LOCAL GOVERNMENT AMENDMENT BILL 2013

Consideration in Detail

Resumed from 3 December.

Clause 4: Section 2.46 inserted —

Debate was adjourned on the following amendment moved by Mr A.J. Simpson (Minister for Local Government) —

> Page 3, lines 12 to 18 — To delete the lines and substitute —
>
> (2) In carrying out its functions under Schedule 2.1 or 2.2, the Advisory Board does not have to act in accordance with any Government policy advised to the Board by the Minister under subsection (1).

Mr D.A. TEMPLEMAN: In my contribution to the second reading debate, I referred to this as one backflip made by the minister since he gave his second reading speech. This amendment specifically provides —

> … the Advisory Board does not have to act in accordance with any Government policy advised to the Board by the Minister under subsection (1).

My understanding is that any advice that the minister gives or seeks to give to the Local Government Advisory Board would be in writing to the chair. That is the current process. When the minister gives advice to or corresponds with the board that would always be done in written form. The proposed subsection in this amendment is different from the proposed subsection that the minister originally proposed. The key words were "must have regard to". In this amendment, the minister is now saying that the board "does not have to act in accordance with" any government policy. That, of course, does not preclude the minister from advising the board of any government policy. My understanding is that if the minister wished to advise the board of any government policy, this provision would not preclude him from doing that. However, it specifically provides that the board is not required to act in accordance with any advice the minister gives or with any advice on current or future government policy. Can the minister just clarify that for me?

Mr A.J. SIMPSON: I thank the member. Proposed section 2.46 in clause 4 of the bill currently provides that the Minister for Local Government may advise the Local Government Advisory Board on policies relevant to local governments. Proposed section 2.46 currently provides that the board must have regard to that policy, but there is no need to follow that policy. In answer to the member's question, the minister can advise the board, but the idea of the process is not to direct the board. We are trying to ensure that there is transparency between the board's decision-making process and how the minister can direct it. In response to these concerns, the amendment will further clarify that the board does not need to have regard to the policy, although the minister can direct the board through the submission process. This will ensure that the board is clearly seen to be independent of the minister.

Proposed subsection (3) provides that if the Minister for Local Government advises the board of the policy, this policy must be included in the board's annual report. This means that people can see through the annual report process what the policy was and whether the board has followed the policy. The board can also seek advice from the department on all policies in making its decision. If a council puts in a submission for a boundary adjustment, the board may seek advice on planning matters to work out where the local government areas are. Similarly, if a local government puts up a case for a boundary adjustment for a community centre, the board may seek advice on where the boundary is and how far it extends. The board can seek more advice through its process and it can seek it through submission. It must also justify its case in making the relevant boundary changes. This will also ensure that the minister is seen to be one step away in that process of government policy.

Mr D.A. TEMPLEMAN: Can the minister indicate why he has made this about-turn and whether it was through representation from the National Party and a veiled threat to not support the legislation in total if this aspect of the bill was not deleted or substantially amended?

Mr A.J. SIMPSON: There was concern by some that clause 4 of the bill may reduce the independence of the board. The idea is to make sure that the board's independence from the minister in this process is well and truly clear. In stating that the board must take into account all government policy, it appeared that the government was directing it. I am confident that the board will consider all government policies that are in place, but it will not be directed by the minister. The most important reason why the number of members of the board has been increased is to ensure that the independence of the advisory board is clear and that there is no direction from the minister of the day. It is important that there be transparency and that it be independent. This amendment will make it clear that it is independent of the decision-making process and will not be influenced by the minister of the day in

saying that it has to refer to government policy. But, at the same time, the advisory board has to justify in its annual report why it has made the boundary adjustment and which policy it referred to in making that adjustment or coming up with a realignment.

Mr D.A. TEMPLEMAN: Can the minister clarify that this proposal will be specific to all local governments; in other words, it is not only with regard to the metropolitan proposal before us, but also will in fact be effective for any future considerations that the advisory board may need to consider for country proposals?

Mr A.J. SIMPSON: It applies to all local governments. In my time as minister, about 90 per cent of the boundary adjustments that I have signed off on have come from country areas. It is more to do with a slight boundary adjustment; for example, a farm could be across two local government boundaries. There are also areas where there are some anomalies in the system. The member is correct; these changes will stay in place under the act for the Local Government Advisory Board for the whole process, including metropolitan and country.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 5: Section 4.88 deleted —

Mr D.A. TEMPLEMAN: I refer to a matter I raised during the second reading debate and to the minister's original proposal in his second reading speech. As we know, the minister will oppose the clause as it stands and move to insert a new clause. Through the briefing provided by the minister and through answers to questions asked by the member for Mirrabooka and me, the minister explained why he originally sought to delete section 4.88, which makes provision for defamation and the publishing and printing of deceptive material, et cetera. He said that he had received legal advice that that section would not stand up, from memory, in the High Court. He also said that the Western Australian Electoral Commission had sought the move to delete the current section 4.88 of the Local Government Act. I want to know on what basis the minister's position has changed from the original comments he made in his second reading speech and from the legal advice he received. Clearly, prior to drafting the new clause that he is about to move, the minister had received legal advice to the effect that section 4.88 would not stand up at all and that matters provided for under that section would therefore be better dealt with under the Defamation Act 2005. Either the minister has changed his mind on this, or something has occurred in respect of legal advice that has changed his mind on this, to lead to the minister subsequently going against his original proposal and seeking to insert a modified clause. I understand that the clause the minister seeks to insert is unchanged.

Mr A.J. Simpson: Correct, yes.

Mr D.A. TEMPLEMAN: I would like an explanation. I know the member for Armadale also has some questions, and he is a much more learned legal person than I am, but he will wait for the minister's response and then ask some questions.

Mr A.J. SIMPSON: Clause 5 was drafted to remove section 4.88 from the Local Government Act at the request of the Western Australian Electoral Commission. The Electoral Commission received legal advice from the State Solicitor's Office that concluded that the part of section 4.88 that dealt with defamation was potentially invalid. The commissioner subsequently advised me that only parts of that section should be amended; that is, section 4.88(1)(b) and (3) should be deleted from the act. I have accepted that advice. Section 4.88(1)(a) deals with the publication of misleading material during elections. This is a separate matter that still needs to be covered by the Local Government Act. A defence is provided in section 4.88(2). It states that it is a defence if a person does not know or could not reasonably be expected to know that the material was misleading or deceptive. We have removed from the Local Government Act the part that provides for defamation because that is covered by the Defamation Act 2005. This part is to do with printing and publishing material, and it was our advice that it should still remain in the act because it is not covered anywhere else. My original advice was that defamation was covered in the Defamation Act, but the advice that I have received from the Electoral Commission subsequent to making my second reading speech is that because this part refers to the printing and publishing of material, it should still stay in the act.

Dr A.D. Buti: What is the defence?

Mr A.J. SIMPSON: The defence?

Dr A.D. Buti: You're reinserting what you've got in the notice paper. Mr Speaker —

Mr A.J. SIMPSON: Yes.

Dr A.D. Buti: Is the original section 4.88(2) about the defence to a charge remaining?

Mr A.J. SIMPSON: The answer is yes.

Dr A.D. Buti: But subsection (3) is not; okay.

Clause put and negatived.

New clause 5 —

Mr A.J. SIMPSON: I move —

Page 3, after line 25 — To insert —

5. Section 4.88 amended

(1) Delete section 4.88(1) and insert:

(1) A person must not, during the relevant period in relation to an election —

(a) print, publish or distribute deceptive material; or

(b) cause deceptive material to be printed, published or distributed.

Penalty: a fine of $5 000 or imprisonment for one year.

(2) In section 4.88(2) delete "subsection (1)(a)" and insert:

subsection (1)

(3) Delete section 4.88(3).

Note: The heading to amended section 4.88 is to read:

Offence to print, publish or distribute misleading or deceptive material

Dr A.D. BUTI: I have a couple of issues on the reinsertion of part of section 4.88. As the minister would know from reading the various pieces of legal advice that he has received, the concern was over the implied freedom of political speech in the Constitution. The minister knows that we live in a form of representative democracy in Australia and that under the federal Constitution there are a number of provisions, including sections 7, 28 and 128, with regard to representative democracy. In 1992, as the minister will well know, two High Court cases dealt with implied freedom of political speech or communications—Nationwide News Pty Ltd v Wills, and Australian Capital Television Pty Ltd v Commonwealth. The Nationwide case is probably more relevant to this particular section, but I will briefly talk about the Australian Capital Television case. That dealt with legislation being proposed by the Keating government to ban or prohibit political advertising for a certain period. It was struck down as a violation of the implied freedom of political speech in the Constitution. The implication of freedom of political speech came about because of the representative nature of our democracy; nothing in the Constitution actually spells out freedom of political speech.

The Nationwide News case was more interesting; as the minister will know, from the advice he has received, that case dealt with a provision in the Industrial Relations Act that purported to forbid criticism of the Industrial Relations Commission. That was held to be contrary to the implied right of freedom of political speech in the Constitution. Justice Brennan of the High Court said in his ruling that to sustain a representative democracy embodying the principles prescribed by the Constitution, freedom of public discussion of political and economic matters is essential. He said that it would be a parody of democracy to confer on the people a power to choose their Parliament but to deny the freedom of public discussion from which the people derived their political judgements. He said that once it is recognised that a representative democracy is constitutionally prescribed, the freedom of discussion that is essential to sustain it is firmly entrenched in the constitutional system of government, which the Constitution ordains. He said that even though that may at times cause embarrassment to people who may be criticised because of our representative democracy, there is a need for a free exchange of ideas, even if that may result in some criticism, and even if that criticism is of a nature that is not factual or true.

This goes further to the new clause, because the minister has now removed the part of the clause that deals with defamation, but he is saying that we still have the potential to impose a sanction—including imprisonment; not just a fine—if there is printing, publishing or distribution of deceptive material. The fact that something is in writing does not necessarily make it different from something that is verbally expressed. It is still a form of communication, and the cases I referred to make it quite clear that the way in which something is communicated is irrelevant. One of the Victorian cases actually stated that it could be an action; a word does not even need to be said, an action would be considered to be a form of political speech. The subsequent case of Theophanous v The Herald and Weekly Times Limited and Anor—a Victorian case—went to the High Court.

Mr D.A. TEMPLEMAN: I am very interested in this. I have no idea what it means, but I am very interested!

Mr A.J. Simpson: Me, too.

Dr A.D. BUTI: This is actually incredibly important in regards to local government.

Mr A.J. Simpson: I appreciate that.

Dr A.D. BUTI: The Theophanous case really dealt with the former president of the RSL, Bruce Ruxton, who I am sure the minister remembers. Ruxton accused Theophanous, who was then a member of the House of Representatives and chair of a joint parliamentary committee on migration, of bias towards Greek immigrants—he also said he was idiotic—and Theophanous brought a defamation case against Ruxton. Of course, Ruxton's legal team used the defence of implied freedom of speech or political communication. It was stated in that case —

> The free discussion of political and governmental matters, including the character and qualification of candidates for parliamentary office or the performance of present holders of such office, is of such great public benefit and so crucial to the effective working of Australian democracy as to outweigh the risk of occasional injury to individual reputations.

That goes to the defamation issue. The case of Theophanous made it quite clear—it was stated in the joint judgement of Justices Toohey and Gaudron and Chief Justice Mason—that —

> The law of defamation, whether common law or statute law, must conform to the implication of freedom, even if conformity means that plaintiffs experience greater difficulty in protecting their reputations.

