

LOCAL GOVERNMENT AMENDMENT (ELECTIONS) BILL 2009

Consideration in Detail

Clause 1 put and passed.

Clause 2: Commencement —

Mr P. PAPALIA: I note that the act will come into operation in two parts. Clauses 1 and 2 will come into operation on the day on which the act receives the royal assent and the rest of the bill will come into operation on a day fixed by proclamation. Can the minister explain why that is the case?

Mr G.M. CASTRILLI: My advice is that the commencement is in two parts because the regulations need to be prepared.

Mr P. PAPALIA: Did the minister say that they need to be prepared?

Mr G.M. Castrilli: Yes, and then proclaimed.

Mr P. PAPALIA: During last night's debate, the minister indicated in response to questioning on the regulations that numerals would not be acceptable as a method of marking the ballot paper. How is he aware of that if the regulations are yet to be prepared?

Mr G.M. CASTRILLI: The regulations we are proposing to use will be the same as the regulations that existed prior to the introduction of the proportional preferential representation voting system, but they need to go to parliamentary counsel for comparison and checking.

Mr P. PAPALIA: Is the minister familiar with the current regulations? Does he know what they contain and how electors are to mark the ballot papers to comply with those regulations?

Mr G.M. CASTRILLI: Regulation 34 in part 7 of the Local Government (Elections) Regulations 1997 provides that if only one office is to be filled at the election, the elector is to mark the ballot paper by placing a tick in the box opposite the name of the candidate whom the elector wishes to be elected. Regulation 35 provides that if two or more offices are to be filled at the election, the elector is to mark the ballot paper by placing a tick in the box opposite the name of each candidate whom the elector wishes to be elected, but he is not to place ticks in more boxes than the number of offices to be filled.

Mr P. PAPALIA: I take it from the act of standing and reading from the regulations that were just handed to the minister by his adviser that the answer to my question is that no, the minister was not aware of what the regulations contained prior to him receiving them just now. I find that incredible.

Mr G.M. Castrilli: How do you work that out?

Mr P. PAPALIA: I worked that out because the minister's response to the member for Armadale's question last night indicated that, and he has just confirmed that by having to wait until he was handed the document by his adviser to read it. I know what is in the regulations because I have read them prior to this time. I can believe it, but I find it incredible that the minister has introduced legislation to effectively change the way that electors around the state will vote in local government elections without having read the regulations that will direct people how to mark the ballot paper. That is a fundamental requirement for a minister who argued in this place last night that this is a more democratic and effective system that will prevent party politics in local governments. I cannot believe that the minister has done that. Can he confirm that he had not seen that document until it was handed to him by his adviser just prior to my asking the question?

Mr R.F. JOHNSON: What we have just heard is basically the same as the speeches we heard during the second reading debate. The clause before the house is clause 2, which deals with the commencement of the act. We are not dealing with how a ballot paper should be filled in. That could probably come under clause 4 but certainly not under this clause. We are talking about the commencement of the act and the time of proclamation. I do not believe the minister has to answer futile questions that are basically a repetition of statements that were made in the second reading debate.

The SPEAKER: Thank you, Leader of the House. My ruling on that —

Mr R.F. JOHNSON: It was not a point of order that I was making.

The SPEAKER: I thank the Leader of the House. The minister has the opportunity to answer it in whichever way he chooses to do so.

Mr G.M. CASTRILLI: Mr Speaker, I have seen this document before.

Mr Paul Papalia; Mr John Castrilli; Ms Alannah MacTiernan; Mr Tom Stephens; Mr David Templeman; Mr John Kobelke; Mr Bill Johnston; Deputy Speaker; Mr Rob Johnson

Mr D.A. TEMPLEMAN: This is quite remarkable. It was quite a simple question to the minister for him to respond to. It is relevant to the clause as outlined.

Mr R.F. Johnson: Clause 4 is.

Mr D.A. TEMPLEMAN: The minister has been asked a specific question about the comments he made last evening in closing the second reading debate. The member for Warnbro has simply asked the minister to confirm the comments he made last evening, which is relevant to this clause.

Mr R.F. Johnson: He should do that under clause 4, my friend. You know that.

Mr D.A. TEMPLEMAN: The Leader of the House suggests that the minister does not have to answer questions. The minister, not the Leader of the House, is being asked questions. The Leader of the House does not have carriage of this bill. It is a simple six-clause bill. One would think, quite frankly, that the minister who has carriage of this bill would be right across the issues that not only were canvassed last evening during the second reading debate, but also are implicit in the six clauses that make up this bill. This is a legitimate line of questioning, and for the Leader of the House to interject and decide which questions the minister should or should not answer is absolutely abhorrent. The Leader of the House is not the person who has carriage of this particular bill. He may have been asked to sit in this chamber behind this minister, because the minister is on the griller at the moment and, it seems, not able to answer the questions. That is probably why the Premier is in the house as well. I note that the carrier pigeon from Jandakot is, of course, not making any comment at this stage!

The SPEAKER: If the member for Mandurah has a particular question or point he wants to make about clause 2, I urge him to do that.

Mr D.A. TEMPLEMAN: I am very pleased to do that, Mr Speaker. However, the Leader of the House made comments about the legitimacy of questioning on this clause, but it is not for him to decide whether the minister answers those questions; it is in fact the minister himself. I find it quite remarkable, and if the minister is not able to answer these questions and the Leader of the House is, maybe we should have another example of what we saw when the Treasurer was in the same seat at the table during the Treasurer's Advance Authorisation Bill and the Premier took over that seat at the table.

Several members interjected.

Mr D.A. TEMPLEMAN: All I am saying is that the opposition will ask questions about this clause and the opposition will continue to probe the minister, as is our right and as is our privilege, to ensure that we have a clear understanding of what he intends to do. From his answers so far and his comments last evening, he has no idea of what he is proposing in his own bill.

Mr T.G. STEPHENS: To pursue the kind and loving way in which we are approaching this debate, I remind members of what will now be on the record in the *Hansard* discussion on this clause. It started with a question to the minister from the member for Warnbro and shadow Minister for Local Government about the proclamation of the commencement clause. Effectively he asked whether the minister could explain why in a six-clause bill it was necessary to have a two-section proclamation so that, effectively, part of the bill would come into operation on the date the act receives royal assent, but the rest of the act would come into operation on a day fixed by proclamation. That was the question put by the member for Warnbro to the minister, and the minister gave two answers in his reply. The first answer was that it would await the regulations to be prepared. Then he was advised by officers at the table, added an extra word and said it would await the regulations to be proclaimed. I am not sure which is the right answer. One answer referred to preparation and one to proclamation of the regulations. I am not quite sure why the minister referred to both. However, that then naturally led to discussion on the commencement clause to questions on the regulations. If the basis for having two parts to the commencement of this bill is to do with whether the regulations are to be prepared or whether they are to be proclaimed —

Mr R.F. Johnson: Now you are trying to help your colleague out of a difficulty.

Mr T.G. STEPHENS: Not at all. I have got some questions about —

Ms A.J.G. MacTiernan: We are actually a team.

Mr T.G. STEPHENS: That is right.

Ms A.J.G. MacTiernan: We actually don't mind helping each other. Government members should try it some time. It is really good when you like your colleagues!

Mr T.G. STEPHENS: We just want to watch government members dissemble before our very eyes! My question to the minister is really about these regulations.

Mr Paul Papalia; Mr John Castrilli; Ms Alannah MacTiernan; Mr Tom Stephens; Mr David Templeman; Mr John Kobelke; Mr Bill Johnston; Deputy Speaker; Mr Rob Johnson

Several members interjected.

The SPEAKER: Thank you, members!

Mr T.G. STEPHENS: My question about these regulations is simple: have the regulations been prepared and are they ready to be put into effect; and, if so, is that because they are the same regulations as those that were in place previously? Can the minister provide a response to that question?

