LOCAL GOVERNMENT LEGISLATION AMENDMENT BILL 2014

Consideration in Detail

Resumed from 25 November 2015.

Clause 9: Sections 3.69 to 3.72 inserted —

Debate was adjourned after the clause had been partly considered.

Mr D.A. TEMPLEMAN: I am just clarifying: I think the last time we debated this bill was in November last year, is that right?

Mr A.J. Simpson: Yes.

Mr D.A. TEMPLEMAN: As was highlighted in my contribution to the second reading debate and the issues raised by the member for Moore, I strongly support the establishment of regional subsidiaries. One of the questions we have about clause 9 is essentially about the insertion of the detail of the regional subsidiaries—the detail of what happens in terms of a regional subsidiary. I am interested in clause 9(2), which states —

> If the Minister approves the formation of a regional subsidiary, the Minister must, by notice in the *Gazette*, declare that the regional subsidiary is established —
>
> (a) on the date set out in the notice …

If two or more local governments have made arrangements to register, if you like, their interest to form a regional subsidiary and the minister has approved it and has given notice in the *Government Gazette*, when is the regional subsidiary essentially operational? Is it when it has been declared established in the *Government Gazette*? The regional subsidiary may say that it wishes to formally commence the entity on 1 July 2017. Is there capacity within the minister's notification and establishment of the regional subsidiary to make it very clear exactly when the subsidiary comes to be a legal entity? Is it a legal entity once the minister has approved it?

Mr A.J. SIMPSON: The member is right about the point regarding the establishment of a regional subsidiary group. Obviously, first the minister must sign off on that charter. Consequently, first things first, we need to check that we have the operation all right. As I have said before, the subsidiary group cannot borrow money, if relying on each local government to put it together. Once that paperwork has been put together and signed off, it will be like most Governor's orders. I will use the analogy of the two bodies in Narrogin that came together under the Governor's orders, and it was the same with the City of Perth Act. The legislation states that as of 1 July 2016 the shire and town will become one. Normally when something starts will be in the charter itself and the process will kick off on the day listed in the paperwork put together in the charter.

Mr D.A. TEMPLEMAN: That has clarified that. I now go to proposed section 3.69(3) on line 26, page 4. It determines that a regional subsidiary is a body corporate with perpetual succession and the common seal. Proposed section 3.69(3)(b) states that the regional subsidiary is to have a governing body consisting of members appointed in accordance with the regional subsidiary's charter. The charter obviously refers to all subsidiaries, so it is not specific to one; it is a general charter.

Mr A.J. Simpson: It is specific to one.

Mr D.A. TEMPLEMAN: Yes, but I mean the template; in other words, will a charter for the regional subsidiary of Dandaragan, Badgingarra and Three Springs look any different from a regional subsidiary charter for the City of Perth and the City of Subiaco, for example?

Mr A.J. SIMPSON: Yes, it would look different. Basically if we were to take the example of bringing together Dandaragan and Three Springs, the charter would have a specific purpose, so obviously it would not be the same. But if the member is talking about the basic frameworks, yes, they would be similar. They would have a purpose and meaning and there would be a process to go through, but it is not a template for all of them to be the same. There will be some variation on them of course. The interesting part regarding the analogy of putting three or four local government bodies together is that the purpose of the charter is to share library or payroll services, so the charter would be quite specific to the reasons for it and the parameters of what it can be used for. Consequently, before things get to that stage, I, as minister, have to sign off on the charter to make sure the checks have been done. Let us take payroll, for instance. If the payrolls of four regional councils are to be combined and they are to share that resource in order to gain a cost saving, the detail of superannuation or any long service leave would have to be clear. That would be part of that process as well. That charter would look quite different from that of regional councils sharing rubbish services, for example. But the basis of the charter is to bring things together so regional councils have the capacity to share resources. As we all know, the idea of the subsidiary legislation is to get the regional councils to work together and share muscle in order to save costs, which can go back to the ratepayers. The only other tool I have as the Minister for Local Government is to form another local government called a regional local government, and of course with that comes all the incumbency

of local government reporting. The regional subsidiary can be quite a simple process, and vice versa, to wind up the charter is a simple process as well.

Mr D.A. TEMPLEMAN: Can I just pursue that issue with regards to when an established regional subsidiary may cease to exist or be wound up. There is a process that the minister mentioned in his response just then, I think under proposed section 3.70(1)(g), to wind up a regional charter. I want to use a hypothetical situation. Let us say that three councils in the wheatbelt decide to establish a regional subsidiary. They create that subsidiary, it is approved by the minister and he approves the charter. The charter includes all the aspects mentioned in proposed section 3.70; however, one council decides it would like to embark on a takeover or an amalgamation, which causes some friction between the council entities, and they seek to use the regional subsidiary as a mechanism and say they will walk away from it. If one or more of the entities decides they want out, what is the process that triggers that? If there were, let us say, three entities, and one wanted to pull out and the other two wished to continue the regional subsidiary with all the same purposes, but with one of three having said it is out, what is the process there? Does a whole new subsidiary have to be created with the two entities now or does the minister simply make a ministerial decision or jurisdiction that states that the regional subsidiary no longer includes council X and now only constitutes councils Y and Z?

Mr A.J. SIMPSON: As part of the process of writing a charter they have to put that eventuality into it. If three or more local councils want to get together to share a resource, in the case of the resource coming together, and as the member highlighted, if one or two local governments decided to jump out of this waste charter and go somewhere else, provision would be made in the charter for how that would happen, and they can go through a process of withdrawing from it. The other councils could choose—it may be in their charter—to let the other councils go and carry on with the current model, or to start again and broaden their charter. The charter, in effect, is quite flexible on what they can do, but it must be very specific about what they want to do. The local governments must explore all avenues in that case where one local government may wish to withdraw, to choose the process for that withdrawal. Obviously, if a charter has come together to sign up for five years to get a rubbish contract tender, and then one council withdraws in the first year, there will be some costs involved. All those options have to be explored upfront in the charter before I will sign off on it, to make sure that it explores all avenues to make sure they have it right. The most important thing about the charter is not to leave the liability back with any local government. That is one of the key areas for me as minister and it goes across to the department to make sure we have covered all those possible eventualities. The identity itself, or the charter itself, cannot borrow the money, so each local government must bear the cost and the liability must come back to the elected body of the council, which will make the decision as to whether it wishes to enter into the charter. From then the charter will be developed, but if one council wants to withdraw, that would be in the current charter as to how it can work through to exit from it. Obviously, all those other costs and operational factors will have to be worked out as well.