According to my notes, Justice Deane went further and stated —

> … the application of State defamation laws to impose liability in damages for the publication of a statement about the official conduct or suitability of a member of the Parliament …

Or other holders of high commonwealth office. But he did agree to go along with the defence that I think the Minister for Local Government is trying to argue in respect to the other part of the act of there being a defence if the accused person did not know and could not reasonably have been expected to know that the material was likely to mislead an elector in relation to the casting of the elector's vote. But that is not the same thing necessarily, because a person must not say something during the relevant period in relation to an election. If someone says something during an election period, they may not actually deceive someone with regard to the casting of that person's vote. So that defence under section 4.82 may not be a defence; and, if it is not, I would argue that the advice the minister received that it will not violate someone's constitutional rights may not actually be correct. The minister may say to me that everything I have said so far relates to the commonwealth and state Parliaments, but it is quite clear from the cases that we are talking about the political sphere; we are talking about not only commonwealth Parliament or state Parliament, but also local government. As the minister very well knows, being my neighbour down Armadale way, my opponent in the last state election brought a case to the Supreme Court of Western Australia about signage. As the minister knows, the City of Armadale had a very strict rule that prohibited political signage even on private property. During the interlocutory hearing before Justice Kenneth Martin on 18 January, he stated quite clearly that—even though it was only an interlocutory hearing and not a full hearing—the implied right of political freedom of speech in the Constitution would apply to local government. He said that he considered democracy and the democratic process to be important, and he therefore allowed the signage to remain.

As the member for Mandurah stated, the minister originally took this provision out because of certain legal advice, so why does the minister think it is necessary to bring in this amendment? As the minister very well knows, if someone writes something deceptive or misleading in an election campaign, it really does not matter if a sanction is imposed; the effect of it has already happened and it will not be a deterrent.

Mr A.J. SIMPSON: I thank the member for Armadale. The member for Mandurah was right—he kind of lost me a little there. I can clarify a couple of points. As to the couple of cases the member raised, I think the interesting part is that what is deceptive and defamatory material about somebody are the two areas we are trying to work on in this bill. The original act referred to defamatory comments about someone, and also printing or distributing deceptive material about someone. The reality is that the legal advice we got back was that the two are separate: one is taken care of in the Defamation Act 2005, which is its own act about saying something about somebody that is not true—defamatory comments—versus printing deceptive material. I will read from my notes. The question raised is whether the remaining parts of section 4.88 might also violate the constitutional freedom of political communication or freedom of speech. That argument is not supported by the advice I have received. The High Court has established that the constitutional freedom of political communication is not absolute; it is only operative to the extent that it is compatible with a representative and democratic government. The opinion is that it is unlikely that the constitutional freedom of political communication would extend to deceptive conduct, which is what section 4.88 was designed to prevent. The freedom of speech stuff the member has touched on—what is called defamation—is covered in that act. We have put this back in because we believe

that the current act does not extend to protect against deceptive conduct, so we are trying to define deceptive conduct through printed material versus what is a defamatory comment about somebody during an election campaign, so the two of them.

Dr A.D. BUTI: I hear what the minister is saying, but let us not worry about defamatory material. One could argue that defamatory material is of a more severe nature than something just being misleading and deceptive.

Mr A.J. Simpson: Yes.

Dr A.D. BUTI: Yes, the minister is right: the implied right of freedom of political communication is not absolute. As the High Court stated in a number of cases, it is an implied right that is incredibly important for our system of government. It is important because it is not written in the Constitution, and the High Court has felt the need to imply it in the Constitution, so therefore the High Court must feel it is a very important right we need to have in the Constitution. There is no doubt that having a section in an act that states that if someone misleads or deceives they could go to jail will be a fetter on the freedom of political speech because the person will have to think more than once or twice about whether they print that material.

Mr A.J. Simpson: Just through interjection, member for Armadale, this is in the current act.

Dr A.D. BUTI: Yes; but it has not been challenged. The way legislation works, as the minister well knows, is that just because something is in there it does not mean it is constitutionally valid. It only becomes an issue when it is challenged.

Mr A.J. Simpson: Correct.

Dr A.D. BUTI: There will come a time when someone will challenge that issue. We as lawmakers in this Parliament representing the people of Western Australia should be trying to enact legislation to guard the state against expensive legal action that may have to be defended in the High Court. If the state loses, as the Premier would know from when he was part of the Court government with its ridiculous native title legislation, it could cost the state millions and millions of dollars. So it is no good to just say something is in the act so it is okay; the fact is that the minister has brought an amendment to this house today, and we are here as representatives of the electors of Western Australia to make sure we deal with this properly. My issue is, once again, that the minister made the right call, I think, by taking it out in the first place; now why does the minister need to bring it back in? As politicians we worry that people will defame us or print material that is deceptive or misleading, and unfortunately that is part of the political process. As the minister said, people can deal with this under defamation laws, although some material could be misleading and deceiving and not defamatory. However, I am still concerned that this proposed new clause will increase the chance of a very expensive lawsuit against the state of Western Australia, and if we lost that lawsuit the state would be faced with a major financial burden, which will not help WA get back its AAA credit rating. My point is that we should not put something in the bill that will at some stage be tested in the High Court. We can never be sure how the High Court will read this clause, because prior to 1992, in its decision in Australian Capital Television Pty Ltd v Commonwealth (1992), no-one had thought about the implied right of free political speech. They may have thought about it, but the High Court had not been involved. The minister is opening the government of the state of Western Australia to an expensive legal challenge.

Mr A.J. SIMPSON: I thank the member for Armadale for his comments. I restate that the member is far more learned that I am on matters of law. The advice in front of me is that the Electoral Commission has received legal advice from the State Solicitor's Office that only part of section 4 should be amended. I take on board the member's point about trying to clarify in this bill that during an election campaign period a person must not print, public or distribute deceptive material or cause that to be printed or published. It is my understanding from the advice I have received, which is a bit out of my league and more that of the member for Armadale, that we have to leave this in the act. The member touched on the charges that go with this new clause, but this part is already in the bill and we have just taken out the reference to "defamatory" and left in "printing" on the advice of the State Solicitor's office, through the Electoral Commission.

Mr D.A. TEMPLEMAN: Can the minister table the legal advice that he quoted?

Mr A.J. SIMPSON: The advice is contained in my notes. I do not have the legal advice on me today; it is advice I received through the department from the Electoral Commission. They were my notes, and I received advice from the department; the advice from the State Solicitor is contained in my notes.

Dr A.D. BUTI: It is up to the minister whether he releases that legal advice, but it would improve our confidence in the bill if he released it. I do not think there is any commercial confidentiality involved, but could the minister possibly release it?

Mr A.J. SIMPSON: I will try to track it down for the member for Armadale and see if I can get it for him. I take the point that if I am standing here in the chamber using advice I have received, it would definitely make sense for members to have that advice.

New clause put and passed

Clause 6: Section 5.99A amended —

Mr D.A. TEMPLEMAN: This will clarify the payment of remuneration for council members. I congratulate the minister on the announcement of the State Administrative Tribunal decision earlier this year to significantly increase the remuneration of local councillors, although I suspect it resulted in a few more nominations in the local government elections in October. The amendments to section 5.99A of the act outline the annual allowance and how it may be paid. Proposed subsection (2)(b) reads —

> In the case of an annual allowance that is not paid in advance, if the council member has incurred expenses of that type during the period to which the allowance relates.

I understand that currently councils vary in how they pay the remuneration that is allowed through the act. Some pay it as an annual payment, some pay quarterly or monthly, and I think some still pay it per meeting, although I am not sure about that. How does this proposed amendment to section 5.99A affect the current practice in councils? Does it make it more specific how that payment will be made? I understand from the explanatory memorandum that if a councillor has been paid in total for the year and subsequently resigns or unfortunately passes away or whatever—this may sound a bit morbid—are councils obliged to seek from the councillor, who is no longer a councillor whether he or she be dead or alive, repayment of that payment pro rata?

Mr A.J. SIMPSON: The member for Mandurah has touched on an interesting point. The Salaries and Allowances Tribunal now determines remuneration for councils, elected members and others. This was one of the first issues I dealt with when I became the minister. This issue has been on the table for a number of years. The remuneration was set at $7 000 for councillors. For a long time there have been questions about remuneration for councillors in a large or busy council versus those in a small council. The Salary and Allowances Tribunal came up with a proposal to determine this. The proposal determined that each councillor would be paid depending on the size of the council, the population base and where they are in terms of bandwidths. On the question of remuneration being paid annually, quarterly, monthly or per meeting, when I was first elected to council the fee was $40 for a committee meeting and $50 for a council meeting, and then in 2002 the fee was annualised and paid at a standard $500 a month. The council's secretary had to rely on the minutes of meetings to determine who attended so they could work out councillors' remuneration. A lot of councils used that process, but the act did not determine whether the payment was quarterly, monthly, or weekly and it was the council's choice. It may be the case that elected members will not complete a full term, through illness or injury or they may pass away. In these cases, advance payments may not be appropriate, depending on the circumstances. The changes contained in the bill are designed to find an appropriate balance to ensure that local government funds are used in an appropriate manner. I hope, and I am pretty sure on this, that most councils do not pay in advance; they pay as the year goes on at a certain point. There could be an election cycle and someone may have left council. If a councillor misses X number of meetings, they automatically lose their seat on council. If they had been paid for those meetings, the council would be entitled to chase them for that money, but that is a point for councils. This bill clarifies remuneration for councillors. The Salaries and Allowances Tribunal will now determine the remuneration of councillors and council presidents. The bill identifies that they will come through the system of the Salaries and Allowances Tribunal, a bit like members of Parliament do. The bill outlines that that is how the process will work. It does not go into any detail on how long or how much; it basically specifies that the remuneration for councillors, mayors and presidents will come through the processes of the Salaries and Allowances Tribunal.

Mr D.A. TEMPLEMAN: The minister mentioned the bands. My understanding of the payment through the tribunal's determination was that councils were divided into various bands and that the predominant criterion was the population of the municipality.

Mr A.J. Simpson: Correct; similar to the CEOs.

Mr D.A. TEMPLEMAN: First of all, who determines the band and the related population? The end result of the government's boundary proposal for the metropolitan area will be councils with varying populations. I think the City of Stirling will continue to have a residential population of around 200 000, whereas the proposal for the new City of Fremantle is around 80 000. That is still quite substantial.

Mr A.J. Simpson: It depends on Cockburn.

Mr D.A. TEMPLEMAN: It may be hypothetical. If in the final outcome there is still a major disparity between the population of Stirling, with 200 000 residents, and a new City of Melville, which under the proposal will have fewer than 100 000 residents, would we expect to see under the new regime a new band system in the

metropolitan area? In other words, would there be a band for the more highly populated councils of Stirling and Wanneroo with around 200 000 residents, and then another band for councils with fewer residents than that? I refer to one of the minister's and the Premier's press releases dated July this year, which I think was subsequently mentioned in later press releases. It states —

> Local Government Minister Tony Simpson said the reforms aimed to deliver strategic benefits for Perth, and financially stable councils, with a population of around 100,000 people each.

We know that has changed because the minister is keeping the City of Stirling at 200 000 and is proposing smaller councils, as I mentioned. I want to know what this clause and probably the clauses that follow on remuneration and the payment of allowances may mean in terms of this banding, which will affect the payment of councillors post 2015. It is proposed that the new councils will be in operation from July 2015. Will there be a change to the remuneration of councillors in the lead-up to and post July 2015?