Mr G.M. CASTRILLI: This bill must be passed before regulations can be prepared in the event that there are amendments. It is therefore applying the standard, normal practice, as I understand it, that happens in this place. That is the answer.

Mr T.G. STEPHENS: I thank the minister very much. Is the minister, therefore, telling me that the regulations he was reading from before were not the regulations that will be put into effect to govern the operation of this legislation?

Mr G.M. CASTRILLI: The regulations are the same as the 1997 ones, unless there is an amendment.

Mr T.G. STEPHENS: I think the minister has now made what appear to be two conflicting and contradictory remarks; that is, that the regulations have to be prepared in order to be proclaimed, yet the regulations that we will utilise are the ones that were in effect before. Can the minister see the inconsistency that I think everyone else in the house can see?

Mr R.F. Johnson: They've got to be prepared; you know that. You were a minister once; do you remember?

Mr T.G. STEPHENS: Briefly.

Mr R.F. Johnson: In the dark days.

Mr T.G. STEPHENS: Can the minister see the contradiction? What is the real answer he wants to give the house?

Mr G.M. CASTRILLI: The current regulations are different because we have proportional preferential representation; therefore, those regulations that I want to model on the 1997 ones need to be prepared and proclaimed.

Mr T.G. STEPHENS: So will the regulations that were previously in place simply be taken holus-bolus and redeployed for the operation of this bill, or does there need to be some change to them?

Mr G.M. CASTRILLI: That is my intention.

Mr T.G. STEPHENS: Does the minister understand why, in handling this commencement clause, we might be of the view that it is entirely unnecessary—for a bill which is so short for an act which will be so brief—to have a two-part proclamation? In fact regulations that were previously available to the minister continue to be available to him. He could have this huge bill of six clauses proclaimed as an act on the same day it receives royal assent. Why would the minister break the proclamation into two parts if the regulations are already drafted and available to him?

Mr G.M. CASTRILLI: That has been the standard applied in this chamber, and parliamentary counsel need time to prepare those regulations.

Mr P. PAPALIA: The minister stated that parliamentary counsel “need time”. If the government is reproducing the previous regulations, which comprise four lines in one clause and six lines in another, why is it going to take so long?

Mr G.M. CASTRILLI: We have adopted the standard process.

Mr P. PAPALIA: The four lines in one clause and six lines in another to which I referred comprise two sentences and one heading. Why is it going to take so long?

Mr G.M. CASTRILLI: It is not as simple as that. Parliamentary counsel need to prepare new forms and to ensure they comply with the legislation.

Ms A.J.G. MacTIERNAN: While it is often the case that regulations are prepared after the bill, in a bill where the regulations are the central point, where the issue is in fact how the vote is going to be exercised, where it is absolutely critical to the substance of the legislation, the usual process is to supply the draft regulations at the same time as the bill so that members know what they are voting on. In this instance, the regulations could completely change the way in which the bill operates. We cannot sensibly assess this legislation without there being certainty about the regulations.

Mr Paul Papalia; Mr John Castrilli; Ms Alannah MacTiernan; Mr Tom Stephens; Mr David Templeman; Mr John Kobelke; Mr Bill Johnston; Deputy Speaker; Mr Rob Johnson

As the member for Warnbro said, it is not as though this is a really difficult issue, and I think parliamentary counsel could sit down and knock the regulations off in an hour. For example, if the regulations stated that the ballot paper was to be completed with numbers—and there is nothing in this legislation that would prevent that being the case—we would get an entirely different voting system, an exhaustive preferential voting system! If the minister cannot produce the regulations, it is incredibly important that we get a cast iron commitment about the voting procedure and the ballot-marking procedure so that we can make a proper determination on this bill.

Mr G.M. CASTRILLI: Section 4.69 of the Local Government Act 1995 sets out the first-past-the-post process. As I read out earlier, sections 34 and 35 of the Local Government Regulations 1997 specify how the ballot paper is to be filled in.

Mr T.G. STEPHENS: In view of that, would the minister object if I were to amend the commencement clause to read: “That this Act comes into operation on the day on which this Act receives the royal assent”?

Mr G.M. CASTRILLI: That is not standard practice, and I would not support it.

Mr P. PAPALIA: Will the minister respond to the member for Armadale’s last question and give a cast iron guarantee that the regulations that he read out earlier will be the ones imposed on this type of voting when this legislation passes?

Mr G.M. CASTRILLI: That is my intention, subject to any unforeseen circumstances.

Mr D.A. TEMPLEMAN: The minister referred to the Local Government Regulations 1997. The opposition is seeking an assurance that the government will not impose a process that will effectively change the method and outcome of voting, whether it is a check, a cross, a tick or whatever. The member for Armadale made the point that if the minister is unable to provide that information, we are debating something without clearly understanding the final intention. The minister has stated his intention, which goes to the crux of the member for Armadale’s question. Clause 4(2) refers to “marking the ballot paper in accordance with the regulations”. If the government decides that a tick is going to be the method, as per the regulations, but people use a cross—which shows the intention of the vote—and the returning officer is satisfied that was the intent, then that is a valid vote. We need some clarity.

The member for Armadale asked a legitimate question of the minister. She expected that these draft regulations would have been clearly identified as part of this bill because they are essentially part of the debate on the change to the voting process. I ask the minister to perhaps specifically answer the original question that was asked by the member for Armadale before she had to leave the chamber briefly. The member for Armadale might want to add to that, I am not sure.

Mr G.M. CASTRILLI: It will not be a Mugabe fingerprint for a start. Clause 4 amends section 4.69 of the act. Proposed subsection (2) reads —

Delete section 4.69(2) and (3) and insert:

- (2) If 2 or more offices are to be filled at the election, an elector is to cast his or her vote by marking the ballot paper in accordance with regulations so as to indicate the candidate or candidates named on the ballot paper whom the elector wishes to be elected but is not to mark votes for more candidates than the number of offices to be filled.

Ms A.J.G. MacTiernan: That is entirely consistent with marking 1 and 2. Can the minister explain how marking 1, 2, 3, if there were three vacancies, in itself would rule out numerical preferential voting?

Mr G.M. CASTRILLI: The regulations will stipulate —

Ms A.J.G. MacTiernan: That is the point we are making—you need to commit to regulations.

The SPEAKER: Order, member for Armadale!

Mr G.M. CASTRILLI: My intention is to introduce regulations based on what occurred pre-proportional preferential representation. The instructions are in the regulations. That is what I intend to do.

Mr T.G. STEPHENS: I hear the minister saying in his answer that that is his plan. Why does he not simply give the house an unequivocal commitment in light of the fears being expressed on this side of the house, not just about his hopes and aspirations, but to absolutely undertake to not alter in any way, shape or form the regulations to create the possibility that the regulations could emerge in a format. I know he is talking now about his plans, but why not give the house a firm and decisive commitment right now? Will he do that?

Mr Paul Papalia; Mr John Castrilli; Ms Alannah MacTiernan; Mr Tom Stephens; Mr David Templeman; Mr John Kobelke; Mr Bill Johnston; Deputy Speaker; Mr Rob Johnson

Mr G.M. CASTRILLI: I have already answered that question. I have just indicated that the requirement is included in clause 4. I said that it is my intention to bring in regulations based on what occurred pre-PPR.

Mr T.G. STEPHENS: I thank the minister for that answer. I refer now to an earlier answer the minister gave in response to my query about why the commencement clause came in two parts. The minister gave us his answer that it is based on, I think, precedent, practice and convention.

Mr R.F. Johnson: It is normal practice of the house in legislation. You know that as well as I do.

Mr T.G. STEPHENS: Things change.

Mr R.F. Johnson: Should it suddenly change today?

Mr T.G. STEPHENS: Things change all the time; that is what Parliament is all about.