Mr D.A. TEMPLEMAN: Further to that, one of the things I do not see in proposed section 3.70 is the minimum number of members. It may appear somewhere else, but I would like the minister to comment on the reason there is not a minimum number or even a maximum number of members that can be constituted as a regional subsidiary. With that in mind, the setting of fees is provided for in proposed section 3.70(d), which provides for the administration of the regional subsidiary, including the membership. I understand that that is where a number may be included, but the minister has not indicated in the legislation that a minimum number is required. This paragraph includes reference to fees, allowances and expenses. Aspects of the Local Government Act, from memory, may provide for sitting fees and such like. I would assume that part of these allowances and fees would apply to an elected member who is appointed by one of the council entities to be its representative on the regional subsidiary, and there may be a provision for setting the fees. Who will set the fee? Will it be the regional subsidiary saying that its members are going to pay themselves $20 000 each every time they meet, or is it going to be something that is proposed by the charter, which would then go back to each council for ratification, because they are going to be paying the fee, I am assuming? Can the minister clarify about the number of members, and his thinking about why a minimum number was not specified? I know, for example, that this regional subsidiary proposal allows people with certain expertise to be brought in. They do not have to be elected; they could be somebody who has expertise in waste management, so that person is procured as a member of the regional subsidiary because of their expert capacity or advice. Can the minister just tidy up, or explain to me that aspect of the number of members, and also clarify the setting of fees, and the payment of fees and/or expenses?

Mr A.J. SIMPSON: The minimum number of local governments is two, obviously. The maximum number is up to the local governments themselves to choose. Currently, in the metropolitan area, the five regional councils have an average of around six members each, although it could be more. I think the East Metropolitan Regional Council has six members, the Western Metropolitan Regional Council has about six as well, and the Rivers Regional Council has about probably five. There can be more. Looking at the north west, in the Kimberley and Pilbara zones, there would probably be four or five. There is no maximum number. It is limited

by what they can do, but the minimum is two, of course. With regard to the sitting fees and whatever other fees are involved, this is where the charter comes in, deciding how it will be put together. Each local government will decide that perhaps the shire president and one other person will be included in the new charter for the business that is to be put together—let us use waste management as a classic example—to form that charter, so they will make the decisions on behalf of their councils and bring those minutes back to their council meetings.

In the charter they will decide whether they want to be remunerated; it is up to them. Currently, the Local Government Act is quite specific that the Salary and Allowances Tribunal will set the fees through the structure of a bandwidth for councillors. That is pretty much how it is, but it is up to them. I would imagine that if councils just put together a small working group to look at a tourism project, it would not be a huge amount of work. I should not imagine they would be looking for remuneration, but they may do. It is up to the council itself; it will have to vote on that charter. A charter will include the broad structure, what its purpose is, how it will operate and also whether the members wish to receive a payment from the councils for sitting on that chartered organisation. It will be up to them to work out how they would do that.

The interesting part here about the whole idea of regional subsidiaries and the charter process is that we have this flexibility for local governments to work together on the broader issues around the table. We may end up with possibly more than half a dozen charters working out of one local government trying to deal with certain issues, so I think that is the important part, and some of them, such as the waste disposal example, will generate a bit more of a workload, to get them up and running. Down my way, in the Peel region, the Rivers Regional Council has been trying to work on a waste-to-energy project and doing a lot of work, and I have seen a fair amount of work go into that over a number of years, but it can be imagined that once the scheme is operating the work of the individual councils will be less then what it was in trying to set it up.

The fee structure is individual to them. The charter will define whether they need to be remunerated or not, but that is in the hands of the councils. If they want to do that, they are finally responsible to their ratepayers, and they will make the decision at their council level, based what is in the charter.

Mr C.J. TALLENTIRE: On this clause, I am keen to know about the rules that we are setting up for the regional councils. I am hearing reports that some regional councils include councillors from individual local governments who represent those local governments on the council but are then not able to go back to the next council meeting and report on the deliberations of the regional council. We have a situation in which people are quite often new to the regional councils. They are involved in making big business decisions and they are not even able to go back to communicate with other councillors about the deliberations, and get advice from others who might know the financial implications of a particular decision. I am keen to know how transparency is enshrined in the legislation, so that we can see councillors being much more open about what is discussed at those regional council meetings.

Mr A.J. SIMPSON: The member is exactly right. The metropolitan area now has five regional councils. The majority deal with waste, so that is how they possibly could be set up. The process that they went through involves a membership of five or six local governments that have applied to the Minister for Local Government to start a completely new local government, which is called a regional local government, and so they are brought together. It operates under the structure of the Local Government Act 1995. Consequently, a council is elected from the ratepayers, who are the councils included in the regional council. Of course, another sitting fee comes in, because the Local Government Act is all there. But it is an actual identity on its own. It must report through exactly the same process as every other local government, so it is quite cumbersome and very heavy. It is actually designed to run a local government, but it is running a regional local government. That has been one of the issues that has been talked about for a number of years. I think Max Trenorden was the first to propose this in the upper house a number of years ago, when the reform process started. He went off to South Australia to look at how it was working, and brought this model back. This is a little different from the regional council that the member just touched on. It is a classic issue of a complete new local government and a regional local government, and the power that it has. Consequently, because it is a local government, and the local government works over here, the two are actually separate. This binds the local governments through the charter. Once the charter is written and brought together, the actual machinery operates from the council, so each one must sit at the table and make the decisions that are in the charter, but then the decision-making must come back to that council.

The charter cannot operate unless the council has voted and moved on that, which is cumbersome. Under this bill, the process is quite simple and, pretty much, they pull a document together stating what they want to do with their charter. They may want to look at waste management and they put out a contract that gets all five people together so they get a larger contract with the possibility of savings. That is what the charter will do, but at all times the council of the day, as the elected body, will make the decision on the charter. There is no possibility at all here of having a free range. The point the member raised about local government—in this case, it is a regional subsidiary—having very little input from members down below, will not happen because it is

a local government on its own. Even though it represents local government, which is the issue the member came across, it has a very heavy, clunky and big machine up top to deliver on waste and in other areas. The member is correct; he is spot-on. This is the reason that the regional subsidiary has a great opportunity with a charter, which can be something very simple and small or very large, if that is what they want in that process.