Mr A.J. SIMPSON: I thank the member for Mandurah. There are four bands. Population is one of the bigger factors in determining which band a council fits within, but growth in an area is also considered. Remoteness is also a factor for some local governments, so they get a levy for that as well. The band within which a council falls determines the pay that its councillors get. For example, in one of the categories it is around $20 000 to $30 000. They should stay within that band, but when it is put before councillors, they tend to jump to the top of that band and they take what they can get. The interesting part with regard to the reform process is that if council A and B are coming together, they will stay as they are through the reform process and the implementation committee will work through that. On 1 July 2015, both councils will dissolve and will go to the poll in 2015 under the new identity born out of councils A and B, which will be council C. Council C would then apply to the Salaries and Allowances Tribunal to be considered for a jump in band; say, from band 3 to band 2. It will depend on how big the council is. A council may grow from a population of 100 000 to 200 000 and growth in the area may be quite strong, so it would put forward a case to the Salaries and Allowances Tribunal to move to a different band, which would mean that the councillors would be paid at a higher rate to go with their larger workload. That process is taken care of regularly. They will have to apply for that process. The implementation committee will identify that new council C has X number of people and that a submission should be made to the Salaries and Allowances Tribunal so that the councillors and mayors can be paid the right amount of money for the work they are doing.

Clause put and passed.

Clause 7: Sections 5.102AA to 5.102AC inserted —

Dr A.D. BUTI: I want the minister to clarify section 5.102AC, "Application of this Division to regional local governments", on page 6 of the bill. Because of the boundary changes that will be made to the council within the minister's electorate, the council will be split and part of the council will go to the City of Armadale and the other part will go further south. I presume that the part that goes south will become a regional local government but that the part that comes to Armadale will not become a regional local government. Does that not reflect the absurdity of some of these boundaries? Before this process, they are all part of the one community. The minister has drawn an arbitrary and artificial delineation and there will now be a significant difference between the two parts.

Mr A.J. Simpson: With regard to Peel, do you mean?

Dr A.D. BUTI: How is a regional local government determined when the current council is being split?

Mr A.J. SIMPSON: In the metropolitan area, there are five regional local governments, and they are basically set up to manage waste. Down my way we have Rivers Regional Council. There is also Mindarie Regional Council. Councils can come to me as the minister of the day and say they wish to form a metropolitan regional council. They would normally borrow X million dollars to set up a waste treatment plant, and that debt is carried by those regional local governments. The member for Armadale touched on the fact that the Shire of Serpentine–Jarrahdale is currently in Rivers Regional Council. The Shire of Murray is also in Rivers Regional Council. Bassendean and Bayswater are using the MRC, and the City of Stirling is using Atlas. Stirling has a one-bin system, so every week one bin is emptied; Bayswater had a two-bin system, with a standard rubbish bin and a recycling bin; and Bassendean has a three-bin system. The people who live in Bayswater and Bassendean would not want to lose any of their services, so this will be an issue for the implementation committee to deal with as part of the reform process.

I am conscious of the fact that each local government is more than likely carrying a debt for a regional group. A new identity should not be required to carry the debt of the former identity. Therefore, the implementation committee may need to find some way of quarantining a certain percentage of the rates over the next four or five years to ensure that those councils can repay that debt. The implementation committee may even ask the state government to help pay out the debt so that the new identity can be born a bit sooner. At the same time—this is

where it gets interesting—we need to make sure that the regional councils have the capacity to continue with their work. A number of these regional councils have relied on getting X cubic metres of tonnage a year through the gate, at a certain price per tonne, and that transfers into money to help them repay the debt and cover their operating costs. So we will need to work with them on that. There is a group that is trying to reduce the number of regional local governments to three, to try to address the waste issue. Also, a number of companies are looking into the new technology of waste to energy. That is still a long way off, but some good work is being done in that area.

The member raised a good point about the regional councils that have been set up. We will need to work through that process of reform, and the implementation committee has identified that in its report to the Local Government Advisory Board as an issue that needs to be addressed.

Clause put and passed.

Clause 8: Section 5.110A inserted —

Mr D.A. TEMPLEMAN: The purpose of this clause is to insert a new section to deal with the withdrawal of complaints that are made to the Local Government Standards Panel about a minor breach. From my understanding of the current process, if an aggrieved person, be it a councillor or someone else, has made a complaint to the standards panel but then seeks to withdraw that complaint, the process cannot be stopped or concluded until a full investigation has taken place. Does the minister believe that the standards panel is doing the job that it was set up to do? Has the minister received any complaints about the standards panel's considerations and determinations that might highlight to the minister that there is a cultural issue with the standards panel process?

Mr A.J. SIMPSON: The Local Government Standards Panel is an independent statutory body formed under the Local Government Act to investigate complaints about the conduct of elected council members. The majority of these complaints relate to compliance with the rules of conduct and the regulations and the required conduct at council meetings. The changes to the act will enable complaints to be withdrawn, which is currently not possible. They will also enable the standards panel to investigate the allegations if it believes there is substance to the complaint that is being withdrawn.

Since we have introduced improvements to the standards panel process, it has been able to eliminate the backlog of complaints, and the time taken to complete investigation of minor breaches and complaints has been significantly reduced, with the panel's turnaround time for dealing with new complaints being an average of three months.

Since I have become the Minister for Local Government, I have not yet received an annual report from the standards panel. When I was at drinks prior to the Western Australian Local Government Association dinner, a gentleman introduced himself to me and said that he was on the standards panel. We had a bit of a chat and he said that a lot of the issues that are brought to the standards panel are from people who are looking for someone to complain to about their council. He said that the majority of the complaints are about the procedures, whereby councillors are told they cannot ask a question or are frustrated because their three minutes is up and they have not had time to make their point. He said that a lot of these issues have nothing to do with the standards panel. He said that the biggest problem is that the standards panel tends to get bogged down with minor complaints when it should be putting more focus on the bigger issues and doing more research. Therefore, we need to streamline that process so that the standards panel can investigate genuine complaints that are made about councils and does not have to spend time dealing with the smaller issues.

Mr D.A. TEMPLEMAN: I seek some clarification of the process that would lead to a complaint being made to the standards panel, versus a complaint being made directly to the minister or to the Department of Local Government and Communities. My understanding is that when a person, whether they are a ratepayer or a councillor, or even a member of the council staff, seeks to lodge a complaint, there are effectively three potential avenues—the standards panel, the minister and the Department of Local Government and Communities. Members of the public, and certainly elected members and councillors, will be interested to know which one will be most effective because that is the one likely to get the most attention. Through the changes to the legislation in this clause and in clause 9, can the minister refer something to the Local Government Standards Panel?

Mr A.J. Simpson: The standards panel investigates only complaints regarding elected members of council.

Mr D.A. TEMPLEMAN: Thanks for that clarification. If the minister gets a letter of complaint from me or a ratepayer about a councillor, would the minister automatically refer that to the standards panel?

Mr A.J. Simpson: The correct procedure is that I notify them that they should send their complaint to a standards panel if it is about an elected member.

Mr D.A. TEMPLEMAN: Is that the case if the complaint is from a ratepayer?

Mr A.J. Simpson: Yes.

Mr D.A. TEMPLEMAN: Is it the case if it is from a councillor about another councillor?

Mr A.J. Simpson: The same process applies.

Mr D.A. TEMPLEMAN: If a councillor complained about a staff member, would that have nothing to do with the standards panel?

Mr A.J. Simpson: No.

Mr D.A. TEMPLEMAN: Would that go through the normal process in the Department of Local Government and Communities?

Mr A.J. Simpson: That would be an internal matter depending on what the conditions were in terms of staff. If the complaint does not involve an elected member, it will probably be dealt with internally.

Mr D.A. TEMPLEMAN: I will give the minister an example. We are aware of the issues that occurred in the City of Bunbury prior to the 19 October election in which there were reports of conflict between elected members and/or mayors and/or appointed staff. If a situation like that cannot be resolved internally through the council's processes, the next step, which I think is what happened with some of the issues in Bunbury, was that the Department of Local Government and Communities became involved and there were a series of attempts at mediation et cetera. Members in this place need to be very clear about this process. If they are approached by a ratepayer, a local councillor or even a member of staff from the local council, they will need to know the best advice for directing them to the most appropriate complaints process. If the matter involves a councillor, the standards panel seems to be the most appropriate option. But at this stage, it seems that for all other matters, either a ministerial referral, which may see the minister seeking advice, or the Department of Local Government and Communities, are the options.

Mr A.J. SIMPSON: I thank the member for the question. I will clarify again that the standards panel deals with investigations around elected council members. Internal complaints between staff must be dealt with inside the council, but the Department of Local Government and Communities webpage explains which complaints go where. For a complaint about a staff member, the webpage can direct a person where to get the information and advice and how to deal with the matter. The member touched on the case of Bunbury where a number of things happened over the past few months to do with the staff drug testing. It was a police matter and had nothing to do with me as minister. Also, some allegations were mentioned in the media about some parking tickets, but that still involves an internal process. The staff can make a complaint and the department's webpage shows them how they can work through that maze and move onto the next stage of the process.

Clause put and passed.

Clause 9: Section 5.110 amended —

Mr D.A. TEMPLEMAN: This is probably the more contentious of the clauses as it affects changes to the Local Government Standards Panel. This provision inserts proposed new subsection (3A), which reads —

> However, a standards panel can at any stage of its proceedings refuse to deal with a complaint if the standards panel is satisfied that the complaint is frivolous, vexatious, misconceived or without substance.

That is an interesting element because those words are very much subjective. Someone could perceive or label a complaint about a person who roars up the street in a vehicle, or a barking dog—which we have gone through in relation to the Dog Act, for example—as frivolous or even vexatious. That seems to be commonplace in a world in which there seem to be more pressures between neighbours et cetera. I am constituents bring complaints to members' offices that members might perceive to be frivolous vexatious or misconceived. It is ultimately a determination or a personal judgment. I find it interesting that we are giving the standards panel the capacity to refuse to deal with a complainant if it is satisfied that the complainant is as I have just described. However, there is no mention of any process that must be gone through first to reach that conclusion. Obviously, if someone has written 100 emails and letter after letter on the same issue, and the standards panel believes that it has dealt with the complaint, it may come to the conclusion that the complaint is frivolous or vexatious. However, there is no mention of any process in this proposed new subsection that outlines how that conclusion would be reached. Is it after only one contact or many? Interestingly enough, in the previous clause we give the power to the standards panel to continue to investigate a complaint, even if the person or the complainant has requested that it be withdrawn. Perhaps I am fishing here but I find that quite interesting. We want to give the power to the standards panel to discontinue a process because the party has or parties have requested that it be withdrawn, but we are giving it the power to continue if it is seen as appropriate and all the circumstances fit. The next clause includes a provision that allows the panel to determine it to be—there is no explanation for how far through a complaint process that determination might be—frivolous, vexatious, misconceived or without substance. If the panel is

satisfied that it fits one of those four descriptions, it can refuse to deal with the complaint. Can the minister tell us the implications of this? I know that the member for Mirrabooka has some concerns about this provision and a particular case that she will refer to, but we might get the minister to respond first and then the member for Mirrabooka will have a further question on this provision.

Mr A.J. SIMPSON: Since the establishment of the standards panel, approximately 30 per cent of all complaints investigated by the panel have been dismissed due to a lack of substance. The bill provides the panel with the discretion to dismiss complaints in certain circumstances. This includes when the panel determines that the complaint is vexatious or misconceived or without substance. When this sort of terminology is used, it puts a label on someone who may just be very passionate about their area. This terminology is used in a number of other pieces of legislation and is well understood by the courts. The panel must provide written notice to each party, giving its reasons for doing so.

I want to touch on a couple of things to do with the meaning of the term "vexatious". The term "vexatious proceedings" is defined in the Vexatious Proceedings Restriction Act 2002 as proceedings that are an abuse of the process; pursued without reasonable ground; or intended to delay, harass, annoy or achieve some other wrongful purpose.

Ms J.M. Freeman: There are four paragraphs in that definition. If you're going to put that definition on the record, put the whole thing on the record.