Mr R.F. Johnson: I am disappointed that your shadow minister has said very little so far. He has had to rely on the help of half a dozen mates.

Mr P. Papalia interjected.

Mr R.F. Johnson: I would sit them down if I were you. I would not want to be embarrassed by some of the comments your colleagues are making.

Mr T.G. STEPHENS: He said, “Come on, move on.” And I will move on. He is trying to help out the minister. He said, “Don’t embarrass the poor minister for too much longer”.

Mr R.F. Johnson: It would be a unique concept to deal with the appropriate questions and statements you are making under the appropriate clause, because none of you have done so yet.

Mr T.G. STEPHENS: I am dealing with the commencement clause. The Leader of the House is reflecting on the Chair.

Mr R.F. Johnson: I am reflecting on you, my friend—on your ability.

Mr T.G. STEPHENS: No; he is reflecting on the Chair. The Chair would be the first to shut me up if I were not dealing with the commencement clause. I know this Chair—the Speaker. The Leader of the House should not be reflecting upon him in his capacity.

Mr R.F. Johnson: I would never do that, my friend.

Mr T.G. STEPHENS: I fact, I think there is a chance the Leader of the House will be named if he keeps reflecting on the Chair!

Several members interjected.

Mr T.G. STEPHENS: I know this Speaker. If I were not speaking to the commencement clause, I would be gone.

Mr R.F. Johnson: Do you want an early weekend?

The SPEAKER: Order! Thank you, Leader of the House.

Mr T.G. STEPHENS: The commencement clause of bills has varied over times and there are times when bills have commencement clauses under which the entire act can come into operation on the date on which it receives royal assent. Clearly, for a bill as simple as this one, there is no reason at all why I should not proceed with my amendment; that is, to move to amend the commencement clause so that the whole six clauses come into effect on the date on which the act receives royal assent. Can the minister come up with any better argument not to do so other than because of past practice, precedent and conventions of the house?

Mr G.M. CASTRILLI: I have already answered that question.

Mr J.C. KOBELKE: Most of the questions and discussions have related to the regulations. When asked about the two parts to clause 2, “Commencement”, the minister indicated that that was one of the reasons there were two clauses and that the rest of the act would be on a day fixed by proclamation because the regulations needed to be put in place. I would like to ask the minister, not to go back over the regulations, but whether he can give us some sort of time line. We clearly understand that if the election is held in October, as we expect, we will want the regulations in place by then. Are there key issues to be dealt with? For instance, clearly, local government needs to be advised. If the WA Electoral Commission is conducting the election, it needs to school its people. I do not expect that will take a great deal of time. But I am sure the minister or his advisers have a list of all the things that must be done. Can the minister give us some idea of what those things are and the current indicative time line for doing those things? Is he seeking to do most of them before proclamation? Things such as informing people how the voting works et cetera clearly can be done after proclamation if there is time

Mr Paul Papalia; Mr John Castrilli; Ms Alannah MacTiernan; Mr Tom Stephens; Mr David Templeman; Mr John Kobelke; Mr Bill Johnston; Deputy Speaker; Mr Rob Johnson

between then and the election. Can we have some indication of the things that need to be done and the time line for them, please?

Mr R.F. Johnson: A very good and genuine question, may I say. The only one we have had so far.

Mr W.J. Johnston: That is so generous.

Mr R.F. Johnson: A genuine one. Better than the feeble attempt of some of your mates I have to tell you. When are we going to hear from the shadow minister again? I am dying to hear from him.

Several members interjected.

Mr G.M. CASTRILLI: Once the act has been assented to, the regulations will be drafted by parliamentary counsel and detailed in an Exco minute paper and complementary explanatory notes. It will be then sent to the Department of the Premier and Cabinet and submitted to government at an Exco meeting. There are several dates for the Exco meetings: 14 July, 28 July, 11 August, 25 August and 8 September. It will be then signed by the Governor and returned to the agencies. A copy will be sent to the State Law Publishers by the agency on request by Parliamentary Counsel and published by the State Law Publisher. That process could take about three weeks if everything goes smoothly, but six weeks should be allowed.

Mr J.C. Kobelke: Which part of the process will occur in that six weeks?

Mr G.M. CASTRILLI: From the time at which the act is assented to, it could take up to six weeks. Nominations open on 3 September and close on 10 September, so the ballot papers must be printed in time for the early voting, which opens on the day the election notice is published. This is anticipated to happen on Wednesday, 16 September.

Mr J.C. KOBELKE: I thank the minister for that. The endpoint is the close of nominations for the elections in October, which means by the September date the minister gave, because the ballot papers would have to be printed and would have to include instructions about the method of voting. If I understood his earlier answer to the question, the minister was suggesting that the legislation could even go before the Executive Council as late as September. Can the minister confirm that is what he actually said, and whether that is cutting it very fine? If the legislation is not to come before the Executive Council until September, the ballot papers would have to be printed within days of the date to meet the closing date of nominations for that election. Did I misinterpret the September date that the minister gave, which I took to be the final date for the proclamation?

Mr G.M. CASTRILLI: The papers need to be ready by 16 September; before that, what I outlined previously needs to happen, but there also needs to be time for training and information sessions for the public, so that people know what is going on.

Mr J.C. KOBELKE: What is potentially the last date of proclamation, after which those things can happen?

Mr G.M. CASTRILLI: My advice is that it needs to happen by the end of July.

Mr W.J. JOHNSTON: I see that this clause states that clauses 1 and 2 come into effect on the day that the bill receives royal assent. I am wondering about the reason for not including clause 3, which does not seem to relate to the regulations that the minister has been explaining to my colleagues are the issue causing the delay. Clause 3 is not included as one of the proposed sections that will come into effect on the date on which the bill receives royal assent, rather than on a date that is later fixed by proclamation. The minister has been explaining that the issue here is that regulations need to be prepared, or have been prepared—one or the other—but I do not see that those regulations relate to clause 3 of the bill. I wonder why the minister chooses not to include clause 3 as a part of the bill that will come into effect on the day of royal assent. Is there a particular reason for that? What is the effect of clause 3 not being included, or is there a potential effect of its inclusion? What is the impact of a bill that does not amend an act on the day of royal assent? Is that a reason for leaving it in, or for leaving it out? What is the purpose of the decision by the minister not to include that clause, when it does not relate to the regulations, which is the issue that the minister has to this point been identifying as the reason for his decision to introduce this legislation in this form? I would appreciate it if the minister could explain his decision.

Mr G.M. CASTRILLI: My advice is that nothing is amended until the proclamation has happened, and after the proclamation, the act is amended.

Mr W.J. JOHNSTON: The question I was asking is whether there is a particular reason that clause 3 is left out of clause 2(a). What is the purpose of leaving it out?

Mr G.M. CASTRILLI: It is standard practice.

Mr Paul Papalia; Mr John Castrilli; Ms Alannah MacTiernan; Mr Tom Stephens; Mr David Templeman; Mr John Kobelke; Mr Bill Johnston; Deputy Speaker; Mr Rob Johnson

Mr T.G. STEPHENS: I picked up a copy of the Electoral Amendment (Miscellaneous) Bill 2008 to make a quick comparison with the bill before the house. It is interesting that clause 2 of the Electoral Amendment (Miscellaneous) Bill 2008 states —

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation.

The convention in that bill seems to be the same as in the bill before the house. I am a bit intrigued about why that is the convention, at least in these two bills. I will pay closer attention to the issue of commencement in future.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 4.69 amended —

Mr P. PAPALIA: I refer to the proposed amendment to section 4.69, which deletes section 4.69(2) and (3), and the interpretation of it. Based on the minister's previous answers, this goes to the heart of how electors will mark their ballot papers and how unfair or otherwise the system may be, and what interpretations may be made at the time the new system comes into force. Section 4.75 of the Local Government Act 1995 is headed "Giving effect to the elector's wishes". Section 4.75(1) states —

The returning officer may accept a ballot paper that, in his or her opinion, clearly indicates the elector's wishes as required or authorised by section 4.69 even if the ballot paper is not marked precisely in accordance with regulations.