Mr D.A. TEMPLEMAN: I do not want to get into the hypotheticals, but I want to make sure I am clear. I am interested in any potential legal challenges to any actions of the regional subsidiary once it enters into existence and commences operation under its charter. I will give an example, which might be a naive one, but the regional subsidiary, comprising four councils, gets together and bids for Main Roads Western Australia work. Roadworks need to be done and they cross two or three councils. The regional subsidiary for those councils, as an entity, decides to tender for those roadworks, which is good because that is local employment. It wins the tender to construct a road to Main Roads specifications. After the work is done, Main Roads, as the authority issuing the contract, says it is not happy with the work as it is substandard and it will take action against them. It might be that, to remedy the problem and render the road to the specification of Main Roads, another $50 000, $100 000 or $500 000 is required to bring it up to standard. Main Roads could issue legal action against the regional subsidiary. What is the risk, if you like, for individual councils and, ultimately, their ratepayers? In that situation, who has to pay to have that rectified? Who is liable? The project could have gone to the council because it was bidding for it. Things have turned putrid, and I want to know, in that situation, the legal status of the regional subsidiary and also the liability for, ultimately, the ratepayers of those entities that have representation on the subsidiary.

Mr A.J. SIMPSON: The member raises a very good point. It is a classic example that occurs even today when a local government tenders for a contract to do anything. We see quite regularly that when a contract has gone sour and the developer or the road builder has not completed the works, the council is left with the mess to clean up. That is a classic example of what can happen when works go out to tender. The majority of local governments take out indemnity insurance for the work they are doing, and the same would occur with a charter. As part of going through the due diligence process, the council needs to make sure it has covered every base. Obviously, one of the things it would do is make sure it has insurance on board so it did not leave its ratepayers exposed to any future claim. It is similar to that which occurs now when one local government authority tenders for a Main Roads contract and, hypothetically, it goes wrong, the authority would be liable. Under this bill, it is exactly the same with the charter. I would hope that a bit of DD would be done around the table with each of the local governments affected to make sure indemnity insurance was in place to cover all bases and scenarios in case something goes wrong. It would be exactly the same in the case of local government insurance indemnity.

Mr D.A. TEMPLEMAN: Would there be a requirement in the charter for the subsidiary itself to take out indemnity insurance or other insurances or are we leaving it up to individual council entities that are part of the regional subsidiary?

Mr A.J. SIMPSON: It will be up to them to decide. It could be in the charter, but the example the member just identified was a charter that came together to build a road or had something to do with a rubbish contract or was expanding into waste, which is the part that has gone sour. The interesting part is that it is up to individual councils to decide that. They will make sure they do their DD. As I said before, it is bread and butter for local governments when they go out to tender to make sure they have their insurance in place so the ratepayers are protected at all cost from any losses in a contract.

Mr D.A. TEMPLEMAN: Could the minister clarify that the regional subsidiary has powers to employ?

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

Mr D.A. TEMPLEMAN: Let us use the example of roadworks.

Mr A.J. Simpson: Through the Chair, while the member is on his feet, when the member says “employ”, obviously if it is a charter, they will be looking for a contract to deliver services. The charter would not have a wages bill; that is, the regional subsidiary would not put in wages connected to the charter. I would imagine that they would need to get expert advice, so the charter group would go out to get expect advice, and that would be a contract for the employee.

Mr D.A. TEMPLEMAN: They may contract somebody to draw up the bid or the tender documents for the roadworks. Have there been any other circumstances in which the minister envisages the entity known as the regional subsidiary does not contract but has employed staff? In other words, we have the constituted board, or the corporate body as we know it, which has fees and allowance. Would they be able to employ staff, for example, depending on the nature of the business they might be doing?

Mr A.J. Simpson: Child care?

Mr D.A. TEMPLEMAN: Yes, child care might be one example. They might say that child care is an issue in Buntine and surrounding areas, so they will have a service in Buntine that will deliver for the surrounding councils. The minister knows the childcare regulations, so he knows they will need X number of staff. In that

case, who is the employer? Would it be the subsidiary or does it devolve to the councils, which have the responsibility to sign off on that? With that in mind, I would assume, as we would expect, that the relevant industrial relations legislation that might govern the enterprise bargaining agreement or pay rates or whatever for those particular employees was kosher. I would not like to find out this was a way of getting a cheap service by exploiting a couple of people in the local community who might be happy to take a pay cut and get paid half the normal rate for a childcare worker, and we know they are paid very poorly. I want some clarity about the capacity to employ and who is governed in that respect?

Mr A.J. SIMPSON: The member raises a very good point. I will explain who is the employing authority. A person who is employed to assist a regional subsidiary in carrying out its activities and services would be an employee of that regional subsidiary. The recruitment, selection process and employment condition for the employees will be determined by the governing body of the regional subsidiary. The general purpose and conditions applying to the employees may be outlined in the regional subsidiaries charter and then further details of individual employment contracts will be negotiated between the regional subsidiary and its employee.

Mr C.J. TALLENTIRE: Just on the composition of the regional subsidiaries, I note that proposed subsection (4) on page 5 of the bill states —

> Without limiting subsection 3(b), a governing body may consist of or include members who are not council members or employees.

I am keen to receive clarification on what the balance of the regional subsidiary would be, what the actual composition of it would be and where the weight of numbers is likely to go. Would it go to those elected representatives or could it be with people who were appointed to a governing board of a regional subsidiary by some other means?

Mr A.J. SIMPSON: Proposed subsection (4) allows a governing body to include non-local government members. One may be able to get some expert advice. Enabling non-local government participants to be members of the governing body will ensure that the subsidiary board of management can include independent people with skills and expertise relevant to the activities of the regional subsidiary group. Again, we have that elected body of more than two people; maybe three or four. That council will vote on everything that the charter has in it. If we want to go down that road of getting someone with expertise and skills, we can do that. The member for Mandurah was just talking about a charter in a childcare centre. Employees under that charter would be able to put together a budget for each local government to set up a childcare centre, showing that it needs some workers and how it would share the rent, power, phone and building costs and each local government would work through it. Each year the budget would come back to the council from the regional subsidiary. It would be their third or fourth, and that is how they work through it. The employment process will be at the regional subsidiary level.

Mr C.J. TALLENTIRE: I find this area really interesting. If I understand correctly, we are getting into a situation that could be similar to that of the development assessment panels in which people will always ask about that balance between the voting power of the elected representatives versus the voting power of the appointed experts. I can see that there are definitely advantages in having numbers go with the experts. At the same time, I can see that local communities feel disenfranchised when that is the case. What are we setting out here? Will the voting weight be with the elected representatives or with the experts?

