. The minister has said that this clause is needed to allow members to declare an interest once and for that declaration to remain in force until the specific issue that is under consideration has been resolved. That appears to be more than reasonable. However, the minister has now explained it to Hon Robin Chapple in a somewhat different manner.

Hon TOM STEPHENS: Members need to read sections 5.66, 5.67, 5.68 and 5.69 of the Act and see the interplay between those provisions. From time to time a specific matter is in front of a council, but because so many of the councillors have an interest -

Hon Ray Halligan: And that can happen.

Hon TOM STEPHENS: Yes.

Hon Ray Halligan: But there can also be only one who has an interest.

Hon TOM STEPHENS: Yes, and in that circumstance they can resolve it.

Hon Ray Halligan: What will happen if the member who has an interest wishes to participate?

Hon TOM STEPHENS: It is rare for an individual issue to come through if a quorum can bring such an issue to resolution under the provisions of the Act. From time to time, it may be possible under the Act for an individual circumstance to come to the minister or the department for advice and determination. I am relying on the advice of the most experienced officers. To my knowledge, a set of circumstances relating to an individual has not been presented to me. The typical circumstances that the Bill covers is groups of councillors who cannot decide on a specific matter because there is no quorum or because they all have an interest in an issue. For example, they may all have Wesfarmers shares, or they may all live in the main street, and that conflicts with a specific issue with which they must deal. At this stage, they have to come back every time that specific matter comes up, which may be every month. This provision will cover the situation for not only one meeting, but until a specific issue is dealt with and out of the way.

Hon ROBIN CHAPPLE: I believe I now understand what the minister is saying; namely, that section 5.69 of the principal Act exists specifically for those instances when a council cannot reach a decision about members participating, because all the members are involved and have the same pecuniary interest. In those circumstances, the minister will step in and give permission for a council to hold a number of meetings on a specific matter in which all members may participate and debate. Am I correct?

Hon TOM STEPHENS: It is not limited to that set of circumstances; however, it will be practice for that set of circumstances to be covered by this provision. For instance - a note has been passed to me by one of my officers as a reminder of a set of circumstances - councillors may have to consider the issue of their meal allowance. That is something in which they all have an interest. Every time the meal allowance issue arises, they cannot vote on it because they have a conflict of interest. It is practice that some councillors determine that these issues present a conflict of interest, and that is the practice that comes up. However, it is not limited to that set of circumstances.

Hon ROBIN CHAPPLE: I will propose a hypothetical situation in an attempt to seek clarification on this issue. The example of meal allowances provides me with a good example. The minister said that he would exempt councillors for a determination on their meal allowance. Would that then roll on to the appointment of a different chef?

Hon Tom Stephens: No, it is a specific thing in each case.

Hon ROBIN CHAPPLE: That issue is clarified; I thank the minister.

Hon RAY HALLIGAN: I understand what the minister is saying. The reason I raised the issue was purely for clarification. It covers an individual, or a number of individuals.

Hon Tom Stephens: Correct; however, the practice is the number.

Hon RAY HALLIGAN: It provides that opportunity for those who believe it important that they participate.

Hon Tom Stephens: Yes.

Hon RAY HALLIGAN: It gives them that right. For those reasons, I advise that we will not support the amendments of Hon Robin Chapple.

Hon ROBIN CHAPPLE: On that basis, I will not proceed with them.

Hon GEORGE CASH: The minister earlier used Wesfarmers as an example of where a pecuniary interest may exist. Will the minister distinguish between an interest held in common with the community and, for instance, the example of the Wesfarmers shares?

Hon TOM STEPHENS: I am advised that it is specifically spelt out in the Local Government Act under the financial provision section. It talks about shares that, through the regulations, are defined as having a specific cash value. The community interest is not specifically referred to in the Act. However, the words "proximity of interest" are used, which is often interpreted by councillors to mean when they have land that is adjacent to or not far from a property that is to be the subject of a council decision.

Hon GEORGE CASH: Which section was the minister referring to when he said there were provisions within the Local Government Act?

Hon TOM STEPHENS: Section 5.62.

Hon GEORGE CASH: Is the minister suggesting that the words "proximity of interest" relate purely to the distance of the interest or is it in fact wider than that?

Hon TOM STEPHENS: In the Act, section 5.62 deals with financial interests and section 5.60B deals with proximity interest and the distance from property. It is spelt out in the Act for the interest of members. In the end, the councillor has to decide whether there is a proximity of interest. The interplay between sections 5.60B and 5.62 is there for the guidance of individual councillors making the decision.

Hon GEORGE CASH: Does it relate just to distance?

Hon TOM STEPHENS: Yes.

Clause put and passed.

Clause 55: Section 5.95 amended -

Hon TOM STEPHENS: I move -

Page 34, after line 1 - To insert -

(1) Section 5.95(5)(b) is deleted and the following paragraph is inserted instead -

“

(b) the information is prescribed as being of a private nature.

”.

Hon RAY HALLIGAN: This amendment appears to take the decision out of the hands of the chief executive officer, and provide me with more work of looking at regulations.