I was happy that the minister suggested that this debate could alter the regulations that we end up with. I would like to seek some clarification about the minister's specific intent in the case of multiple vacancies; say, where there are two vacancies and three candidates, and people marking the ballot paper with two ticks, or two crosses, or even the figures 1, 2 and 3—or 1 and 2, to make it less controversial. Taking section 4.75(1) into account, if I were a returning officer, my interpretation would probably be that the intent of the voter is clearly indicated when a paper is marked with the figures 1 and 2, two crosses, or even two ticks, which, if the proposed regulations to which the minister has referred were strictly adhered to, would be the only correct answer. Can the minister give some insight about his intention, and whether he intends to adjust the regulations to take into account possible alternatives?

Mr G.M. CASTRILLI: As the member has indicated, section 4.75(1) stands, but then the Local Government Act indicates that in accepting a ballot paper under subsection (1) the returning officer, if appointed under section 4.20(4), is to have regard and give effect to any directions or guidelines given by the Electoral Commissioner.

Mr P. PAPALIA: I did not really garner from that response what the minister's intent is with the regulations in their final form. The minister is suggesting that the Electoral Commissioner will give advice in the lead-up to the election. My concern is that we are being asked to consider this amendment and a wholesale change to the process by which local governments are elected and the conduct of local government elections without knowing what the minister's intention is with regard to how a voter marks a ballot paper. I am trying to draw from the minister whether he is intending that only ticks will be considered valid or whether, in the case of a voter putting a tick and a cross, two crosses or the figures 1 and 2, clearly indicating to the returning officer the elector's wishes in accordance with section 4.75(1)—which remains in force, as the minister has indicated—those marks will be valid. Such markings clearly reflect the elector's wishes as required or authorised. I am concerned that we on this side of the house, by supporting the amendment, may support the government in disenfranchising a lot of people whose intent is very clear to the returning officer.

Mr G.M. CASTRILLI: As I said, my intention with the regulations is pre-proportional preferential representation. Section 4.75(1) and (2) of the Local Government Act, which the member read out, is current. It is not proposed to change it, so it will continue to be in force.

Mr P. PAPALIA: I understand that. I know that the section I have read will remain unchanged. However, the use of the section to enable a returning officer to interpret a ballot paper and to determine that he or she is able to ascertain the elector's wishes from the way in which a ballot paper is marked would suggest that if an elector, for instance, marked a ballot paper with two crosses, in the event of two vacancies, or the figures 1 and 2, the returning officer would clearly be able to determine the elector's wishes, under the current and future section

Mr Paul Papalia; Mr John Castrilli; Ms Alannah MacTiernan; Mr Tom Stephens; Mr David Templeman; Mr John Kobelke; Mr Bill Johnston; Deputy Speaker; Mr Rob Johnson

4.75(1). However, under the regulations that the minister is proposing, if they are strictly interpreted, we would return to the only valid form of vote being two ticks in the event of two vacancies.

Mr G.M. CASTRILLI: Section 4.75(1) and (2) was in effect under the first-past-the-post system and is still in effect today. If there is a clear intention on the part of a voter, the returning officer has the capacity to accept that voting intention. The Electoral Commissioner can give guidelines on the ballot papers.

Mr P. PAPALIA: This is of great interest to me and obviously to many of the members who took part in the debate last night.

Mr G.M. Castrilli: Nothing has changed.

Mr P. PAPALIA: No, nothing in the guidance has changed, but I am seeking the minister's intent. Section 4.75(1) provides guidance to a returning officer, subject of course to the commissioner's guidance—I am wondering about that because I do not know what it will be. I am seeking some sort of comment from the minister, for *Hansard*, that may suggest that figures 1 and 2, for instance, in the case of two vacancies, would be acceptable, or whether a cross and a tick would be acceptable or whether two crosses would be acceptable. What is the minister's intent, because this is fairly fundamental? In my contribution last night I was particularly concerned to state that I had concerns that many people will find it confusing. This situation is almost bizarre. It is ironic that once this amendment goes through the Parliament, in a local government election, should we follow the usual practice for electing a lower house at a federal or state election and a voter marks his preferences 1, 2, 3 and 4, that voter would potentially be considered to have marked the ballot paper in an invalid fashion. He would be disenfranchised. That that could take place is not an outrageous suggestion. I am therefore seeking from the minister a little more of his view of what should be enacted or decided by a returning officer in that event?

Mr G.M. CASTRILLI: The instructions to the voter will be to place a tick on the ballot paper, and that will be in the regulations. That tick will give effect to the elector's wishes and will enable the returning officer to accept the intention of the elector. It is not my personal position to determine what every single vote is. It is not my role to do that. The instructions will be to use a tick to give effect to the elector's wishes for the returning officer. The Electoral Commissioner may give directions or guidelines. From my perspective, what is proposed will change nothing in section 4.75 in comparison with what the arrangement was previously under the first-past-the-post system.

Mr P. PAPALIA: The minister will understand my concerns if I draw a little on the contribution last night of the member for Perth with regard to the scrutineering process and how in the prolonged period of time following the last state election, we who were involved in scrutineering at different stages pored over every single ballot paper and looked for any possible negative interpretation —

Mr G.M. Castrilli: As one does.

Mr P. PAPALIA: The minister did too, and everyone does. The minister can then understand that my concern is that under the current legislation and section 4.75, which will remain unchanged, a number of people could effectively mark their ballot paper incorrectly and not in accordance with the guidelines, regulations or guidance given to them in the how-to-vote instructions from the Electoral Commission. Nevertheless, their vote could potentially be counted. By refining and reducing the options to the voter to a tick as opposed to the figures 1 and 2, a series of figures, a combination of ticks and crosses or whatever, we are reducing the acceptable options to such an extent that I believe there will be a higher likelihood of confusion and inadvertent invalid voting. I seek the minister's advice on how he proposes to overcome that likelihood, noting that he is the one who is suggesting that this is a better system that we need to go back to and that there will be better outcomes.

Mr G.M. CASTRILLI: I am not really sure what else I can tell the member. The instructions to the elector will be to tick. Section 4.75 of the Local Government Act gives the power to the returning officer to clearly accept the vote if he can determine the clear intentions of the elector. There are scrutineers who do this. There are checks and balances. I am not going to change the current system—that is, section 4.75—as that is what it is now and what it was before. That is the assurance. It is the same process that exists for local, state and federal governments. I say again that, under the regulations, the instruction will be to tick, and then it will be up to the returning officer to determine what the voter's intention is and to accept that vote if he clearly understands what the voter's intention is. It is up to the returning officer. The Electoral Commissioner may give directions or guidelines to the returning officer in those situations.

Mr P. PAPALIA: The minister probably understands my concerns. I know I am frustrating him by doing this —

Mr G.M. Castrilli: All I am saying is that nothing has changed. That is the current situation today.

Mr Paul Papalia; Mr John Castrilli; Ms Alannah MacTiernan; Mr Tom Stephens; Mr David Templeman; Mr John Kobelke; Mr Bill Johnston; Deputy Speaker; Mr Rob Johnson

Mr P. PAPALIA: I know. My response may be that perhaps something should change. As we have changed the manner of marking the ballot papers, I am not sure that this guidance to returning officers is adequate.

Mr G.M. Castrilli: I am not proposing to change section 4.75 of the Local Government Act as it is printed now.

Mr P. PAPALIA: The minister has not included that section in this amendment bill. I wonder whether it should be. My concern is that the minister appears to be comfortable that section 4.75(1) can be utilised by returning officers to determine whether or not all potential ways of marking a ballot paper are legitimate. I am not convinced that that is adequate. I think a degree of responsibility is being given to a returning officer, even to the Electoral Commissioner in this case, without us having heard what the minister's intention is.