Mr A.J. SIMPSON: As I have said, this is in a number of acts. This terminology is used in the State Administrative Tribunal Act 2004, the Legal Profession Act 2008, the Freedom of Information Act 1992, the Equal Opportunity Act 1984 and the Building Services (Complaint Resolution and Administration) Act 2011. It is a phrase commonly used in Western Australian legislation, usually so that complaints can be dismissed by legislative or regulatory bodies responsible for investigating such complaints. The core work of the standards panel is to deal with complaints about elected members. At the moment, my understanding is that there are a lot of complaints that do not have enough substance to investigate. In saying that, this will give the panel the discretion to dismiss complaints, but the panel must provide written notice to each party giving the reasons it has done so. This mechanism will ensure that the panel does not just dismiss it, but writes back to the parties with the reasons why.

Ms J.M. Freeman: Is there an appeal?

Mr A.J. SIMPSON: Yes.

Ms J.M. Freeman: To where?

Mr A.J. SIMPSON: To the State Administrative Tribunal.

Ms J.M. Freeman: So they can appeal to the State Administrative Tribunal if the panel says that it is vexatious.

Mr A.J. SIMPSON: Yes.

Ms J.M. FREEMAN: I have serious concerns with a provision that contains the term "vexatious". I understand the term "frivolous", which involves a broader determination. It is a classification that can have an impact on someone. The terms "misconceived" and "without substance" are also subjective aspects. Although the minister outlined the definition in the Vexatious Proceedings Restriction Act 2002, he did not go through the entire definition of "vexatious proceedings". The act states that vexatious proceedings are proceedings —

(a) which are an abuse of the process of a court or a tribunal;

(b) instituted to harass or annoy, to cause delay or detriment, or for any other wrongful purpose;

(c) instituted or pursued without reasonable ground; or

(d) conducted in a manner so as to harass or annoy, cause delay or detriment, or achieve any other wrongful purpose.

In the recent past, it has been very, very rare for someone to be said to be vexatious. It is a really serious finding against someone if they are found to be vexatious. It takes away their procedural justice. It undermines their capacity to argue a matter. The minister has said that it is an understood term and it is used in other legislation, and he went through those other pieces of legislation, but that legislation applies to courts and tribunals such as the Equal Opportunity Commission, the State Administrative Tribunal and various others. This is a review panel; it does not have lawyers.

Mr A.J. Simpson: Yes, it does.

Ms J.M. FREEMAN: How many lawyers?

Mr A.J. Simpson: There is one legal member.

Ms J.M. FREEMAN: There is one legal member; that is a bit different.

Mr A.J. Simpson: In a panel of three, one is a legal person.

Ms J.M. FREEMAN: It is hardly a tribunal; it is a review panel.

A great deal of responsibility will be put on the only legal member of this panel, and that person will have to look at this definition because everyone else will just want to call the person vexatious and get rid of them. I am getting evil stares from all around the chamber because it is a quarter past four and we are behind. I have a really serious concern that the minister has put the term "vexatious" in this legislation. If someone is called vexatious, they are denied procedural justice; they are denied the capacity to bring issues before the review panel.

We can look at the recent decision of the Supreme Court in the case of the Principal Registrar of the Supreme Court v Chin in 2012. Mr Chin made multiple applications. Even then, the Supreme Court made a very large and encompassing determination and pointed out the seriousness of making the determination that Mr Chin was vexatious for the purposes of the Vexatious Proceedings Restriction Act. I will not go through that because that was about one issue.

The other thing that must be understood here is that someone cannot be found to be vexatious just because they bring multiple issues to the review panel. People are vexatious over one issue; they single-mindedly keep on about one issue when it has been turned down. Given that the minister has read part of the definition in section 3 of the Vexatious Proceedings Restriction Act and I have read the full definition, can the minister confirm for me that that will be the threshold that must be met in the determination of the three people on the panel, including the one lawyer, and that the threshold will be those principles established in the Western Australian Supreme Court case of the Principal Registrar of the Supreme Court v Chin in 2012? Without that, the minister would be denying people a right in an area that should not have this sort of strong terminology.

Mr P. PAPALIA: I do not think the member had completely finished. I am very interested to hear the rest of what she has to say.

Ms J.M. FREEMAN: For goodness sake, the minister has taken out of the bill the part about the issue of defamation because the Western Australian Electoral Commission said that it was not appropriate for defamation to be dealt with in this legislation. I think that the term "vexatious" is absolutely not appropriate in this legislation.

Mr A.J. SIMPSON: I thank the member for the question. I have a couple of points. We are trying to give the standards panel a bit of direction under the act. The term "vexatious" is referred to in a number of acts. The member is right; labelling someone vexatious is not a very good thing to do because people may be in that situation for many reasons. The standards panel does not label a person vexatious. All we are trying to do, under legal advice, is identify that a vexatious person is someone who writes to the panel; we will not label anyone as a vexatious person. It will not stop them from putting in more submissions. As I said before, and as the member has identified, it is terminology that is used in other acts. They are court proceedings. At the end of the day, it is the terminology we use. If someone complains all the time, they are a vexatious complainant. The standards panel will not name that person and state that they are vexatious. It is the terminology that is used in the act. The panel does not label those people as vexatious, but every person who writes in will get a written reply, with the reasons for doing that.

This act enables the standards panel to deal with those submissions and speed up the process. At the moment, 30 per cent of submissions to the standards panel are complaints without any substance.

Clause put and passed.

Clause10: Schedule 2.1 clause 1 amended —

Mr D.A. TEMPLEMAN: Clause 10 defines the metropolitan proposal; it states —

> ***metropolitan proposal*** means a proposal that directly affects a local government that is located within the metropolitan area;

I seek clarification of the minister's last formal submission to the Local Government Advisory Board, which included maps, because it affects the Shire of Murray, which is a non-metropolitan council. My concern is that the minister's latest submission affects a council outside of the metropolitan area by putting the lower southern half of the Shire of Serpentine–Jarrahdale into the Shire of Murray. What does that mean in the context of the "metropolitan proposal"? Related to that is a concern I have raised previously about the issue of the metropolitan versus the non-metropolitan boundary. The metropolitan region scheme determines the metropolitan boundary of Perth, Western Australia, and currently includes the Shire of Serpentine–Jarrahdale. However, the Shire of Serpentine–Jarrahdale appears in another act of Parliament, the Regional Development Commissions Act 1993, which constitutes the Peel region. The Shire of Serpentine–Jarrahdale is a metropolitan council that sits within

the constituted Peel region, where the four other councils that make up the five are defined as non-metropolitan. I not will talk about my battle with the Premier about whether Mandurah is metropolitan or not—unless he interjects. I think this is pertinent to this clause and the definition. How can there be a proposal specifically for the metropolitan area, yet the minister is including a proposal to add part of a metropolitan council to a non-metropolitan council—namely, the Shire of Murray? Having spoken to the Shire of Murray, I would be interested in any discussions the minister has had with it about the shire's eligibility—I know the minister's advisers are talking to him—for any dollars from the state government to investigate the financial benefits or not of being the recipient of the southern portion of the Shire of Serpentine–Jarrahdale. I understand that the Shire of Murray has not said yes or no, but would like more information and to have the capacity to analyse what the cost would be to its current ratepayers and its future ratepayers if it were to take in that southern portion of Serpentine–Jarrahdale. What would it mean for rate rises? For example, the Shire of Murray has highlighted that the section of Serpentine–Jarrahdale that the minister proposes it takes has a significant number of local roads, some of which it believes are not of an appropriate standard. That raises a cost issue. I would like the minister's response in relation to the clause and the definition of metropolitan proposal.

Mr A.J. SIMPSON: Clause 10 defines the metropolitan proposal; it states —

> ***metropolitan proposal*** means a proposal that directly affects a local government that is located within the metropolitan area;

This links to the definition of metropolitan area already in the act. It is the same as the definition of metropolitan area in the Planning and Development Act 2005. The act already has the power to deal with the metropolitan area; this clause defines metropolitan area in the act as defined by the Planning and Development Act 2005.

On to the issue of the Shire of Serpentine–Jarrahdale and the Shire of Murray. The member is right; the Shire of Serpentine–Jarrahdale has had a foot in each camp for the last few years by being in the MRS and the Peel region. Interestingly, in the debate to allow people in the bottom half of the Shire of Serpentine–Jarrahdale to access the Country Age Pension Fuel Card, I used the example that people in North Dandalup can access the fuel card, so why is it that people in Keysbrook who have same public transport service cannot access the fuel card? I could not get the fuel card extended to Mundijong because there is a green bus service there. Jarrahdale only has a limited bus service for the school so residents could access the fuel card.

This is the interesting part. I will answer a couple of the member's questions. Yes, the Shire of Murray will be entitled to receive some of that money for the implementation committee to do the work —

Mr D.A. Templeman: Is that the $200 000?

Mr A.J. SIMPSON: Yes—not $200 000, but some of that money. We are currently working that out. As the member knows there was money allocated for that, but there were only four submissions in line, so we divided up the rest of the money. When they come to the table, we will provide the money so they can go on with that work. The member identified that the Shire of Murray will have to do a fair bit of work on the assets it will receive and where the rate base is.

The current MRS boundary is at Keysbrook on the boundary of the Shire of Murray and the Shire of Serpentine–Jarrahdale. That boundary remains in place and this reform process may result in the Shire of Murray being in the situation where some of the shire is in the MRS and some is in the Peel region. It has always been a fine line where the metropolitan area ends and the country starts, and the current boundary will stay in place. There could be movement of the MRS boundary with the top part of the Shire of Serpentine–Jarrahdale going into the City of Armadale. We will have to have a conversation with the Peel Development Commission regarding where we take that money, the royalties and the Peel Development Commission and Shire of Serpentine–Jarrahdale's access to that money. Obviously, the bottom part of the shire that goes to the Shire of Murray will still be a part of the Peel region, but if the Shire of Serpentine–Jarrahdale does not exist, we will have to have a chat about the top bit going into the City of Armadale. We will need to assist the City of Armadale to grow, as it has the same problem in taking on the assets and managing them for the future, as is the case for the Shire of Murray. There is some interest in and work to be done on the MRS boundary. I think it is part of the implementation process identified by the Department of Planning. There could be an option on the table to move the MRS back up towards Mundijong Road where the boundary is because that is where there is an urban cell. Below Mundijong Road, moving away from Fremantle, and excluding the towns of Jarrahdale and Serpentine, there is no urban land or planned urban development for the next 10 to 15 years. Having said that, I have received a number of letters from people in the Shire of Serpentine–Jarrahdale who are close to the City of Rockingham and want to merge with that council, because they are close to the Kwinana Freeway and want to be a part of the development as well.

A lot of areas need to be examined in regard to the metropolitan area boundary and Shire of Serpentine–Jarrahdale as it folds out; other departments will make decisions on those. The Shire of Murray will be entitled to

money to do that work. I met with the shire president, Wally Barrett, and the chief executive officer, Dean Unsworth, about this issue. They raised the issue with me of the quality and standard of the roads. It is something we will work through as part of the reform process. This clause is to define the purpose of the metropolitan area as per the Planning and Development Act.

Clause put and passed.

Clause 11: Schedule 2.1 clause 3 amended —

Mr D.A. TEMPLEMAN: This clause gives the advisory board the capacity to defer a formal inquiry and to group together any formal inquiries so that it can deal with a multitude of issues at the same time. An absolute majority is required, because any decision to defer a formal inquiry into a proposal has to be done by an absolute majority. Further along in the bill, the minister is proposing to increase the membership of the advisory board to nine. An absolute majority would therefore be five members. Is that correct?

Mr A.J. Simpson: Yes.

Mr D.A. TEMPLEMAN: My other question will come later, so I will just ask the minister to respond to that.