Hon TOM STEPHENS: Yes, that is correct. Hon Barry House would recognise the words in the amendment, which removes from the CEO the freedom to table certain information that is private in nature. The CEO's bank account details, where he is putting his pay and where he lives is all private information, and through regulation he will not be forced to table that. However, his salary level, qualifications or other information in his contract cannot be, by arbitrary decision of the CEO, described as being private in nature. This provision endeavours to respond to the recommendations of the parliamentary report and to put in place regulations that say its nobody's business where a CEO lives, what his bank account number is or where he banks. However, the figure he is paid or other information in his contract might be of public interest. This provision tries to respond to some of the recommendations of the parliamentary committee.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 56 to 66 put and passed.

Clause 67: Schedule 2.2 amended -

Hon ROBIN CHAPPLE: I move -

Page 42, line 12 - To delete "is to" and insert instead "may".

This amendment deals with those local governments that do not have wards. As it stands, the amendment requires those councils to automatically carry out a review. The Western Australian Local Government Association has advised me and some councils that there is already a provision in the Act whereby the advisory board can require local governments to carry out that review, and a review every eight years would be too onerous. My amendment would delete the words "is to" and insert the word "may", which would then give local government the ability to carry out a review if it wished, but that would not impinge upon the advisory board requiring it to carry out a review.

Hon TOM STEPHENS: I propose to accept amendment No 10/67 on the basis that I am withdrawing amendment No 31/67. I understand that Hon Robin Chapple is not proceeding with amendment No 11/67. I accept the amendment.

Hon RAY HALLIGAN: It is interesting doing these things on the run and trying to find out exactly what is happening. What is the minister agreeing to? What will be the end result?

Hon TOM STEPHENS: Instead of requiring this review of the wards, the word "may" will be inserted to make it a more flexible arrangement. I think Hon Robin Chapple has explained it better than I, but basically this is a less onerous responsibility and makes for a more flexible arrangement. I am accepting that.

Hon ROBIN CHAPPLE: By way of explanation, the principal Act states that councils with wards must carry out a statutory review every eight years. This amendment originally would have insisted that councils without wards carry out a statutory review every eight years. WALGA and a lot of the smaller local governments have indicated that this would be an expensive provision and may not be needed. If it comes to the attention of the advisory board that there needs to be a review, the advisory board can instruct, at any time, that a review be conducted. Instead of there being a statutory arrangement for smaller local councils to carry out a review every eight years, this means they may carry out a review.

Hon RAY HALLIGAN: I thank Hon Robin Chapple for that explanation. The Opposition will support the proposal.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 68: Schedule 2.3 amended -

Hon RAY HALLIGAN: The minister will be aware of the opposition to these amendments by the Western Australian Local Government Association.

Hon Tom Stephens: The amendments are not opposed.

Hon RAY HALLIGAN: That is not the explanation I have been given. WALGA is very much opposed to these amendments. In the first instance, can the minister explain WALGA's opposition, and why he is going against that opposition?

Hon TOM STEPHENS: Yes, I am sorry; I was looking at the wrong clause. During the discussions, there were, and apparently there continue to be, expressions of opposition to clause 68. Section 2.3 deals with the methods of electing mayors, presidents, deputy mayors and deputy presidents when they are elected by the council. Effectively, these amendments add new requirements to established procedures for the conduct of election formalities. They deal with the calling for nominations, the procedures for conducting the election, the declaration of the election and the Court of Disputed Returns process. The department has accumulated a body of experience based on the complaints it has received, the concerns raised by the complaints, and the working through of a range of issues. I note that often that is not an experience that is shared by others. WALGA is not necessarily the recipient of all the complaints and issues raised with the department as it tries to process information. The amendments contain a requirement to formalise the election process, and puts the paperwork in place so that the circumstances of the Court of Disputed Returns can be available. These amendments have been developed on the basis of experience, and set in place processes similar to those we have available to ourselves in our electoral processes. Clause 68(11) adds a new division 3 to the Act, and will ensure that any elections conducted by councils to elect the mayor, president or deputies are subject to the same protections as

other elections when the results can be reviewed by a Court of Disputed Returns. Effectively, the clause puts in place the paper trail for handling disputes.

Hon RAY HALLIGAN: The suggestion is that the paper trail did not exist in the first place. Therefore, in the minister's opinion, is the opposition of WALGA to these provisions ill-conceived?

Hon Tom Stephens: That is right.

Hon RAY HALLIGAN: I am wondering where all of these amendments came from.

Hon Tom Stephens: They came from cumulative experience of the department, and advice to me.

Hon RAY HALLIGAN: Again, my concern is - this is the word that is coming through to us - that the minister has not tried to win the confidence of the associations, including WALGA. There may well be opposition, and often there is, but one hopes that the minister will try to go through a conciliation process. I am not aware that such a process has taken place, or that the minister has tried it.

Debate interrupted, pursuant to sessional orders.

[Continued on page 4854.]