Mr G.M. CASTRILLI: If that was the member's concern, when proportional preferential representation was introduced by Labor, why did it not change the act then? I do not have a concern.

Mr P. Papalia: Does the minister want me to respond?

Mr G.M. CASTRILLI: That is what is there currently under PPR. It was there under the first-past-the-post system. That has not changed, so I do not see any —

Mr P. PAPALIA: My point is that under the system that is currently in force, which the minister is seeking to change, voters have to indicate preferences. The interpretation is a little more specific—it is numbering the boxes in order of preference of choice. What the minister is proposing is to remove that and enable, in accordance with the regulations, only a tick to be considered the appropriate marking. I can see a scenario, without too much stretch of the imagination, whereby someone might put a cross, for instance, or, if there is more than one vacancy, put a tick, one cross or two crosses. Even if we consider the likelihood of people coming from a state or federal election straight into a local government election and marking their preferences 1 and 2, my interpretation of section 4.75(1) would be that if a ballot paper were numbered 1 and 2, I would, as a returning officer, be able to determine the elector's wishes. I would determine that as a valid vote. I do not know what the minister's interpretation is. I would like some sort of sense about what his interpretation is.

Mr G.M. CASTRILLI: It is not my position to tell the returning officer what to accept and what not to accept. That is why section 4.75 is there. It gives the returning officer the capacity to determine what the intention of the voter is. If the intention is clear to the returning officer, the returning officer may accept that ballot paper. That is what it is today; that is what it was yesterday under the first-past-the-post system. I am not proposing to change any of that. I think I have answered that as best as I could.

Mr W.J. JOHNSTON: In the minister's answer to the immediate previous question from the member for Warnbro, he referred to scrutineers being able to determine these matters.

Mr G.M. Castrilli: No; scrutineers do not determine.

Mr W.J. JOHNSTON: Indeed. I am not trying to misquote the minister. If the minister did not use the word "determine" I withdraw that and apologise.

Mr G.M. Castrilli: I was just saying the scrutineer has a job to do, as in all situations.

Mr W.J. JOHNSTON: What I am getting to is the issue that the minister has raised with me—I am pleased that he has—that is, the question of the rights and responsibilities of the scrutineers in this process. Could the minister outline for me the way that a scrutineer could raise objection if, under the Local Government Act, he does not actually have any right to review ballot papers in the way that scrutineers can under the state Electoral Act? Under the state Electoral Act there are specific provisions for scrutineers. As the minister is aware, we all dealt with it at the overseas passenger terminal. There are extensive processes for the conduct of scrutineers in their dealings with the ballots conducted by the Western Australian Electoral Commission. As I understand the Local Government Act, those rights do not apply automatically in the local government system. Ballot papers could be ruled out of order with no opportunity for the scrutineers, as the minister has raised in this chamber, to review those ballot papers. That then leads on to people's rights to take the matter further by way of appeal if they are not even aware of decisions the returning officers are making because of this proposed system.

We do not know what the regulations are. A person could have what in any other circumstance would be considered a valid vote ruled out because of regulations that we have not seen. There is no proper provision for scrutineers to review the ballot papers and therefore no opportunity for the matter to go further because, of course, the case going any further would need to have particulars. Those particulars could be raised only by a scrutineer having access to the ballot papers at the time of the count. If the count has been done in secret and the papers have been ruled out when there is a 1 instead of a cross, a tick instead of a cross or a smiley face instead of a cross—all of which would clearly be valid votes and be properly included in the count—they may well be excluded. As the minister says, the scrutineers are the protection for the system that he is introducing. I am

Mr Paul Papalia; Mr John Castrilli; Ms Alannah MacTiernan; Mr Tom Stephens; Mr David Templeman; Mr John Kobelke; Mr Bill Johnston; Deputy Speaker; Mr Rob Johnson

wondering whether those provisions are in fact adequate to do the job that has been outlined for them. If not, this change could have additional consequences for inexperienced returning officers. There are so many more returning officers in local government than there are in either the federal or state arenas. In the federal arena particularly, they are professionals who work full time in that job. In the state arena, they tend to be people with senior status in the community who are well trained or well versed, having dealt with these matters on a number of occasions. In many cases they are also the federal divisional returning officers. However, at local elections, there are many, many more people involved, and inexperienced returning officers could be making inadequate decisions. The minister is proposing a system which we do not know, but which potentially says to us that a 1 will no longer be a valid vote, yet all the court decisions on this matter have shown that even when a cross is recommended, a 1 should in fact be accepted. These votes could be excluded when they should be included. The procedure that the minister has outlined is the scrutineering process that will ensure that the injustice the minister is introducing is not perpetrated. Where is adequate protection provided if returning officers can count votes in secret and exclude scrutineers from having access to the process of the count?

Mr G.M. CASTRILLI: I suppose the member would understand the scrutineering process pretty well in his former role, I would imagine. However, under the Local Government Act section 4.71(1)(j) states that regulations are to include provisions about the scrutineers for candidates and the rights and obligations of scrutineers. Under the Local Government (Elections) Regulations 1997, regulation 71 details the rights of scrutineers in a list from (a) to (e). I can read those out for the member, if he wants. Basically, regulation 71 deals with the rights of the scrutineers.

Mr W.J. Johnston: What page is that on?

Mr G.M. CASTRILLI: Section 4.71(1)(j) of the Local Government Act refers to the appointment of scrutineers for candidates and the rights and obligations of scrutineers. Regulation 71 of the Local Government (Elections) Regulations 1997 details the rights of scrutineers and refers back to the Local Government Act section 4.71(1)(j). The last amendment to the rights of scrutineers was gazetted on 22 December 1998, so it has stood the test of time for more than 10 years.

Mr W.J. JOHNSTON: However, nowhere in those provisions does it require a returning officer to count a ballot in front of the scrutineer. There is no provision in the act or regulations that requires a returning officer to count ballot papers in front of a scrutineer. As I understand, the minister's position at the moment is that he intends to introduce regulations that will remove the right of an elector to indicate his or her preference by writing the number 1. There have been many court decisions about this issue, the most recent one, of course, was the famous case involving Fran Bailey that was decided in July 2008 where this issue was again canvassed. Justice Tracey quoted the main case that is referred to in these matters, which was the decision of Justice Isaacs in *Kean v Kerby*. I will not read the whole paragraph from Justice Isaacs but in that case one of the ballot papers in question was a ballot paper on which the person made a cross when they were obliged to write a number 1 and then went back and made a number 1. The court held that clearly the intention of the elector in that case was to vote for a gentleman called Kerby and Justice Isaacs admitted that vote. Justice Isaacs explained how the intention of the elector is the most important issue, not the technicalities of the legislation. In the case involving Fran Bailey, a Liberal, who members may remember won the ballot by a very narrow margin, the Labor Party called for the Australian Electoral Commission to recount the ballot. The Labor Party was able to produce evidence to the Australian Electoral Officer about why he should—it was in Victoria, I think the person was a man—recount the ballot and the Australian Electoral Officer in Victoria agreed to do that. Following the recount Fran Bailey lost the seat and Fran Bailey then appealed that decision to the Federal Court sitting as the Court of Disputed Returns, which is the case I referred to involving Justice Tracey. Justice Tracey reversed the Australian Electoral Officer's decision by recounting the disputed ballot papers and then installing Fran Bailey as the winner of the seat. Now, that would not be possible here because —

The DEPUTY SPEAKER: I want to refer the member for Cannington to standing order 179 “Relevancy of debate” that states —

Debate will be confined to the clause or amendment before the Assembly and no general debate will take place on any clause.

The member is now discussing scrutineering, court cases and whatnot, will he please come back to the point.