Mr A.J. SIMPSON: It can be with either. It depends on what the local government wants. It is up to the local government what it wants to do in that charter. It may want the charter to be operational in that process or it can say no, and it will have to go back to the elected body to make that decision. The charter only exists through the members of that charter. They will always have a say in how the charter comes together and how it operates. The power always goes back to the local government that is in that charter. It sets it and operates it and that is the way the operation will work.

Clause put and passed.

Clause 10: Section 4.88 amended —

Mr D.A. TEMPLEMAN: This is an interesting clause. It effectively addresses the issue that has been around for a while of distribution of information that might or might not be seen to be deceptive et cetera. I ask the minister to refresh my memory or my understanding of what we are doing here and why. We are effectively deleting a section of the existing Local Government Act and inserting this proposed new subsection 4.88(1). Could the minister give me the background again and clarify it for us. I may have only one more question on this clause.

Mr A.J. SIMPSON: This clause relates to defamatory statements made during an election period. A provision relating to the offence of making defamatory statements is in the Local Government Act. As the member would be aware, the Local Government Act was reviewed in 1995. Since 1995, the world has moved on and we have

a Defamation Act 2005 and a current version of the Criminal Code as a result. It is no longer necessary for the provision to be in the Local Government Act 1995 because those powers relating to committing a defamatory offence during an election under the Criminal Code are taken care of under the current act of Parliament. We are just tidying up the Local Government Act to bring it into line with changes that have occurred since 2005. Quite clearly, the Defamation Act is now taking care of anything to do with those types of offences. Again, we are forever amending the Local Government Act 1995. Here we are again taking out a little bit that has been changed.

Mr D.A. TEMPLEMAN: When talking about deceptive material, in a federal election context, we can point to the seat of Lindsay in 2010, I think, when the then Liberal member, who was subsequently defeated —

Mr C.J. Tallentire: Jackie Kelly.

Mr D.A. TEMPLEMAN: In the middle of the night she distributed material in letterboxes that would have come under this clause as being deceptive. I suppose it is all about the timing. Essentially, there is still nothing to stop somebody delivering material in the dead of night before an election when the postal ballot papers are arriving. Not all councils have postal voting though most of them do. Someone can time their election material to arrive in the letterbox when the postal ballot papers come. My experience in Mandurah is that lots of people vote within a few days of the postal ballot papers being delivered to their letterbox, if they vote. A piece of election material that might attack another candidate or be deceptive or misleading et cetera could be delivered into letterboxes. That was the context of the experience involving that member. What was her name again, member for Gosnells?

Mr C.J. Tallentire: Jackie Kelly.

Mr D.A. TEMPLEMAN: Fortunately, that did not help her cause. It is certainly possible that somebody could spread lies about somebody and be elected on the distribution of that information. Whilst this offence incurs a penalty of $5 000, if an aggrieved candidate believes they are a victim of deceptive material, what would be their recourse? Can they seek some legal action under this clause? The clause seeks to delete the provision that currently exists and inserts this new section. I just want a bit of clarity. If I am the aggrieved candidate and the minister has sent an awful thing out saying that I voted for something I did not vote for and people say, "What a terrible man; I am not voting for him", what is the process for engaging the outcome of this clause, particularly the process leading to a penalty?

Mr A.J. SIMPSON: Section 4.88 of the Local Government Act states, in part —

> A person who, during the relevant period in relation to an election —
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> (a) prints, publishes or distributes deceptive material or causes deceptive material to be printed, published or distributed;
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> …
>
> Penalty: $5 000 or imprisonment for one year.

That still stays in the Local Government Act 1995. The part that we have taken out is more to do with the Defamation Act 2005, which is used when someone makes defamatory comments about somebody. That is taken care of in that act. The part relating to deceptive material is still in the Local Government Act. The penalty for committing that offence is $5 000.

Mr D.A. Templeman: If I put out a thing saying Tony Simpson is corrupt, which is clearly defamatory if proven, what would happen?

Mr A.J. SIMPSON: I can take action against the member under the Defamation Act because he made —

Mr D.A. Templeman: Not under this?

Mr A.J. SIMPSON: No. That is correct. If the member made a defamatory statement—something that was not true—I would use the Defamation Act 2005 to prosecute the member. This offence would apply to a person who printed or published deceptive material. We have to keep in mind that it gets a bit technical in legal terms. We would have to ask a lawyer the question asked by the member relating to which act the offence comes under. If someone makes a defamatory statement, it comes under the Defamation Act 2005.

There is still the possibility of an offence under the Local Government Act, but for defamation one needs to go to the Defamation Act. If a person prints, publishes or distributes deceptive material or causes deceptive material to be printed or published, there is a penalty under the Local Government Act. If a person ended up in court over a defamatory comment, the court would currently refer to that part and the $5 000 fine.

Mr D.A. Templeman: And that includes online comment?

Mr A.J. SIMPSON: I think it does. We have watched election campaigns being run more and more through social media. We all see stuff on social media. The interesting part is that these things have to be proved in a court of law. Consequently, for comments made on social media a person would need a screenshot to prove something was said, as it could be taken down an hour after it was posted. That is the evidence something has been said online, such as on Facebook. It can be used, but I caution that it is a new world in terms of printed material versus online stuff. It is a different world out there.

Mr C.J. TALLENTIRE: I am curious to know about the timeliness of these processes. I accept what the minister said in that defamation cases can be dealt with by the defamation laws. I am interested in when it is of this more deceptive nature. I have observed that local government elections get very personal, perhaps more so than the level of personal attack we face. They get very personal and people can be quite deceptive. Yes, it is good that that has been recognised in what is proposed, but it all comes down to timeliness. If an election has taken place, people are inclined to think: oh, well, that is all over now; what does it really matter? What are the chances of a re-count being part of it? In fact, I do not see in the bill any mention of the voiding of an election as a result. Sure, there is the potential for a $5 000 fine, but that does not necessarily help the victim of some deceptive comment. It might be something like, "So and so supported the sell-off of the war memorial", when they were just not around to vote for the issue. It might be something quite mild, but, nevertheless, it could be presented in a way that put someone in a very negative light. If that were the case, how timely would it be dealt with? Is there a way of perhaps postponing an election day because of some deceptive behaviour that has taken place?