Mr A.J. SIMPSON: With regard to the advisory board, the clause will enable the advisory board to defer consideration of a proposal received, and this will allow a situation in which the advisory board may reasonably assume that multiple proposals could be received in a particular area, such as in the case of metropolitan reform. It also allows the advisory board to be more effective and efficient in managing its workload. This clause allows the board to actually go through a process of dealing with more than one proposal, so if it has a proposal from one council and another one from the neighbouring council that will be affected, it can deal with more than one at a time. The current legislation talks about dealing with one regulation. The majority of the time, the board has dealt with just one boundary adjustment. Through the metropolitan reform, it is going to have a number on the go at one time because the neighbouring council is also going to have to work with it to achieve the best model of local government and how it can be best serviced. Basically, all this does is give the board the power to deal with more than one submission or multiple submissions at one time.

Clause put and passed.

Clauses 12 and 13 put and passed.

Clause 14: Schedule 2.1 clause 5A inserted —

Mr D.A. TEMPLEMAN: The minister will need to provide some clarification or explanation of this clause. It allows the advisory board to dispense with submissions on metropolitan proposals on a temporary basis until 31 December 2016 or a later date appointed by the Governor. The minister may be aware of the Dadour group, which is a group concerned about any changes to the Dadour proposal. Its query, which I am happy to share, is: why will the Local Government Advisory Board be required to consider submissions as part of its normal process, when this clause effectively says it does not have to, because they can be temporarily suspended? The minister needs to explain or clarify that aspect. What does it do? On one hand we are saying to the Local Government Advisory Board that it can deal with a number of submissions independently and/or collectively, yet this clause, by its very title, dispenses with some of them at the discretion of the Local Government Advisory Board.

Mr A.J. SIMPSON: This clause will give the advisory board discretion to waive the six-week submission period that normally applies to a metropolitan proposal. Some of the proposals that we are dealing with at the moment will not need that six-week period; we can probably deal with them a lot sooner, depending on the amount of work that is done prior to that. Changes will be temporary, and they are being introduced only to assist with the timely delivery of the government's metropolitan local government reform process. The board will retain this discretionary power until 31 December 2016, or a later date as ordered by the Governor, and will have the power to advise the Governor regarding the order of extension of this period. Any order made by the Governor will be tabled in Parliament and will require Parliament's approval. These changes are being introduced to provide the advisory board with some flexibility, particularly considering the large volume of proposals it will be dealing with. There has already been extensive consultation across the community and metropolitan local governments regarding this stage. The board chair has already said that the board will be happy to receive submissions once the formal inquiry process is open, and the board will be advertising for public submissions. We are trying to acknowledge that there are some areas in which there are some boundary adjustments. The City of Perth has a boundary adjustment around Vincent, and that process could probably roll out a bit sooner. There are some other ones that are not so complicated where two councils are coming together, such as Mundaring and Swan, with slight changes around the airport, and Belmont and Kalamunda, also with slight changes around the airport. The idea behind this is that if the board can move a bit quicker, we are happy for it to do so. We are trying to give the board what I call the freedom and flexibility to get to the end point of the

reform process so we can get community consultation out to the public through advertising, and also a report back to me to identify the benefits of the reform process in the form of a document so that we can have some more debate about the reform process based on some evidence of the new entities borne out of the reform process.

Mr D.A. TEMPLEMAN: I understand the synopsis behind this change. However, I think this is where some suspicion is created. This clause could effectively allow the advisory board to deal very quickly with a proposal or proposals, and make recommendations and determine them to fit in with the reform process; as the minister said in his response, this clause is designed to create greater flexibility in delivering the government's reform process. The minister has set a time frame of 1 July 2015. My concern is that I am not 100 per cent certain that this bill will get through the upper house this year. Therefore, the time frame will slip out to when Parliament resumes in late February. It is still not likely to have been determined until March. We are creating through this bill an expanded advisory board which, one would think, would give the board greater capacity to deal with complex matters and a number of proposals. The constitution of the board cannot be changed until this bill is passed, so we will not see nine members of a new Local Government Advisory Board in place until, at the very earliest, late March next year, or even April. The minister said during the second reading debate that there may be a mechanism for him to have preliminary advertising for potential members of the board, so he can ask Local Government Managers Australia to look at some nominations. However, the reality is that he will not have a constituted Local Government Advisory Board in place with nine members until the end of the first quarter of next year. Bearing that in mind, what concerns me is this timetable of July 2015. This is where I think suspicion will come in from councils and the public; they will begin to become suspicious if the minister is seen to be hurrying up the process, particularly if there is a capacity for the Local Government Advisory Board to curtail the normal six-week consultation process, which is what is happening here. If I am a ratepayer in the Shire of Serpentine–Jarrahdale, on a council, a councillor or whoever, and my council is affected directly so that I may see my council as it exists now disappear, I would be concerned about any attempt by the minister to fit it in with his proposed program so that he gets all this out of the way before he starts entering the pre-election period; I would be concerned about anything to do with trying to curtail or reduce the consultation and submission period. I think the minister needs to give some explanation of the timing aspect, given that I do not think the other place will deal with the Local Government Amendment Bill 2013 this year. What will that mean in terms of the expanded Local Government Advisory Board and the suspicion many have that this an attempt to reduce the capacity of the community to have input?

Mr A.J. SIMPSON: I have a couple of things to say. Under the current legislation, if the advisory board advertises, there will be a six-week period to go through that process; that will stay in place. The advisory board can collect data and information regarding the proposal in front of it, so it can get data from all the submissions that come in. The member is right; the bill may not pass this year—I am probably with the member on that. I am not quite sure what will happen in the next week in the upper house; it depends on its workload whether it can get the bill through. The member is right; if it does not happen until February or March, I can still get the Western Australian Local Government Association to give me a list of members so that we can get ready to pick two more members from each group, and also we can probably look at starting to line up some community people. But until the bill passes, the advertising period is still six weeks. There is no way I can speed up the process until the bill has gone through both houses. If the member's theory is right, that will not happen until February or March next year, so the six-week process will stay in place. That will happen. We are trying to acknowledge here that there is a situation that we need to work through. The member made a couple of comments about the fact that it may take a bit more time than we thought. We are hoping for July 2015. The reason for the July 2015 date is that an election has to be held in October 2015; I have a goal of working towards that date. I do not want to have to put ratepayers through a by-election or another election process in between or after that. If it does blow out a little, we can probably live with that, but I would have to work through the process first. The advice I have is that under the current proposal, they still have only a six-week advertising program to go through, which will take us into March anyway. By the time the new members come on board and these provisions come into effect, they may have already gone through the six-week advertising period. But through the process they may have to go out and advertise again for a certain area or a certain precinct. They can shorten that advertising period under this condition, because they will not have to wait for six weeks. But currently six weeks is in the bill. We will work through that process, and if it takes a little longer, so be it. But we will get there and achieve the goal with our community on board as we work through the process.

Clause put and passed.

Clause 15: Schedule 2.1 clause 5 amended —

Mr A.J. SIMPSON: I move —

Page 11, lines 28 to 30 – To delete the lines and substitute —

(3) This clause is subject to clause 5A(2).

Amendment put and passed.

Clause, as amended, put and passed.

Clause 16: Schedule 2.1 clause 6 amended —

Mr F.M. LOGAN: This is the issue I raised with the minister during the second reading debate, which goes to the addition of proposed clause 6(3) to schedule 2.1 of the act. Can the minister explain how this proposed clause will apply, and also how it is to be read in conjunction with clause 6(2)? For the purposes of *Hansard*, I will read out again the existing clause 6(2) of schedule 2.1 of the Local Government Act 1995. It reads as follows —

> The Advisory Board is not to recommend to the Minister the making of an order that is significantly different from the proposal into which it formally inquired unless the Board has —
>
> (a) given* notice to affected local governments, affected electors and the other electors of districts directly affected by the recommendation of its intention to do so; and
>
> (b) afforded adequate opportunity for submissions to be made about the intended order; and
>
> (c) considered any submissions made.
>
> * *Absolute majority required.*

Using the proposition that the minister has put before the advisory board with regard to the metropolitan map that shows the carve-up of Cockburn, for example, and reading that literally, it states —

> The Advisory Board is not to recommend to the Minister the making of an order that is significantly different from the proposal into which it formally inquired …

That is, if the minister has presented a map to the board for it to inquire into, which shows the carve-up of Cockburn, it cannot recommend to the minister anything different unless it follows the process under paragraphs (a) to (c), assuming an absolute majority was required, as stated in paragraph (a), yet clause 16 of the amending bill adds a further subclause (3) to clause 6, which states —

> However, the Advisory Board is not required to comply with subclause (2) —

That is, it cannot ask the minister to make an order significantly different from, for example, the map he has given it, unless paragraphs (a) to (c) are complied with. Proposed subclause (3) continues —

> in relation to a recommendation if —
>
> (a) the proposal into which the Board formally inquired is a metropolitan proposal to which clause 5A applies; and —

In this case it is the map, and, yes, clause 5A does apply. Proposed subclause (3) continues —

> (b) the Board decides* that, in the circumstances of the particular case, compliance with the procedures in that subclause would serve no useful purpose.
>
> * *Absolute majority required.*

Taking that in as plain English as we possibly can, it means that the map that the minister has put forward to the Local Government Advisory Board for it to examine, which includes the carve-up of Cockburn, cannot be significantly changed unless paragraphs (a) to (c) are followed or, as we have seen with proposed clause 6(3)(b) of schedule 2.1 in clause 16 of the amending bill —

> the Board decides* that, in the circumstances of the particular case, compliance with the procedures in that subclause would serve no useful purpose.

It could be that the Local Government Advisory Board takes all the submissions from Cockburn and surrounding councils, and then says that it is not going to change the map at all or go to the affected electors of the local government because it will serve no useful purpose. Is that correct, minister?

Mr A.J. SIMPSON: As the minister I have made a submission to the advisory board, and the advisory board will be responsible for investigating the merits of this proposal together with the proposals that have been submitted from other sources—the City of Cockburn has probably put in its proposal. This is one of the primary purposes of the existence of the board; it has to look at all submissions. The advisory board will have a discretion as to how it investigates proposals. After the board concludes an inquiry on a proposal, the board will be required to make a recommendation on what should occur. The board can advise that the proposal be rejected; therefore, it can reject it. The board can advise that the proposal can be accepted, and an order be made in accordance with that proposal. In certain cases, the board has the ability to advise that a proposal be rejected and a different order

be made. The advisory board will then make its recommendation to me as the minister. I will accept or reject those recommendations, but I cannot amend them. If I accept the board's recommendation, I will advise the government to make an order in accordance with those recommendations. I can only advise the Governor to make an order that has been recommended to me by the advisory board. The act does not provide me with the powers to amend the board's recommendation or to advise the government to make a different order, which the board did not recommend. However, it has to deal with all the submissions, including not only the government's or my submissions, as minister, but also all the submissions from the City of Cockburn. It has to deal with them all. The member is reading from clause 16 of the bill, which states —

> After Schedule 2.1 clause 6(2) insert:
>
> (3) However, the Advisory Board is not required to comply with subclause (2) in relation to a recommendation if —
>
> (a) the proposal into which the Board formally inquired is a metropolitan proposal to which clause 5A applies; …

It is a policy decision that is made. All proposals are considered and inquiries are made of them all.

Mr F.M. LOGAN: I thank the minister for the explanation. However, it still does not deal with the existing clause 6(2)(a) of schedule 2.1; for example, the Local Government Advisory Board. We should remember, in addition to the order that the minister has just read out, is the attached map, which is the minister's submission as well. The Local Government Advisory Board could say that it has looked at what the minister has said, taken submissions, read the Robson report again, and that, regardless of the map, it will keep the boundaries of Cockburn exactly as they are. Although the minister's order allows the board to undertake an examination, if it is significantly different from the map attached to the order, does that then go —

Mr A.J. Simpson: It is not an order; it is a submission. They will make a recommendation to me that the city —

Mr F.M. LOGAN: Yes. Sorry, it is the minister's submission. I apologise. If the order is significantly different from the minister's submission, does that then invoke clause 6(2)(a) of the schedule?