Mr W.J. JOHNSTON: On that point of order —

Ms A.J.G. MacTiernan: Unfortunately, your crime is that you are not confining yourself to matters within the competency of the minister, which means you've got a very small envelope of debate.

Mr W.J. JOHNSTON: I am very happy to be guided by the Deputy Speaker and I accept his ruling. If I stray beyond the bounds of the matters that are before the chamber, I am sure that he will let me know.

Mr Paul Papalia; Mr John Castrilli; Ms Alannah MacTiernan; Mr Tom Stephens; Mr David Templeman; Mr John Kobelke; Mr Bill Johnston; Deputy Speaker; Mr Rob Johnson

Returning to the point that I was making, the minister raised the question of scrutineers. I have tried to —

Mr G.M. Castrilli: I did not raise the question of scrutineers; I was referring back to a point.

Mr W.J. JOHNSTON: The minister raised the question of scrutineers in the answer to a question from the member for Warnbro; that is right. I am taking up the minister's point about scrutineering and I am asking him in respect of the clause in front of us—which is changing the voting system so that the voting system electors currently use will be different—when electors mark the ballot paper, is the minister proposing to say to them that the way in which they marked the ballot paper last time would mean an invalid vote next time? I am going to the question of the court's interpretation of the way that people mark ballot papers. In the case I raised it was the reverse; rather than a 1 being outlawed and a cross being accepted, in that case a cross was outlawed and the 1 accepted. However, Justice Isaacs, as he then was, accepted that even though it was not strictly a 1, it still demonstrated the elector's intention. I was making the point that, as the minister raised, scrutineers are our protection from errors by the bureaucrats who administer the procedures, but now the minister is changing the system and proposes, as we understand it because we have not seen the regulations, that a number 1 will no longer be valid even though it is today—sometime between now and October it will become invalid. Returning officers do not have to count a ballot in front of a scrutineer; indeed, even if a scrutineer is appointed, he has no right to request to view either the ballot papers themselves or the counting procedure. Is the minister satisfied that there is sufficient protection for ordinary folk who today would be making a valid vote—the minister intends to make their valid vote invalid, but the court would accept their vote as being valid—against changes that a scrutineer would make?

Mr G.M. CASTRILLI: This bill is about changing the voting to first-past-the-post. I am not changing anything about scrutineers or anything else. I am not changing the rights of scrutineers or any of that at all. This bill has nothing to do with scrutineers; it is about changing to first-past-the-post.

Mr W.J. JOHNSTON: The minister raised the question of scrutineers. Neither the member for Warnbro nor I raised the question of scrutineers. The minister raised it. I have asked a very simple question. The minister's answer is that he is not changing anything about scrutineering. I understand that the minister is not and I am not currently proposing that the minister should. What I asked was a very simple question and I have not heard an answer yet. If this bill is passed by this house, clause 4 does not say a number 1 is invalid. Nothing in this bill says that a number 1 is invalid. Indeed, none of us has seen the regulations that the minister proposes to introduce. The minister has referred to what may or may not exist. On two occasions the minister has given different answers: he said his intention is that the regulations will be substantially the same as the regulations that applied from 1997, and on another occasion he said that we need to wait for parliamentary counsel to draft the regulations. I am very happy for either of those answers to be right, but it does not change the question I am asking. The minister proposes a law that states he intends to regulate that a valid vote today will become invalid tomorrow—that is to say, he intends to regulate a number 1 to no longer be a valid vote—yet the courts have clearly said in a number of decisions going back to the 1920s that it does not matter what the law says; it is the voter's intention that is paramount. The minister has raised the very fact of protection for those citizens who currently vote validly, but he intends those valid votes to become invalid. Even though the minister intends that regulation be the case, the court still protects them from him through decisions going back over 80 years. The minister says that the only way they are protected is by the procedures allowed in scrutineering. He says that he is not changing the rules of scrutineering. Is he satisfied, given that he will make what are currently valid votes technically invalid but still valid, that he is not increasing the rights of scrutineers? Although he is saying that these valid votes are technically invalid, the courts would show that they are valid. There will be no way of getting the courts to review it, because he is not intending to increase the rights of scrutineers so that they could gather the evidence to take to a court to get the court to overturn a bureaucrat's decision. He is increasing the authority and power of the bureaucrat at the expense of the ordinary citizen.

Mr G.M. CASTRILLI: I have clearly answered the question asked by the member for Warnbro. It is set out in section 4.71(1) and (2) of the Local Government Act 1995. I am not changing any of that, nor am I changing any provisions of the rights of the scrutineers. I am trying to attempt to change first past the post. All the other regulations and the provisions in section 4.71 of the Local Government Act relating to giving effect to electors' wishes are what is current today and what is currently first past the post. I am not changing any of that.

Mr W.J. Johnston: Are you satisfied that that is okay?

Mr G.M. CASTRILLI: Yes, I am. It has stood the test of time. I am not changing any of that. It is what is in place today and it has worked under proportional preferential representation. It was first past the post before. I am not changing it. I am comfortable with what is there.

Mr P. PAPALIA: I would like to pursue this a little more because I understand that the minister is comfortable utilising the regulations that were in place prior to them changing in 2007 to local government voting. I would

Mr Paul Papalia; Mr John Castrilli; Ms Alannah MacTiernan; Mr Tom Stephens; Mr David Templeman; Mr John Kobelke; Mr Bill Johnston; Deputy Speaker; Mr Rob Johnson

have thought that some of the issues and concerns I have raised are legitimate, as are some of the concerns raised by the member for Cannington about the minister increasing the power of scrutineers inadvertently by not adding any detail to his regulations.

Mr G.M. Castrilli: How am I doing that to what is not there now?

Mr P. PAPALIA: I am not saying that.

Mr G.M. Castrilli: You just made the statement.

Mr P. PAPALIA: I am saying that the system that the minister is reintroducing —

Mr G.M. Castrilli: Which is the same as before PPR and the regulations and the Local Government Act.

Mr P. PAPALIA: That is correct. Our debate has identified that we are clearly not satisfied with the previous regulations being applied now. There are concerns on our side about the implication of re-implementing these regulations. Just because they were the ones that the minister's former colleagues were satisfied with when they were introduced in 1997 does not mean that the Western Australian public has to be satisfied that, by virtue of his not wanting to do any additional work or not wanting to shift his position at all, the minister should not consider that there should be more detail, more guidance and more appropriate —

Mr C.C. Porter: Isn't what you're suggesting this: there are any number of permutations, almost as infinite as the number of voters, in the way people might go about numbering something, particularly after a change in a voting system? However, as I understand it, it is not standard practice for a minister, beyond matters that are traditionally expressed in regulations, to give his or her personal view as to what might be in or out with respect to every single one of those almost infinite permutations.

Mr P. PAPALIA: I take the interjection; it is a reasonable point. However, when we are changing local government voting methods, when a six-clause bill has been introduced to enact what is a significant change to the way in which voters around the state vote in local government elections, the regulations go to the heart of the matter. The regulations set the standard. The regulations determine whether voters in local government elections are to be deprived of their legitimate right to express their vote.

Ms A.J.G. MacTiernan: Just on that point, only last night the minister said that numbers would not be included.

Mr P. PAPALIA: In fairness to the Attorney General, he was not here last night when it was clearly revealed that the minister was not on top of these regulations. He was also not here earlier today when it was revealed that the minister had not even read the regulations until they were presented to him five minutes beforehand by his advisers. The minister has blithely wandered into this house and introduced legislation that, albeit, the Liberal Party made an election commitment to introduce. That is fair enough, but the minister had not even bothered to read the regulations that he was going to enact. I understand that the Attorney General might feel that the minister is putting a persuasive and acceptable argument and we should just sit down, shut up and accept that the old regulations were okay for 10 years from 1997 to 2007 and all is good, but this minister is not filling us with confidence. He came into this place for the third reading debate without even reading the regulations that he will enforce in relation to this voting system. How does he know that this system is adequate? He is just telling us it is adequate because his advisers are saying, "You don't have to do anything; it's the one that was in place in 1997 and that's all fine." We might not be satisfied. I do not know whether the Western Australian public would be satisfied based on the answers that the minister gave today and last night. I do not know whether anyone in Western Australia would be satisfied and comfortable with allowing regulations to be put in place just because they were in force in 2006.