Mr A.J. SIMPSON: This is getting to the point of needing some legal advice. I will give the best advice I can as Minister for Local Government. There are a couple of things. The Local Government Act contains a definition of "relevant period", which means —

> … the period commencing when notice calling for nominations for the election is published and ending at 6 p.m. on election day.

That relates to the $5 000 fine. On the member's question about somebody making comments about somebody being corrupt, the victim could take out an injunction against that person, but, again, as the member pointed out, once the flyer has been distributed, an injunction is possibly not going to change people's minds. I take on board the member's comments at the start that local government elections have become quite heated and that people are more exposed than we are in the election cycles that we go through. That is something about the modern world; everyone is looking to move up to the next ladder and worries whether they are going to get there. What we are trying to do in this part of the Local Government Act is to follow the recommendation to take out the defamatory part. The State Solicitor has advised that that does not belong in the Local Government Act, because defamation is covered by its own act. However, we should leave in the $5 000 fine for printing and so forth. How long it will take is always an interesting question. I cannot comment on how long it would take. That is always interesting to work through. What is more important from my perspective is that we are tidying up and trying to get to the bottom of streamlining the Local Government Act, and the word "defamatory" does not belong in this act anymore.

Clause put and passed.

Clause 11 put and passed.

Clause 12: Section 5.63 amended —

Mr D.A. TEMPLEMAN: I cannot let this go without seeking clarification regarding proposed paragraph (ii), which relates to a gift. Does the minister think that the Lord Mayor should resign?

THE ACTING SPEAKER (Mr P. Abetz): I am not sure that is relevant.

Mr D.A. TEMPLEMAN: I ask honestly, in terms of what is going on. Does the minister think she should resign?

Mr A.J. SIMPSON: This has been a very interesting case. For the record, I received the report from the Corruption and Crime Commission in November last year. It is quite interesting that every time I have seen a CCC report it has always had a recommendation in it, but in reality it goes down to the next level. That CCC report came up with the conclusion that, under the Local Government Act, the Department of Local Government and Communities can take the Lord Mayor through a certain process. It is also interesting to put on the record that once the CCC has done an investigation, we are not allowed to use its evidence; we have to collect our own evidence. That is why the department had to go through that process to get to that level. I think the recommendation from the director general is quite right.

Mr D.A. Templeman: It is a clumsy process, though.

Mr A.J. SIMPSON: It is a bit clumsy. If any other person had gone to the CCC, there would have been an outcome and it would have moved on. The CCC said to the Department of Local Government and Communities, "You've got an act; you can take care of that", and dropped the baby on it.

Mr D.A. Templeman: Do you think that there is a need for amendment of the act?

Mr A.J. SIMPSON: One would wonder about that. After going through this matter to the point I am at today, I do wonder what the point of the CCC investigation was. The CCC could have just said to me on the second day that there was quite a bit of work to do and that we had our own act that covered it, and it could have sent it to the department to do that. The CCC wasted six months of its own time to come back with a recommendation to me—in fact, no recommendation—that the Department of Local Government and Communities has its own act and can deal with it. Yes, I agree, but at the end of the day the report speaks for itself. The director general has now instructed the State Solicitor's Office to prosecute the case. I hope we can soon get to the bottom of this, because I acknowledge that it is taking a bit of time.

Mr D.A. TEMPLEMAN: I would hate for the minister to divert! Let us be very clear about this: the Labor Party supported the transparency measures in the City of Perth Act because we believe there should be transparency in the acceptance of gifts, contributions towards travel and all those things. I am referring to the proposed paragraph under this clause about gifts, Mr Acting Speaker. This has caused some confusion. Maybe from the Western Australian Local Government Association's perspective, the department's bulletin created more questions than answers in many respects. I am sure the minister has had emails from people, including from elected members and CEOs, who have said that the situation is now ludicrous. If a person's cousin presents them with a birthday cake for their birthday just before a council meeting, they then have to decide how much the cake is worth and whether it should be declared. The minister's statements to questions I have asked have been a little confusing in terms of whether the new transparency measures are being reviewed in the context of the new act that has been gazetted and is now law, or as part of the previous process of reviewing entitlements and whatever of councillors. Could the minister clarify what he or his department is doing to address the concerns that WALGA and a number of councils and elected members have raised about gifts? We are referring in this clause to gifts, so I think it is a relevant question to ask for some clarification of that.

Mr A.J. SIMPSON: The interesting part for us to note, member, is that when the City of Perth Bill came through this place, the member, as the shadow minister, and I, as the minister, put in place that transparency measure. Every time I receive another email or letter about the laws that we changed, I have to stop them and say that there are no new laws in this regard. It is within the current Local Government Act 1995. We did not change anything in the act about gifts through the City of Perth Bill. The information is taken from an annual report and entered into an online system within 10 days of receiving the gift; that is all we changed. This is a black and white matter. I got some State Solicitor's Office advice and test cases on what is a gift. The member just raised the obvious point about a cousin. The notification that went out from the department contained a couple of examples that raised some eyebrows. The basic rule is that if the gift is worth over $200, it must be declared. The interesting part there is what comprises $200. The analogy was given of an employee's fortieth birthday party at which he received a number of gifts for his wife, his family and his daughter, but then it involved his cousin. The notification said that because the cousin is not immediate family, it is not determined to be a gift. I think that really draws a long bow. Everyone asks why staff are caught up in it and not elected members, but I must point to the Local Government Act 1995. If a lawyer is asked whether it is a gift, the lawyer will say that it is a gift and must be declared. It is very similar to the charter issue. I really do push it with councillors who write me those emails and letters. One thing is very clear: councillor training is very important to understand obligations and responsibilities as councillors, and to determine what is a gift.

In summing up, we have identified some issues that we need to work through. More importantly, local government councils need to do the work that they are employed to do. This may involve representing the city or the shire in which they live at functions. The gift value may be over a certain amount of money. I always tell them that if they are ever in doubt, just declare the gift. That is the important part. When a councillor attends a function, they can work up that gift and say that they attended the function on behalf of the shire. If the value of the gift was over a certain amount, a media statement can be put out explaining that they were attending representing their council. To sum up, we are working with the Western Australian Local Government Association, Local Government Managers Australia and a working group to look at gift provisions in a modern world. The member for Mandurah and I have a threshold of $500 on our annual return, but it is $300 for local government. There is a little bit of "Why is it one, and not the other?" but the world has moved on. We need to clarify between someone talking at a conference and receiving a bottle of wine and someone receiving gifts when travelling overseas. We have all been with the Speaker on overseas travel and seen gifts going back and forth, and then we come back and declare the gifts. It is more important that we work to try to resolve the issue. Hopefully, after next year's election, we can come back to review and neaten up the Local Government Act to be more specific about what is a gift. Hopefully, we can come up with a solution to get it back to where it needs to

be. I cannot argue with the member. The interesting part is that it has been in the act since 1995. The member and I did not change anything to do with gift provisions. It is just a lawyer's interpretation of what is a gift.