Mr A.J. SIMPSON: The answer to the member's question is no, it does not.

Mr F.M. Logan: Just by way of interjection, can the minister explain what will happen?

Mr A.J. SIMPSON: The recommendation will come back from the board, under the current act, for reinstatement. I can do only two things: I can either accept it or reject it. I cannot amend it. The advisory board can make the determination. Amended schedule 2.1 of the act will state —

> … the proposal into which the Board formally inquired is a metropolitan proposal to which clause 5A applies; …

That refers to the policy it operates under. The advisory board will look at all the proposals. The member is correct that the board could make a recommendation that is not the one that I made; it could be one that the City of Cockburn made. That is the recommendation to me. When the recommendation comes back to me, I can only do one of two things: I can either accept it or reject it. There is nothing else I can do with it.

Mr F.M. LOGAN: I accept that is the minister's expectation from the process, but that is not what the current act provides. I am not talking about the amending provisions; I am talking about the current act. The current act says that when the LGAB wishes to make an order that is significantly different from the submissions the minister has made, the board is not to make that order to the minister unless the board has invoked clause 6(2)(a) of schedule 2.1.When will that happen?

Mr A.J. SIMPSON: That means that the board has consulted and advertised for public submissions, and it has taken on board those submissions to come up with that preferred boundary.

Mr F.M. LOGAN: That is not exactly what it says. What it says is that when the LGAB makes an order that is significantly different from the minister's submission, the board is not to give it to the minister unless it has actually given notice of the order to affected local governments, affected electors and the other electors of districts directly affected by the recommendation of its intention to give the minister an order that is different from the minister's submission.

Mr A.J. SIMPSON: If the board has my submission and one from the City of Cockburn and the board accepts the submission from Cockburn, the board must advertise it. If the board accepts something different from what either the minister or the City of Cockburn has presented—the board can go with a totally different one—the board will have to advertise that process. If there is a third option—so there is my submission, the City of Cockburn's submission and a third option on the table—the board can put the third one out for public comment.

Mr F.M. LOGAN: But the act is fairly clear; it is more than just advertising. It is actually giving notice to affected local governments, electors and the other electors of districts directly affected. It does not say, "Look, we'll put an advert in the paper." That says quite clearly that electors themselves will be notified.

Mr A.J. Simpson: Yes.

Mr F.M. LOGAN: Therefore, it will have to be given to the councils who are affected.

Mr A.J. Simpson: Yes.

Mr F.M. LOGAN: As well as their electors.

Mr A.J. SIMPSON: Yes, that is correct. Probably one of the main things in this matter is that the advisory board will make a submission to local government. It will be a situation, which the member has touched on, that may be different. The minister is wondering what the City of Cockburn submitted, and he may want to go back to the council to say, "This is the proposal that we think actually works better." The board may get the council to go through that process. It goes back to whoever put in the submission. I think everyone who puts in a submission should receive a copy. The council must be notified and the submission must be advertised as well. It has to go back to the council.

Clause put and passed.

Clause 17: Schedule 2.1 clause 11 amended —

Mr D.A. TEMPLEMAN: This clause will cap contracts of employment to a maximum amount that an employee could be entitled to. As the minister is aware, Local Government Managers Australia WA had its annual general meeting in August, I think, at which this issue was highlighted. The association was seeking from the minister a commitment that anyone whose employment is terminated would receive a maximum payout of 72 weeks' pay, but the minister has decided not to accede to that request. The minister has set the maximum at 52 weeks. Can the minister explain his reasons behind not acceding to the request by Local Government Managers Australia?

Mr A.J. SIMPSON: The member for Mandurah is correct that the bill was tabled at the Local Government Managers Australia conference in August this year. We looked at all the options on the table. The member should keep in mind that this clause refers to not only CEOs but also contract staff and we are trying to put some sort of figure in the act. Currently there is no payout for CEOs; the payout is negotiated. Members should keep in mind that sometimes the only person a council employs is the CEO, so when that relationship breaks down and they decide to part ways, the council has to negotiate with the CEO to determine a payout. We are trying to identify that when the CEO or contract person is paid out, it will be limited to 12 months of the package, and not 12 months' pay. That package is negotiated at the start of a contract. This is more in line with the private sector. The member should bear in mind the reform process we are currently undertaking, and staff involved will be aware they have 12 months or longer prior to the termination payout, which is equal to receiving two years' pay and knowing they will be terminated on a certain date. They will have transparency for over 12 months prior to the payout. The bill will ensure that CEOs who have their contracts terminated as a result of a merger may be able to receive termination pay in line with other termination provisions in the act. The termination payout may not be higher than the value of one year's remuneration and the value of the remuneration that the CEO or senior employee would be entitled to receive had their contract not been terminated. In the case of a person affected by structural reform, they are guaranteed two years' employment; in effect, they could be guaranteed full employment through to July 2017. The amendment in this clause makes it clear that this is the same principle applied to terminations linked to structural reform. It is not appropriate that local government should be able to exceed this limit in cases of amalgamation and boundary changes. Providing for a payout amount that exceeds its principal would be a major financial burden on local government and ratepayers and this amendment will protect new councils from unreasonable requests for termination payments. Although we are discussing local government reform today, there are 138 local government authorities in Western Australia that could end up trying to terminate the employment of their CEO. This amendment will define the boundaries under which they can operate. It has been a matter of contention in the sector for quite a while. I am also conscious that it is ratepayer money that will pay out these contracts. I understand where the Local Government Managers Association is coming from, but it is a contract and we think the termination payment will be more in line with the private sector, so we have come to the conclusion that 12 months is sufficient for a payout to a CEO.

Clause put and passed.

Clause 18: Schedule 2.5 clause 2 amended —

Mr D.A. TEMPLEMAN: The opposition opposes this clause, and will oppose the minister's amendment when it is moved. I highlight again that in the second reading speech the minister proposed an additional two members to the existing five members, but in between the second reading speech and now the minister has proposed to

change that. The minister needs to explain the reasoning the proposal went from two additional members to four additional members. I will make a few additional comments when the minister moves his amendment.

Mr A.J. SIMPSON: I will clarify that we are dealing with the clause as it stands to increase the membership of the advisory board by two people who will represent the interests of the community. I think this was put to me by the Local Government Advisory Board. The amendment to the schedule provides for four members, including two community members. Clause 18 will increase the membership of the board. It is interesting that by going to nine members and requiring a majority of five and also having five members coming from the sector, from my perspective, that makes the membership more transparent. One of the things that have come out of the reform process is that the advisory board is trying to keep its independence. That is well and truly the wish of the community. By increasing the board's membership to nine, with five members coming from the sector, one from the Local Government Managers Association and four from WALGA, the sector will be in the driving seat and will have the best input into its communities. Having two members represent the interests of the community and five members from the local government sector will help to put in transparency so that it is clearly independent from the minister.

Mr F.M. LOGAN: I do not oppose the minister's attempt to expand the Local Government Advisory Board in the clause as printed, but I reiterate my concern that the composition of the advisory board is about to be changed as a result of the passage of this bill and in its examination of metropolitan issues. The minister heard some interjections and the position put by National Party members in this chamber, who are more than happy to pressure the minister and the government to make amendments to the amending bill to ensure the government stays as far away from regional councils as possible and it makes no changes whatsoever to their councils so that the Nationals can protect the small fiefdoms they have around Western Australia. Yet, when it comes to determining the future of local governments under the minister's proposition for the Local Government Advisory Board, the National Party is very happy to have three regional representatives on the board making the decisions. I find that absolutely unacceptable. I made that clear in debate on the second reading. I have no problem with the minister increasing the membership of the board to seven or attempting to get the independence that he suggests should be in the Local Government Advisory Board, although I question that intent, particularly when it comes to Cockburn and I have said that in the second reading debate. I certainly question why three regional representatives will make decisions over the future of metropolitan councils. I thought the minister would have expanded the Local Government Advisory Board with only metropolitan representatives being appointed to that board. Those representatives could come from all walks of life—they do not necessarily have to be from local government—and could be from business, academia or the trade union movement or wherever, if the minister wanted to achieve independence. One thing is sure: they should be from the metropolitan region, so that they can determine the future of metropolitan councils.

Mr A.J. SIMPSON: In the current make-up of the board only one member is from the country—Ron Yuryevich from Kalgoorlie, but after the amendment is passed, there will also be Helen Dullard from Mundaring and Dr Shayne Silcox from Melville, who are all from metropolitan areas. I take the member's point that the Western Australian Local Government Association provides a list of members, and that its composition is up to the association. The association has had a long history of representation from both metropolitan and country areas. My understanding is that when the current president steps down, a country member would normally take over that role, and then it would go back to a metropolitan member; they try to share it between country and metropolitan members. It is the same deal with the Local Government Advisory Board. I will use Dr Shayne Silcox as an example. Obviously as a member of the advisory board, he cannot sit on anything to do with Cockburn, Melville, Fremantle or Canning—he has to step down when the board deals with anything that is anywhere near the City of Melville. He has a deputy, who is a country member, who will step into that process. At the moment that is Mark Chester from Dardanup. The important part is that the advisory board tries to ensure that there are no conflicts of interest. When we get up to five members and put five deputies behind them who can step into their seat when there is a conflict of interest, it is going to get a bit harder for me to make sure that I can keep the five members across the metropolitan area and that no-one will have an interest across the sector. If Rockingham, Joondalup and Wanneroo are not affected, they can make up three of the positions, but I will have to keep moving the seats around. The member is right; the two community interest members would only have a conflict relating to where they live. That would be one area on which there would be an influence. The idea of having two community members is to find some academics or retired people who have a lot of experience in the sector. The interesting part is that under current legislation, we work with the local government sector. It has had that policy, but it is not in the legislation. That was a good point to raise.

Mr F.M. LOGAN: There could have been an opportunity to put in the bill a sunset clause to deal with the issue that is before the minister now—that is, metropolitan local government reform—that could have created an entirely new structure for advice to the minister, even though he would obviously include the Western Australian Local Government Association. The minister could have had a temporary sunset clause in the bill, which would have given him a far better make-up than the one we will end up with.

Ms J.M. FREEMAN: I want to talk about the two people who will represent the community interest. This is interesting because these appointments will be made by the minister, so he will get to define what the community interest is. The minister will assess what he thinks is "community interest". When we went to speak to the minister and his advisers, he said, as he did just then, that it could be an academic with a community interest. I am at a loss to see how an academic could be someone who could represent community interest. I would think that elected councillors would be extraordinarily annoyed if the minister suddenly did not think that they represented a community of interest, because they probably do. I want a broader definition of what the minister means. I have tried to get some understanding of the minister's intent. Which community will these people represent? Will unions be a community of interest? Will the minister allow a member of the Australian Services Union to be a member of this board? The union is a community interest. Will the minister allow a person from a residents' action group to be appointed as a representative of community interest? Will it be defined by geographic area? Will it be a member of a special interest group, such as one that has a particular interest in dividing fences or dogs? They are community interests. Will it be service users? This proposed paragraph is so ill-defined. The minister is going to stand up and say that it is okay, but I want to put on the record that without a proper definition of what the minister intends by "community interest", all he is trying to do is to put some people on the board who will share his view. That is all very well at this point in time for all the members over there because they are in government, but when we stick a community interest representative on the board, members opposite had better not start questioning it. I want to put on the record that I think a community of interest is the ASU! If and when we are in government and we put a member of the ASU on there, members opposite should not come back to me and tell me that I am dealing with my union mates. That is a community of interest just like any other.