Mr C.C. Porter: Are you dissatisfied with the previous form of the regulations?

Ms A.J.G. MacTiernan: Yes.

Mr P. PAPALIA: In relation to preferential voting, because people were required to number their preferences. In my view it is far clearer—which is why I support that system—for the returning officer to be able to determine —

Mr D.A. TEMPLEMAN: I am very interested in the speech of the member for Warnbro, and I would like him to continue.

Mr P. PAPALIA: It is far easier for a returning officer to determine the intent of the voter in the event that he or she has numbered the candidates in order of priority, albeit there is the option to use a couple of numerals twice or one numeral twice or leave a number off. If there is a figure 1, the voter's intent is clear. That does not change under this new system or this old-new system or new-old system, whatever it is. Nothing changes with regard to the intent of the voter by putting a number 1 and possibly, if there are two vacancies, a number 2 against the name of a candidate. What changes is whether the returning officer will take that intent into account. I know that

Mr Paul Papalia; Mr John Castrilli; Ms Alannah MacTiernan; Mr Tom Stephens; Mr David Templeman; Mr John Kobelke; Mr Bill Johnston; Deputy Speaker; Mr Rob Johnson

the words have not changed in section 4.75(1) of the Local Government Act, relating to guidance to the returning officer. The returning officer will be able to interpret that. The problem is that the options are expanded back out again.

Mr C.C. Porter: How have they?

Mr P. PAPALIA: Effectively, a voter could use a tick and a cross or two ticks, two crosses or the numbers 1 and 2 and all could be considered valid by the returning officer. Under this change, if a scrutineer then challenges any one of those combinations, the scrutineer might be considered correct but his decisions could subsequently be overturned by the courts, as was indicated by the member for Cannington. It is important for the minister to give an indication of his intention. He may have to re-visit the regulations. He may have to go to section 4.71(1)(l), which states —

any other matter relating to the casting of votes at elections or to votes so cast.

This provision will be included in regulations. It may be that we could determine there is a need for a little more work. As I said, we were not filled with confidence last night and we have not been imbued with any more confidence today. I would like to hear from the minister how he expects us to accept that his only argument for retaining the regulations that were enforced from 1997 to 2007 is that they were there and it is easy.

Mr G.M. CASTRILLI: I have answered this question time and time again.

Mr W.J. JOHNSTON: I am sure that that answer satisfies the minister. Under clause 4(1), which we are currently dealing with, I understand that the result of this amendment will be that the section 4.69(1) will state —

If only one office is to be filled at the election, an elector is to cast his or her vote by marking the ballot paper in accordance with regulations so as to indicate the candidate named on the ballot paper whom the elector wishes to be elected.

We do not have the regulations before us today. As the minister understands, at the moment an elector can fill in a ballot paper for, say, a mayor and put 1 and 2 for the two candidates for mayoral office, if there are only two candidates. That is the case under section 4.69(1), because that covers the situation in which there is a single vacancy and two candidates. Is it the minister's intention to make that currently valid vote invalid through the regulations? In the future a person will get his ballot paper for mayor and will write 1 and 2 against the two names. Is it the minister's intention that the regulations will say that if a person puts 1 and 2, it is not a valid vote and that the elector must put an X, a cross, a smiley face or some other device? Is it the minister's intention that the 1 and 2, which are currently valid, will become invalid? Is that the minister's intention?

Mr G.M. CASTRILLI: The regulation is a direction on how to fill in a ballot paper. The validity is under section 4.75(1) and (2).

Mr W.J. JOHNSTON: That does not answer the question.

Mr G.M. Castrilli: It does.

Mr W.J. JOHNSTON: It does not answer the question. There is not one provision in the legislation that says that a person cannot fill in a ballot paper using numbers. Either the minister has seen or he will see the regulations. The minister gave an answer that he still has not clarified. His first answer was that he has a copy of the regulations, and he saw them this morning when his advisors gave them to him. Alternatively, the minister said that he is waiting for parliamentary counsel to draft them. One way or another, is it the minister's intention to have a regulation that says that numbering a mayoral ballot paper with 1 and 2, when there are two candidates and one person to be elected, will be an invalid vote? Is that the minister's intention? Currently it is a valid vote if an elector puts 1 and 2.

Mr G.M. CASTRILLI: My intention is that if one office is to be filled at an election, an elector is to mark the ballot paper by placing a tick in the box opposite the name of the candidate whom the elector wishes to be elected.

Mr W.J. JOHNSTON: The minister is saying that it is his intention to introduce a regulation that will say that a 1 is not acceptable. However, the point I have made on a number of occasions —

Mr G.M. Castrilli: That is not right.

Mr W.J. JOHNSTON: That is exactly what the minister just read out. He just read out "a tick".

Mr G.M. Castrilli: I said "a tick".

Mr W.J. JOHNSTON: A tick is not a 1. Therefore, it is the minister's intention to introduce a regulation that will say that an ordinary person who fills in his ballot paper in exactly the same way as he did at the last mayoral

Mr Paul Papalia; Mr John Castrilli; Ms Alannah MacTiernan; Mr Tom Stephens; Mr David Templeman; Mr John Kobelke; Mr Bill Johnston; Deputy Speaker; Mr Rob Johnson

election will cast an invalid vote. This is a quite important point. I do not know the minister's state of mind. However, he gave the impression in the past that he did not understand the points I made to him on subclause (1). The minister is proposing to introduce a regulation that will tell the public servants who count the ballot papers that the vote which an elector casts today and which is valid will be invalid when these new rules are introduced. Yet the High Court has already ruled on this matter on numerous occasions. In an interjection, the Attorney General commented that it had been 100 years or something. Does the minister see the problem that he is creating for these public servants?

Mr C.C. Porter interjected.

Mr W.J. JOHNSTON: That was the Attorney General's interjection. Those public servants will be told by regulation to reject valid ballot papers. Ballot papers with a number 1 will in fact be valid when two people are being elected. The courts will find that it is a valid vote if an elector puts a number 1. The courts have found that for at least 80 years. They have said that if the intention of the elector is clear, the vote is valid. It does not matter what the regulation says, because it will still be a valid vote.

Mr C.C. Porter interjected.

Mr W.J. JOHNSTON: With respect, for a person who served a small amount of time in a junior office at the Office of the Director of Public Prosecutions, I would have thought that the Attorney General would have had—I am not a lawyer—enough respect for the law to not come into this place and denigrate the long history of the protection of voters' rights by the courts of Australia. In case law going back 80 years, the courts of Australia have protected the rights of electors to have their intentions shown. If they write a number 1, let us understand what will happen. An elector will get his ballot paper, write 1 and 2 on it and send it in. Who cares? That is not my interest.

Mr P.T. Miles interjected.

Mr W.J. JOHNSTON: With respect, from a corrupt councillor for the northern suburbs, that is a nice interjection.

Withdrawal of Remark

Mr R.F. JOHNSON: I think the member for Cannington reflected adversely on a fellow member of this house in the member for Wanneroo.

Mr P. Papalia: What did he say? I didn't hear him.

Mr R.F. JOHNSON: He said that he was a corrupt councillor from Wanneroo. That is totally unparliamentary, and I ask that he apologise and retract that statement.

The DEPUTY SPEAKER: Will you withdraw that immediately?

Mr W.J. JOHNSTON: I withdraw my remark.