Mr D.A. TEMPLEMAN: Does the minister support the Lord Mayor? I thank the minister for his answer to that last question—or lack thereof. In relation to the register, the City of Perth Act has been operational effectively for two months. Are all councils complying with the legislation and posting the register online?

Mr A.J. Simpson: That is a good question.

Mr D.A. TEMPLEMAN: I am not in the estimates committee hearings, but I was hoping I could get the answer as supplementary information.

Mr A.J. Simpson: It all depends if they actually received gifts. First things first; they have to receive gifts to put it online, but it is part of that process. The last time I checked, only one council did not have a webpage, and that was about a year ago. At least 99 per cent of them should have it online by now, but I can get that information for the member.

Mr D.A. TEMPLEMAN: Perhaps the minister could respond at the third reading. I have sort of given an undertaking to the Leader of the House that we are happy to move this bill through to conclude consideration in detail by 5.00 pm —

Mr J.H.D. Day: And the third reading hopefully.

Mr D.A. TEMPLEMAN: No, not the third reading because I would like a response on some questions, which I hope the minister can do at the third reading tomorrow —

Mr A.J. Simpson: Do you want us to come back tomorrow?

Mr D.A. TEMPLEMAN: I have previously adjourned the house. I might have control to be able to reconstitute the house tomorrow morning! I have great powers—apparently. I thank the minister for that answer. Proposed subparagraph (iii) states —

> reimbursement of an expense that is the subject of regulations made under section 5.101A;

Can the minister give an example of what that expense might be?

Mr A.J. SIMPSON: A reimbursement could be to do with fuel, photocopying or any other type of incidental that comes along. This provision in clause 12 includes a reference to a section on gifts in which council members can be reimbursed for expenses. A tax invoice will need to be supplied to the council to receive that reimbursement for fuel, photocopying and perhaps other expenses picked up along the way. It allows council members to claim for any additional expenses.

Mr R.F. JOHNSON: I will be very brief because I have not taken part in the second reading debate on this bill, but I have a general interest at the moment in what has been going on in the City of Perth. Being a former mayor in both hemispheres, including the largest city as it was at the time before it was split into two, the City of Wanneroo. I find the behaviour of the Lord Mayor and certain councillors deplorable in not declaring gifts and travel that they have received. I have a simple question for the minister. Why on earth does the minister not do what previous local government ministers have had the courage to do—that is, to sack the council and put in an administrator until things are running properly and a fresh election can be held? That is what has happened with many other councils. Why are we treating the City of Perth so differently from other councils in Western Australia?

Mr A.J. SIMPSON: I cannot sack a council. I cannot sack an individual member. The important part here is that we are following due process under the Local Government Act. To go through a process of suspending a council, I have to provide a notice to show cause and I have to give a certain number of days, but, in all honesty, we are dealing with the suspension of one person in the council, not the whole council. At this stage, the director general has directed the State Solicitor's Office to prosecute the case. We are now at the level where it is going off to the State Administrative Tribunal.

Clause put and passed.

Clause 13: Section 5.99A amended —

Mr D.A. TEMPLEMAN: This provision relates to the current regime of council members and their annual allowance as per the legislation and regulations that set out the payment made to councillors depending upon the band in which their council lies. Again, I am happy for the minister to provide these figures at the third reading if he is able to do so. I am interested in the current practices in councils regarding the payment of fees. What is the general practice of councils in paying council members their allowance? I would like a rough figure. Do the majority pay it quarterly or twice a year, and how many pay it annually? I would like the minister's view of what he thinks is the best option because this clause is about annual allowances being paid in advance, and then clause

14 provides for the apportionment of annual payments because a person might hold an office for part of the year that attracts an additional allowance. In that respect it might be a deputy mayor who gets an additional allowance—usually it is a percentage of the mayor's allowance or a figure that is arrived at by the council, and he or she may hold that position for only a few months.

I understand that the next clause allows for the apportionment of that additional allowance pro rata, effectively. Can the minister clarify that? I do not expect him to have the figures and to be able to tell me that of the more than 100 councils, 25 do this. Can the minister tell us what he would prefer to see? Is there an ideal thing that he thinks works best? Can he make a comment on that?

Mr A.J. SIMPSON: The member may remember—it was probably the same in the member for Mandurah's day as it was in mine—when the fee in council was $6 000 a year. In my day, it was $40 for a committee meeting and $50 for a council meeting and that was paid on a monthly basis. I remember the annualised fee of $6 000 came in in about 2002 or 2003. The interesting point is whether the fee is payable weekly, monthly or yearly. It is up to individual councils. When the Salaries and Allowances Tribunal took over and gave councillors a pay rise on 1 July 2013, councils had to move a motion to give themselves a pay rise. Each local government has a different process. The majority of local governments pay the fees monthly, because most accounts run monthly. They pay their debtors and creditors monthly and that process normally washes out with the councillors' fees and allowances. They are also reimbursed for mileage, as that is also an entitlement. There is no set rule on whether they are paid weekly, monthly or yearly; it is up to individual councils. I would have to trawl through 139 local government council minutes to find out what they voted to do. I would guess that, for good accounting, they would probably work on a monthly process whereby they do a payment and credit washout. They would definitely look to do it monthly to keep it simple and also to keep the books in line. I do not know when they would get paid. Individual local governments are autonomous bodies and they can decide to pay it yearly, monthly or weekly; it is up to them.

Clause put and passed.

Clause 14 put and passed.

Clause 15: Section 5.110A inserted —

Mr D.A. TEMPLEMAN: Clause 15 deals with the standards panel. I understand the reason for clause 15. I understand that, currently, once a complaint process is commenced, even if someone wishes to ultimately withdraw that complaint, they cannot. This clause allows a complaint to be withdrawn, thus ceasing further progress of the complaint. Proposed section 5.110A(3) deals with the withdrawal of a complaint. Can the minister clarify that? I support what this provision seeks to do. It will mean that the department and the standards panel do not have to deal with a complaint that might have a long history. This will simply tidy up the process so that a complaint cannot drag on forever.