Mr A.J. SIMPSON: The member is right. A member of the community can be any of those people whom she mentioned—that is, a councillor, a ratepayer, anyone involved in the community —

Ms J.M. Freeman: A union member?

Mr A.J. SIMPSON: They could be from a union; they are community members. The legislation states "community member. The member has put that on the record. She is right. The only point is that we would be more than likely to appoint a councillor as a representative of the Western Australian Local Government Association, but a community member could be anyone.

Clause put and negatived.

New clause 18 —

Mr A.J. SIMPSON: I move —

Page 13, after line 16 — To insert —

18. Schedule 2.5 clause 2 amended

In Schedule 2.5 clause 2:

(a) delete "5 members" and insert:

9 members

(b) in paragraph (b) delete "2 persons" and insert:

4 persons

(c) after paragraph (c) insert:

(da) 2 persons are to be nominated by the Minister to represent the interests of the community; and

Mr D.A. TEMPLEMAN: There is another amendment on the notice paper under the name of the member for Kwinana.

The SPEAKER: If you want to put an amendment, we first have to put this new clause. You can then put your amendment.

New clause put and passed.

Clause 18: Schedule 2.5 clause 2 amended —

Mr D.A. TEMPLEMAN: I move —

Page 13, after the last line of new clause 18 — To insert —

(d) at the end of clause 2 of Schedule 2.5 insert the following subclause:

(2) The Minister, before making —

(a) a nomination under subsection (1)(a) or (da); or

(b) an appointment under subsection 1(b) or (c), is to consult with the parliamentary leader of each party in the Parliament.

I am glad that there are some members opposite here, because I will be seeking their support on this amendment. Given the debate that has just occurred and the issue raised by the member for Cockburn, the opposition is seeking to insert an additional paragraph to clause 18. There is precedence for the amendment that we seek. The precedent is a clause concerning the appointment of members to the Healthway board, which allows for the parliamentary leader of each party in the Parliament to be consulted on the appointment. To ensure that the whole process is transparent, this amendment means that the minister would have to consult each parliamentary leader of each party in the Parliament on any new member of the Local Government Advisory Board nominated under proposed subclauses 1(a) or (da). We have just voted on new clause 18 and the insertion of paragraph (da), which outlines that two members are to be nominated by the minister to represent the interests of the community. That takes into consideration the point made by the member for Mirrabooka. The current process is that the minister does not have to directly accede to that, but it would allow an element of transparency into the process. The minister would say to the Leader of the Opposition and the Leader of the National Party that these are the two members he is seeking to appoint to the Local Government Advisory Board. Bearing in mind the comments of the members for Cockburn and Mirrabooka, that would be an appropriate mechanism to gain the sanction of those parliamentary leaders. This is not a process that can be corrupted in any way. It will allow the opposition party and the minister's current National Party colleagues to be consulted about the minister's nominees. The minister and I have had a conversation about the sorts of people who would attract bipartisan support as community representatives. It would be good to have a clause in the bill such as the one that we are proposing that would allow a bipartisan approach to be taken. This is the minister's reform program. But part of the process of achieving this reform is through a so-called independent body. We can give greater independence to that body by providing the opportunity for the opposition party in particular to be consulted. That is what we are attempting to do with this amendment. I therefore seek the support of the minister and members opposite for this amendment.

Mr A.J. SIMPSON: I understand the intent of the amendment moved by the member for Mandurah. We have already come a long way in expanding the membership of the Local Government Advisory Board. It is more important that the board is representative of the industry that it represents. The two community members who will be appointed to the board will help to put more balance on the board and keep in check the members from the sector. There are a number of good people in the community who could be appointed to the board, and we have talked about that already. We need to ensure that the nomination process does not become too cumbersome. I already struggle with having to appoint people to cemetery boards in a number of country areas and with having to go back and forward to cabinet with a series of nominations of people to go onto boards. This board is an advisory board. It looks at local government proposals. I think it is well suited to have more members on that board from the sector. To require the minister to have to consult with three parties—or, if the Greens happen to have five members in the two houses, four parties—would be quite a long and cumbersome process. There is merit in what the member is trying to achieve, but it will be a bit unworkable. I am therefore happy for the current process to remain in place.

Mr D.A. TEMPLEMAN: We will be taking this new clause to a vote, but I firmly believe that given that the minister is seeking to fundamentally change the composition of metropolitan councils, it is important to ensure that the Local Government Advisory Board is independent. As I said during the second reading debate, I do not have anything personally against the current chair of the Local Government Advisory Board. However, it is true that he has a clear connection to the Liberal Party. Therefore, I believe the minister will arouse continued suspicion of the so-called potential to stack the board. Even though the minister had said that WALGA will be able to nominate X number of people, the minister will still need to approve those nominees according to the list that is given to him. The minister will effectively make the determination as to whether he likes all or none of those nominees. That determination will still sit with the minister. This proposed new clause is simply a mechanism—as is the case with appointments to the Healthway board, as an example—that will provide, because of the nature of what the minister is doing, when he told fibs, in my view, before the election and said he would not force amalgamations and then broke that promise —

Mr G.M. Castrilli: Be nice! It's Christmas!

Mr D.A. TEMPLEMAN: Yes, it is Christmas, and I could have used another word, but I did not.

We are simply asking the minister to support a proposal that will provide an even greater element of transparency for a board that the minister is claiming will be, and that has to be, totally independent.

Division

Amendment put and a division taken with the following result —

Ayes (14)

Ms L.L. Baker	Mr F.M. Logan	Mrs M.H. Roberts	Mr B.S. Wyatt
Dr A.D. Buti	Mr M. McGowan	Ms R. Saffioti	Mr D.A. Templeman *(Teller)*
Ms J. Farrer	Mr M.P. Murray	Mr C.J. Tallentire	
Ms J.M. Freeman	Mr J.R. Quigley	Mr P.C. Tinley	

Noes (31)

Mr P. Abetz	Ms W.M. Duncan	Dr G.G. Jacobs	Mr D.C. Nalder
Mr F.A. Alban	Ms E. Evangel	Mr R.F. Johnson	Mr J. Norberger
Mr C.J. Barnett	Mr J.M. Francis	Mr S.K. L'Estrange	Mr D.T. Redman
Mr I.C. Blayney	Mrs G.J. Godfrey	Mr R.S. Love	Mr A.J. Simpson
Mr I.M. Britza	Mr B.J. Grylls	Mr W.R. Marmion	Mr M.H. Taylor
Mr G.M. Castrilli	Dr K.D. Hames	Mr J.E. McGrath	Mr T.K. Waldron
Mr V.A. Catania	Mrs L.M. Harvey	Ms A.R. Mitchell	Mr A. Krsticevic *(Teller)*
Mr J.H.D. Day	Mr A.P. Jacob	Mr N.W. Morton	

Pairs

Mr P.B. Watson	Mr T.R. Buswell
Mr R.H. Cook	Ms M.J. Davies
Mr P. Papalia	Mr M.J. Cowper
Ms M.M. Quirk	Mr C.D. Hatton
Mr W.J. Johnston	Mr P.T. Miles

Amendment thus negatived.

Clause 19 put and passed.

New clause 19A —

Mr A.J. SIMPSON: I move —

Page 13, after line 33 — To insert —

19A. Schedule 2.5 clause 4 amended

In Schedule 2.5 clause 4(1) delete "9 persons" and insert:

12 persons

New clause put and passed.

Clause 20: Schedule 2.5 clause 7 amended —

Mr A.J. SIMPSON: I move —

Page 13, line 27 — To delete the line and substitute —

5

Amendment put and passed.

Clause, as amended, put and passed.

Clause 21: Schedule 2.5 clause 11 amended —

Mr A.J. SIMPSON: I move —

Page 14, lines 2 to 10 — To delete the lines and substitute —

(1) In Schedule 2.5 clause 11(2):

(a) in paragraph (b) delete "2 persons" and insert:

4 persons

(b) after paragraph (c) insert:

(da) the 2 persons appointed as members under clause 2(da); and

(2) In Schedule 2.5 clause 11(3b) delete "3," and insert:

5,

Amendment put and passed.

Clause, as amended, put and passed.

Clause 22 put and passed.

Title put and passed.

Leave granted to proceed forthwith to third reading.

Third Reading

MR A.J. SIMPSON (Darling Range — Minister for Local Government) [5.32 pm]: I move —

That the bill be now read a third time.

MR D.A. TEMPLEMAN (Mandurah) [5.32 pm]: I will not speak for very long. We have had a very interesting process with the Local Government Amendment Bill 2013. The second reading speech of the minister was made in this place in late October and the bill was laid on the table. Since that time, three key areas of the bill, as outlined by the minister in his second reading speech, have been substantially changed. The first change was a very significant change. The original legislation that was presented to this house included a requirement for the Local Government Advisory Board to take note of the policy of the government of the day. Of course this was contentious and of course this was an area that the opposition was concerned about. According to the minister's second reading speech, this new provision would ensure that the advisory board acknowledged the government's reform process, which is a significant plank of the amendment bill. Since the second reading speech, we have seen a backflip by the minister. We suspect it was due to the influence of the National Party and because it had threatened to oppose the bill in its entirety if the changes were not made to that clause and others. Subsequently, the minister was forced to delete that part of the clause.

The second major section of this bill that was changed substantially was about the composition of the Local Government Advisory Board. In his second reading speech, the minister proposed an expansion of the Local Government Advisory Board from five to seven members. Again, our understanding is that the National Party in its threat requested an additional two members over and above that which was proposed. The member for Cockburn in his contribution this evening about that clause has highlighted a very appropriate concern—that is, the influence of members who are not metropolitan members on the Local Government Advisory Board potentially having a say on councils that are not within their jurisdiction or in regional Western Australia. That is a legitimate concern. The member for Cockburn said that if the advisory board is specifically directed to determine boundaries associated with the metropolitan area, then certainly people who reside and/or are influenced by living in the metropolitan area should have a say on what their future councils will look like and not be unduly influenced, in this case, by the National Party's jurisdiction.

The member for Cockburn raised a legitimate concern. As he said, we have no problem with the expansion of the board to the number that the minister has succeeded in achieving—nine members—but who those nine members might be is of concern. If the National Party, in its influence on the minister, has won a substantial say on the constitution of metropolitan councils, then that is of concern. If the situation were reversed and we were talking about key councils in regional Western Australia, the National Party would be up in arms and champing at the bit to tell the minister that it wants country people as the people who decide their fate. That is the fundamental principle that the member for Cockburn raised, and it is a legitimate one, and I argue the same. I have always said that no-one else in this place has a right to ultimately determine the future of my non-metropolitan council without consultation with the people who are my constituents in Mandurah, as an example. I have always raised in this place my concern that people label Mandurah as a metropolitan council when, in fact, by law, it is not. I do not have a problem with the minister bringing forward and debating legislation about that, but do not impose it on the people of my area without consulting us; that is all I ask, it is a simple request. I seek to have people appointed to the Local Government Advisory Board who have a connection with the metropolitan area if they are to determine the ultimate composition and structure of councils in that area. It does not matter if there are one or two from regional WA, like the Mayor of Kalgoorlie who currently sits on the board, but when the National Party has undue influence, that is cause for concern.