Mr C.C. Porter: Why would you smile about that?

Mr W.J. JOHNSTON: I did not smile.

Debate Resumed

Mr W.J. JOHNSTON: The elector will write a number 1 on the ballot paper. He will send it to the public servant who will count the vote. The public servant will read the minister's regulations and say that it is a 1 and not a tick, and he will rule it out. Yet it is still a valid vote. Through this process, the minister is setting up a procedure that will guarantee that valid votes will not be counted. The minister is guaranteeing that there will be disputes in local government elections. However, even worse than the fact that he is guaranteeing that, he is doing nothing to change the procedures that would allow scrutineers to fix this anomaly. This anomaly does not exist today. The minister is going to create an anomaly that does not exist today. That is what the minister is going to do. He is going to introduce a regulation that will lead to valid votes being excluded, will lead to disputes and will lead to people being elected who do not get majority support from the community and who do not even get a plurality of votes. Those people will still be elected. That is not sensible regulation by the minister. It is time that the minister took on the responsibility of his office and thought not about the councillors who lobby him and who are his friends, but about the ordinary folk who vote in elections. I would appreciate it if the minister explained to me how he will do that.

Mr G.M. CASTRILLI: The validity to which the member is referring is provided in section 4.75(1) of the act, which is headed "Giving effect to the elector's wishes", and states —

Mr Paul Papalia; Mr John Castrilli; Ms Alannah MacTiernan; Mr Tom Stephens; Mr David Templeman; Mr John Kobelke; Mr Bill Johnston; Deputy Speaker; Mr Rob Johnson

- (1) The returning officer may accept a ballot paper that, in his or her opinion, clearly indicates the elector's wishes as required or authorised by section 4.69 even if the ballot paper is not marked precisely in accordance with regulations.

What the member is talking about is covered in the act, and I am comfortable with that.

Mr W.J. JOHNSTON: If that is the case, why is it the minister's intention to introduce a regulation that is of no effect? Why would the minister not introduce a set of regulations that direct the public servants who will do the counting to do so correctly? Instead of the minister saying, "Don't worry, I know that I'm introducing confusing legislation that many ordinary folk will not comply with, because there is a separate section that directs people to do something that I'm not telling them to do", why not have a regulation that says numbers and crosses are valid? Why would the minister not impose a regulation that does what he wants it to do instead of having one regulation that outlines how to do it and a separate procedure that says, "Even though I'm telling you to do it this way, actually do it some other way"? Why not have a regulation that takes account of the minister's intention. If the minister is able to do so, will he explain why he wants a regulation under this act to deal with this provision that will not have effect? Why not have a regulation that tells the returning officers, who are humble people trying to do their job—they are not bad people and I have no gripe with them; they will be trying to unscramble the minister's omelette to get it back to the way it should be—that it is valid for a person to use a 1, an X or another mark?

Mr R.F. Johnson: Or a smiley face!

Mr W.J. JOHNSTON: I will take the interjection from the member for Hillarys, who often gives us good interjections. What about defacing a ballot paper? Other provisions in the legislation deal with that. Everybody knows that they can write on ballot papers. If we go back to the Flinders by-election in December 1982, we would find that people wrote "No dams" on the corner of the ballot papers. It was a famous matter. The former member—I cannot recall his name—was the only person elected in that session of Parliament to never sit in that Parliament. Subsequently, he ended up as the federal Minister for Industrial Relations. Perhaps the member for Nollamara can remember his name. He introduced the first wave of the Howard workplace reforms in the early 1990s.

Mr D.A. Templeman: Peter Reith.

Mr W.J. JOHNSTON: It was Peter Reith. He was the first member of Parliament to be elected in a session of Parliament to never sit in that Parliament.

People can write whatever they want on the ballot paper so long as the boxes are numbered clearly. Thank you, member for Hillarys, for asking me to comment on that ridiculous interjection.

Mr R.F. Johnson: I didn't ask you to do that.

Mr W.J. JOHNSTON: That is exactly what the member did.

Why is the minister introducing regulations that he does not intend returning officers to comply with. The regulations reflect his instructions to the public servants who act as the returning officers in local government ballots and the minister is intending to introduce a regulation that he does not want them to apply. It is complex. I ask the minister to explain the logic behind introducing a regulation that will not explain to returning officers how to count the ballot. Why not introduce a regulation that tells them how to do their job correctly and that indicates that number 1 is valid, that a tick is valid, an X is valid and any clear indication of the voter's intention is valid? Why would the minister give the returning officers, humble public servants trying to do their job, an instruction that is wrong? What is the logic behind that decision?

Mr G.M. CASTRILLI: The regulations provide a direction to people on how they should mark their ballot paper, because so many things could happen. It is a direction on how to mark their ballot paper. The regulation gives the returning officer the discretion to determine the elector's intention. That validity is given under section 4.75 of the Local Government Act.

Mr P. PAPALIA: I know the minister is getting frustrated by this, but I want to explore this issue further. Why cannot the regulations provide more guidance? I know the minister is being advised that these regulations were in place for the first-past-the-post system and therefore we should use them now. I refer to section 4.71(1)(l) of the Local Government Act, which states —

any other matter relating to the casting of votes at elections or to votes so cast.

Is this the type of provision that should be included in regulations? Why cannot the minister now consider perhaps expanding the guidance given in the legislation to cover some of the concerns that opposition members have expressed in the course of this debate?

Mr Paul Papalia; Mr John Castrilli; Ms Alannah MacTiernan; Mr Tom Stephens; Mr David Templeman; Mr John Kobelke; Mr Bill Johnston; Deputy Speaker; Mr Rob Johnson

Mr G.M. CASTRILLI: Because I think it is adequately covered as it is.

Mr P. PAPALIA: I understand that the minister is of that view. However, I note that at the commencement of consideration in detail, the minister had not read the regulations. Call me a sceptic, but I am finding it difficult to be convinced of the forthrightness of the minister's response. The degree of scrutiny of, the degree of thought about, and the consideration of all possible outcomes of the regulations that the minister is suggesting we should be happy with, and the implications of the fact that he does not have a draft for opposition members to look at, makes it difficult for me to accept that he has put in the appropriate level of scrutiny or is taking appropriate responsibility. Again, I ask the minister why he cannot enhance, improve and expand these regulations so that we can circumvent the undoubted outcome, as identified by the member for Cannington; namely, subsequent court decisions that votes that the proposed regulations deemed invalid are indeed valid. Why cannot he expand the regulations by opening his mind a little bit, lifting the shutters and accepting that he did not read the regulations—although he is wedded to them—and listen to the views of the Western Australian public as expressed through their representatives on this side of the house?

Mr G.M. CASTRILLI: I have answered this question time and again.

Mr P. PAPALIA: That is not a response; it is not an answer.

Mr R.F. Johnson: He has answered it dozens of times, but you don't seem to be able to grasp it.

Mr P. PAPALIA: Another revelation that has been made in the course of this debate is that this minister is so inept and incapable of performing his job that he has had to be babysat by at least two ministers at any one time. In the course of this debate there have been interjections from the Leader of the Opposition, the Attorney General has tried to shift —

The SPEAKER: Order! I have given the member the opportunity to ask a question of the minister. I have followed all the consideration in detail debate and I urge the member to either ask a question of the minister or sit down.

Mr P. PAPALIA: Thank you, Mr Speaker. Why will the minister not consider at least including within the regulations some guidance to returning officers suggesting that the use of the numeral 1 as opposed to a tick would be considered valid, noting that subsequently the courts will determine that it is valid anyway?

Mr G.M. CASTRILLI: I have answered this question time and again.

Mr W.J. JOHNSTON: Is there anything in subclause (2) to indicate that a number is an invalid vote?

Debate interrupted until a later stage of the sitting, pursuant to standing orders.

[Continued on page 3461.]