Proposed section 5.110(4)(c) states —

> a further complaint about the matter that is the subject of the withdrawn complaint cannot be made (whether by the original complainant or anyone else) unless the member of the primary standards panel who is appointed … is satisfied that it is appropriate to do so in the circumstances.

Again, I do not want to talk about hypotheticals, but, essentially, that still will require a value judgement to be made by the standards panel member. The minister and I could name a number of what we might consider to be vexatious complaints, for example, by aggrieved former councillors from various areas of the state. Some people might draw the conclusion that they use the standards panel process to tie up the department and, indeed, create a long, laborious investigation process. Can the minister make some comments on the logistics of proposed paragraph (c)? A complaint should not just be dismissed out of hand, because people have genuine concerns, but we also need to have a process that deals with the capacity to withdraw a complaint if that is what someone wishes to do. I am trying to think of a hypothetical situation in which someone might seek to withdraw a complaint but then new evidence comes to light and they want to resubmit the complaint. Can the minister clarify proposed paragraph (c)? I am really concerned that we are not denying natural justice.

Mr A.J. SIMPSON: I think the member is right. The standards panel is the instrument by which we try to resolve conflict between councillors or to do with a council. The standards panel is an independent statutory authority formed under the Local Government Act to investigate complaints regarding the conduct of elected council members. The majority of these complaints relate to compliance with the rules of conduct and regulations that relate to the conduct at council meetings. Other changes to the act will allow complaints to be withdrawn, which is currently not possible. The specified new section provides that the withdrawal of a complaint must be in writing and must be sent to the appointed member of the primary standards panel. If the complaint is withdrawn, a written acknowledgement must be sent to the person withdrawing the complaint and the council member to whom the complaint relates. The withdrawal of the complaint will release the panel from

any legislative obligation to investigate the matter to which the complaint relates. The withdrawal of the complaint will prevent the making of any further complaints regarding the same subject, unless the appointed member is satisfied that it is appropriate to do so. When a complaint has been withdrawn, the appointed member has the discretion to have the standards panel deal with the complaint as though it had not been withdrawn. In the event that the panel continues to deal with the withdrawn complaint, an appointed member must notify the parties and the complaints officer. Prior to this amendment, the panel was required to fully investigate the complaint, even when it had been subsequently withdrawn, and this led to significant strain on the panel's resources and time. As a result of the amendment, the panel will have the discretion not to investigate complaints after they have been withdrawn. The panel will retain the discretion to investigate such complaints if circumstances deem it appropriate. The amendment will allow the standards panel to investigate the allegations if it feels they may have substance, regardless of whether the complaint has been withdrawn. Basically, this will tidy up some loose ends for the standards panel and will streamline some of those decision-making processes. As the member pointed out, sometimes people can clog up the system. The standards panel has a large backlog and it is trying to do the work it needs to do to resolve conflicts between elected members most importantly so that the council can operate again. The quicker a complaint to the standards panel can be dealt with, the better. This amendment will streamline it a bit and hopefully it will get those complaints sorted out a lot quicker.

Clause put and passed.

Clause 16: Section 5.110 amended —

Mr A.J. SIMPSON: I move —

Page 13, line 13 — To insert after "frivolous," —

trivial,

Mr D.A. TEMPLEMAN: This amendment means that proposed section 5.110(3A) will read "frivolous, trivial, vexatious, misconceived or without substance". We are happy to support the amendment. At the end of the day, citizen Y or former councillor X still might think that their complaint is not frivolous, vexatious, trivial or misconceived and has substance. It still comes down to a value judgement that is made, essentially, by a standards panel. I want to know clearly, again, how the decision is made. The standards panel can at any stage of its proceedings refuse to deal with a complaint. How is that to be officially communicated to the complainant or complainants? Is it by letter? We still have newspaper notices that say, "The standards panel investigated Councillor X and finds he or she was blah." Can the minister clarify how that decision to not proceed, or refuse to deal with a complaint, will be officially communicated?

Mr A.J. SIMPSON: The standards panel must give each party written notice of the reasons for any findings it makes under proposed subsection (2), or any refusal under proposed subsection (3A) to deal with the complaint. The amendment bill inserts a clause that allows the standards panel to refuse to deal with a complaint if it is satisfied it is vexatious, misconceived or without substance. The State Solicitor's Office has advised that "trivial" should be added, because frivolous or vexatious allegations may be difficult to make a decision on, depending on inference and motive. Showing a complaint to be trivial, so as not to cause harm, is a more objective assessment. It would allow a decision to be made on the basis of the resources involved in a potential outcome. Other legislation in which "trivial" is defined includes the Disability Services Act 1993, the Defamation Act 2005 and the Public Interest Disclosure Act 2003.

Mr D.A. TEMPLEMAN: The little thing in that response that concerns me is if the resources are not there. A little alarm bell just goes off in that being an excuse for not dealing with a complaint, and saying that a reason for not dealing with it is that we are not prepared to put the resources into it. I will give an example. Members in this place sometimes receive answers to questions on notice in which the minister—I do not think the minister has done it to me yet—has said, "The requirements of the question will require us to spend too much office time to do it, so I am dismissing it." I am a bit concerned that that will be used as an out by the standards panel. It should not be able to say, "To really investigate this in great detail, we will need to get some legal advice, or it will be too costly et cetera, and the opportunity for natural justice may or may not be delivered." I flag a little bit of a concern about the language the minister used.

Mr A.J. SIMPSON: That is a good point to raise, member. We have done a fair bit of work around why we should implement these changes, and this is an important part. Since the establishment of the panel, approximately 30 per cent of all complaints investigated have eventually been dismissed due to lack of substance. After an angry debate or a heated discussion, the complainant will have written to the standards panel without any substance or the reason for the complaint. Of 100 complaints that may come in, 30 may have no substance and the panel has to dismiss them. We are trying to streamline that process. As I said, a number of those complaints come in and have to be sent back again. We are trying to find a better way for the standards panel to work. Given that over 30 per cent of complaints do not have substance, the decision to complain must be made when people are angry. They put pen to paper and write to the standards panel to complain about that elected member, but do not add any substance to their complaint. Under the current process, the standards panel

has to deal with every one of those submissions. Whether the complaint is withdrawn or has no substance, the panel has to go through the same process. We are trying to streamline that.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 17 to 22 put and passed.