The third plank that the government changed dramatically in this bill was the defamation clause. The minister told us specifically in his second reading speech that there was a need to delete the existing clause because the Western Australian Electoral Commission had requested it, and the minister had received legal advice that that is what should happen and that it could be dealt with more appropriately under the Defamation Act 2005. However, the minister's backflip was that that was no longer the case and that the clause should remain, and that is what we have achieved. The fact that those three key areas have substantially changed since the second reading speech highlights, as the member for Cockburn pointed out in his contribution to the second reading debate, the sham and farce that this whole process has become; the goalposts have changed each time. There have been occasions on which the Minister for Local Government has made statements and they have been slapped down within 24 hours by the Premier himself. That includes things such as the minister's so-called minor tweaks to the maps;

when we saw the second lot of maps, there had been major tweaks. In the first set of maps, it appeared that the integrity of the City of Cockburn was going to continue, and then in the last maps that the minister put forward as the government's submission to the Local Government Advisory Board, there was a total reversal of that. In fact, the minister took the City of Cockburn—one of the most financially stable councils, with low debt levels and a very high capacity to deliver quality services to ratepayers—and discriminated against it and penalised it, in spite of all the things the minister claimed in his previous statements that he wanted to achieve. For example, he wanted financially sustainable councils with populations of around 100 000 or so, and he had a glowing, award-winning example of that in Cockburn, but he sliced that council into three, based on no sound explicable evidence. That is the key problem we have always had with this process. The minister, his predecessor, and certainly the Premier, have never once explained a rational economic and social argument behind their proposals. Instead, we have seen a series of thought bubbles and generalised comments based upon no real researched evidence, and some numbers plucked out of the air.

During consideration in detail I referred to the minister's comment that some councils should have a population of around 100 000. Even that is not reflected in the final maps that were submitted to the Local Government Advisory Board some weeks ago. Under the minister's current proposal, there are councils that range in population from around 60 000 up to 200 000, so there is still quite a wide range. There has been no evidence-based analysis provided to us as to the reasoning behind the maps. There are also discussions about the maps not following natural boundaries, like the Swan River in the case of South Perth and Victoria Park, and the Burswood peninsula. There is also the question of councils such as Serpentine–Jarrahdale being sliced in half, with the more urbanised northern parts going to the City of Armadale and the southern part going into a non-metropolitan council, the Shire of Murray.

We will maintain this pace through to the next election. We will continuously seek to expose what we believe are the flaws in this process and the fact that what the government told the people of Western Australia and the local government sector before the election is not what it is delivering in terms of truth and honesty. I believe the government told them one thing before the election and then set about a process that disregarded what the minister and the Premier said before the election. That is why councils feel that this whole process has been forced upon them. There will be winners and losers in this process. People will go to Christmas in the next few weeks unsure whether in 2015 they will be working with the council they are currently with, and this will continue to create uncertainty amongst people working across the sector at all levels. The minister has failed to explain the reasoning behind this process. We will continue to hound the government; we will continue to have debates in this place about the process; and we will continue to highlight to the people of Western Australia that the government's process has been based upon a false premise and the lack of a well-researched, evidence-based explanation of why the government is doing this.

My last comment is, as I said in the second reading debate, that there has been an abuse of trust. There has been an abuse across the sector. The government told things to certain sections of the sector, changed its mind, rethought things and backflipped, which has undermined trust. That is where the government has fallen down most spectacularly. The government has failed to keep the trust of the very local governments it needs assistance from in this reform process, many of which have been willing participants, including South Perth, Victoria Park and Cockburn. They were willing participants in the reform process and recognised the need for reform. The government failed to keep their trust because it changes its mind constantly. The Local Government Amendment Bill 2013 is an example of that. That trust has been abused and therefore those local governments are very uncertain about where this whole process will lead and the future of their council, their ratepayers and their council employees.

MR F.M. LOGAN (Cockburn) [5.46 pm]: I rise to add a few more comments to the third reading debate of the Local Government Amendment Bill 2013. As members know, the shadow Minister for Local Government, the member for Mandurah, has indicated that we will not oppose this bill, but obviously we have had significant concern with the bill and all the clauses we dealt with during consideration in detail. As I said earlier, amending the amending bill in the way that was done during consideration in detail simply reflects the whole process of the supposed local government reform announced by the Liberal–National government in 2008. From 2008 to today, numerous meetings have been held around Western Australia, with millions and millions of dollars spent by various metropolitan councils to try to meet the government's agenda of reforming local government by encouraging amalgamations, changing boundaries, encouraging councils to talk to one another and trying to achieve economies of scale, which is effectively the object of the exercise. None of that has worked. It has been a chaotic process and the bill before the house reflects that chaos. The bill amends the Local Government Act, yet it had to be significantly amended itself by the minister.

I particularly took issue with the process identified in clause 6 of schedule 2.1, which deals with submissions from the minister to the Local Government Advisory Board. What happens after that? Is there any input by councils such as Cockburn, which is facing annihilation? Is there any further input by the ratepayers of Cockburn

and surrounding districts who will also be affected should the Local Government Advisory Board make a decision and a recommendation to the minister that is different from what the minister put to the Local Government Advisory Board? One thing we had clarified by way of that debate is that subclause (2)(a) will be enacted, and that the electors and councils will be notified, should a recommendation from the Local Government Advisory Board be different from a submission put by the minister in the first place for the Local Government Advisory Board to look into. I appreciate the minister clarifying that, because as I said during the second reading debate, I certainly was unsure, with the amendments in the Local Government Amendment Bill 2013, whether the existing provisions of the act would come into play should the Local Government Advisory Board come up with a recommendation different from the submission it received from the minister to inquire into.

Of course, the ratepayers of Cockburn are seeking from the Local Government Advisory Board a completely different position from that put by way of submission by the minister for the LGAB to inquire into. It is not surprising they want a completely different outcome from the Local Government Advisory Board in its recommendation to the minister. The ratepayers of Cockburn have not really kept a very close eye on the local government reform process—they have not. In fact, most people in Western Australia have not kept a close eye on the local government reform process because, in most cases, it has primarily been a debate between local government officers and government, whether it be the minister, the minister's advisers or the local government department, and the chief executive officers and mayors of local governments.

There has not been a very wide consultation debate throughout metropolitan councils with ratepayers about what is likely to occur to their local councils. That has not taken place. It is no different in Cockburn from what it would be in Canning or Serpentine–Jarrahdale or Stirling or Vincent; that did not occur at any of those councils either. But when ratepayers have woken up to what is likely to occur to their local councils—the Town of Vincent being swallowed up by the City of Stirling is a classic example—then we saw the backlash, objection and protests about the changes that are masquerading under the guise of local government reform.

We then also saw how the process really works, which is significantly different from the amendment bill we are dealing with at the moment. The process really works in a way that, although the LGAB might make a recommendation to the minister and the minister may accept or reject the Local Government Advisory Board recommendation, the Premier reaches over the minister and the Local Government Advisory Board and says, "No, that's where I believe the boundary change should be made. The City of Vincent can go into the City of Perth rather than the City of Stirling." That is what happened. The people of Vincent found out what was going on, they objected and protested, and the Premier acted and made his comments known on television that the Town of Vincent does not have to go into the City of Stirling at all; it can go into the City of Perth. There are still problems with where the boundaries will lie for the proposed new City of Vincent–City of Perth, but that seems to be the process. It certainly seems to be the process as seen by most ratepayers in metropolitan Perth who have followed the example of the City of Vincent.

Then we come back to the City of Cockburn. The minister's excuse to the house for this bill, and on previous occasions when I have raised the issue of the carve-up of Cockburn, is that it is a functional decision. The minister explained it to me, to the house and to the ratepayers who gathered outside Parliament at the rally last Thursday by saying, "Look, I have to make the City of Fremantle whole, I have to make the City of Melville whole and then what is left over from the City of Cockburn can go into a joint venture, effectively, with the City of Kwinana, and in itself it will be financially whole, fiscally whole and sustainable." However, that has not been discussed over the five years that we have been dealing with the whole local government reform process. Up until the election of the new Liberal–National government and up until recently, two propositions from the Robson report had been discussed, one of which took away only the top part of Cockburn. Both propositions showed the amalgamation of the City of Fremantle, the City of Melville and the Town of East Fremantle. None of the propositions that formed part of the local government reform showed the carve-up of Cockburn—that seems to have come out of thin air.

I have said an awful lot on this issue, so I will not go on about it, but I will make this simple point in this speech on the third reading of the bill. I cannot see in the carve-up of the City of Cockburn why the minister believes that taking the whole top half of Cockburn, cutting it in two and giving part to Fremantle, part to Melville and the rest effectively to Kwinana will improve the sustainability of those councils, particularly Kwinana and Fremantle. Currently, Fremantle and Kwinana run deficits and have debt. The minister will give them assets and money that belong to Cockburn and he somehow believes that there will be a cultural change in the mindset of those councils and that they will run a budget surplus. He believes that they will get rid of their debt and be debt-free. Why does the minister imagine that? Up until now they have run deficits and debts. It is as though the minister is giving money to someone who has been behaving badly with money and expecting them to change their attitude and behaviour and never get into trouble ever again with money. Why would Fremantle and

Kwinana not absorb everything the minister gives them as part of the process and still run debt and deficits? It is very possible that they will, and that will be at the expense of a good council that has been well run, fiscally conservative and sustainable. That is exactly what the minister is doing. He has given reasons why. He has suggested that he had to draw the lines where they are proposed and put them before the Local Government Advisory Board. He then assumes that will change the attitude, culture and financial behaviour of those councils, with no evidence whatsoever to support that assumption. He is hoping they will.

The ratepayers of Cockburn, who have observed the way in which the City of Kwinana is run, and particularly the way in which the City of Fremantle is run, do not share the minister's confidence at all and they are really upset with what he has done—extremely upset. The rally that the minister saw outside the front of Parliament last Thursday was only the beginning of the actions that will be taken against this government and against the minister, unfortunately. We are going into the summer break, which will give the troops the opportunity to build up the case against the government over the proposal to carve-up the City of Cockburn, and, come the opening of Parliament next February, we will be back bigger and louder than ever opposing the carve-up of one of Australia's most respected and awarded councils.

Mr A.J. Simpson: Why would you not just put that time and effort into the advisory board, which is going to make the decision?

Mr F.M. LOGAN: They are doing it, but they do not trust the Local Government Advisory Board to change the minister's recommendation any more than I do. At the end of the day, it is not called an advisory board because it makes decisions; it is called an advisory board because it provides advice to the minister, who makes the decisions. The minister said that during consideration in detail. The minister's recommendation is to carve it up. What hope do we have of the minister making a different decision? That is the logic that follows.

Mrs M.H. Roberts: Hear, hear! Great speech, member for Cockburn!

Mr F.M. LOGAN: To support my colleague the member for Midland, who would like to hear more —

Mrs M.H. Roberts: I would, but it has been fantastic; I'm convinced.

Mr F.M. LOGAN: She would like to hear more, but I will bring my wise words to an end. I acknowledge the bill before the house and remind the minister that, come February, we will be back protesting against the carve-up of Cockburn and the recommendations before the LGAB.

MR A.J. SIMPSON (Darling Range — Minister for Local Government) [6.00 pm] — in reply: I thank members opposite for their support of the Local Government Amendment Bill 2013. Anything to do with local government is very, very touchy with a lot of the community. I would like to place on the record a couple of issues with the bill. This bill is fixing up a lot of nuts and bolts. Today we touched on the Local Government Standards Panel. We have done a lot of work to try to streamline that process and fix some areas such as the complaints process, which is important. It has also given the local government sector a clear direction for CEO payouts and fixes that anomaly that has been in the system for a number of years. That issue has not been resolved for a long time. It also tidies up the fees and allowances for councillors through the Salaries and Allowances Tribunal. The expansion of the Local Government Advisory Board will also help with that work. As we move forward, the reform process will be bedded down. The advisory board still has a lot of work to do. It is important that it is transparent. As minister, I am confident that we have done everything we can to ensure that the advisory board has independence and is transparent. It will not have any more input from the minister than it has today.

I thank the opposition for its input and support of the bill. I take on board the comments from members opposite about the reform in the metropolitan area. I believe we have a long way to go through that process to finally get to where we will be. I thank them for their support and I commend the bill to the house.

Question put and passed.

Bill read a third time and transmitted to the Council.