Clause 23: Schedule 2.1 clause 11 amended —

Mr D.A. TEMPLEMAN: I would like the minister to affirm my understanding of this clause. It is related to a contract of employment and the value of compensation that may be required to be made, and that would relate to that person's employment contract. This clause, effectively, outlines the framework under which the termination of that person's employment may be undertaken. Can the minister give me a very quick clarification to reassure me?

Mr A.J. SIMPSON: The member may remember that there have been a lot of changes around the CEOs' pays. We brought in bands to put some parameters around the amount of money being paid. Unfortunately, for people who had a contract before the band came in—quite a few still do—their contracts are quite open and there can be quite a separation between the two. However, the ratepayer is more important to us. Our liability is to the ratepayer, and the use of ratepayer money is our main concern.

Mr D.A. Templeman: I think important information to know is how many CEOs are currently under that, if you like, the old system? I do not expect the minister to answer now, but it might be something that —

Mr A.J. SIMPSON: That is hard to find out. This is where it gets a little funny, because the Local Government Act 1995 states that the contract of the CEO must be available to the public between nine and five. I have to walk in the front door of the council and say, "Can I see the CEO's contract?" and that is how I will find out whether he is on the old or the new system. This is where it gets a little bit grey. In the 1995 act, it says that document must be available from nine to five; what we are saying in today's world is, "Put it on the net. Put it out there as part of your public documents, part of your town planning and scheme reviews. That is where it should be." I have to physically walk in the front door, and they have to produce it. Under the act they said it must be available to the public, so if the member asks me how many there is, as contracts roll out and new ones start, of course the new ones are coming under that new scheme, so they have got the bandwidth to operate under, but honestly, it would be hard to tell, because I would have to physically walk in their front door to see how they are travelling.

Mr D.A. Templeman: So that is an anomaly, isn't it?

Mr A.J. SIMPSON: It is a bit of an anomaly, hence why we tried to bring those bandwidths in, to put some parameters around it. A little bit before my time we tried to get some parameters around the increase, based on the size of the council and the bandwidth. Of course the region ones have some disability factors in there. There was definitely no comparison when one was getting paid more than the other. Consequently, this part of the bill ensures that CEOs have their contract terminated as a result. If in any case they wish to terminate that payment, the value of the CEO or a single employee is entitled to have a contract terminated. But it fixed it, so there will be no more than a 12 months payout in line with their pay. The interesting part here is that we are trying to tidy up some loose ends where we have brought in the bandwidths. This is just a final bit to say that if the termination agreement happens, it is a maximum of 12 months payout of the pay. At the moment, it can be a contract, which is quite open ended to say everything to do with their allowances, car and so forth can be part of that payout as well. We are tightening this up. This is far more in line with the market and the free world out there, that local governments are now in line with that. It has caused a little bit of grief with some of my CEOs out there who are on that process, but it is no different from the member or me going to an election next March and losing our seat; there is no 12 months' payout for us. I think the important part to understand is that this brings us in line with what I call —

Mr D.A. Templeman: There is for us. Nine months.

Mr A.J. SIMPSON: Sorry; only if you go less than two terms?

Mr D.A. Templeman: Anyway, the member will be all right.

Mr A.J. SIMPSON: I will be all right for the first nine months, evidently. But this is what this is about.

Mr D.A. Templeman interjected.

Mr A.J. SIMPSON: I have; that made me feel a bit better. I think the important part here is that currently some contracts out there could be up to two years or even longer. This brings things in line with the modern world regarding that payout in a maximum of 12 months.

Clause put and passed.

Clause 24: Schedule 2.1 clause 12 inserted —

Mr D.A. TEMPLEMAN: I am prepared to let these clauses go through the vote, but just for the record, clause 24 and the following clause 25 are provisions that need to be amended because of the intention of this legislation. Proposed clause 12 of schedule 2.1 relates to clarifying the relevant official in relation to some of the acts in force now. I am happy for that to go through. I will next want to speak on clause 26.

Mr A.J. SIMPSON: This clause has been included to simplify the process of transferring a property from one local government to another. That is what that has been written for.

Mr D.A. TEMPLEMAN: In relation to the City of Perth Act passed in the Parliament, a section of the City of Subiaco was transferred to the City of Perth. This is relevant, because land that would be registered under the title or deeds would need to be transferred; is that correct?

Mr A.J. SIMPSON: If it was a park, yes, it would be.

Mr D.A. Templeman: There are some.

Mr A.J. SIMPSON: There are some; yes, they are assets. The Department of Lands requested this amendment. It is a matter of making it simpler and easier for property to be transferred. It has to be property owned by the local government, so in the case the member just mentioned of Subiaco and Perth, it applies if there is any physical asset that has be transferred.

Mr D.A. TEMPLEMAN: Say there is a City of Subiaco hall in the southern ward of Subiaco that is now going to the City of Perth. There would need to be a formal transfer of land title, because that land was formerly owned by the City of Subiaco and now it would be owned by the City of Perth. That would be relevant to this clause, would it not?

Mr A.J. Simpson: Correct.

Clause put and passed.

Clause 25 put and passed.

Clause 26: Act amended —

Mr D.A. TEMPLEMAN: Can I just get some clarification? I assume this is in relation to the City of Perth Act, and we are not amending the Botanic Gardens and Parks Authority Act, because that has already been covered. Is that correct?

Mr A.J. SIMPSON: Yes, the member is right. The Botanic Gardens and Parks Authority Act 1998 was amended in the City of Perth Act to allow the Executive Director of Public Health to exercise his powers and perform his duty over Kings Park under the Local Government Act. The amendment was made to the Local Government Act 1995 by the City of Perth Act 2015. Consequently, this amendment will be removed from this bill, because it was done in the City of Perth Act.

Clause put and negatived.

Clause 27: Section 44A inserted —

Mr D.A. TEMPLEMAN: Is this the same thing?

Mr A.J. Simpson: Yes.

Clause put and negatived.

Clause 28: Section 53A inserted —

Mr D.A. TEMPLEMAN: Is the minister opposing this clause for the same reason?

Mr A.J. Simpson: Yes.

Mr D.A. TEMPLEMAN: I seek a quick clarification, because I remember this issue was discussed in the debate on the City of Perth Bill. There was obviously this issue about local laws not applying. Although this clause will not be inserted, because we will support the minister in opposing the clause, was it addressed in the City of Perth Act?

Mr A.J. SIMPSON: Yes, that is correct. Clause 28 refers to Kings Park, but we will delete that clause because we took care of that issue in the City of Perth Act earlier this year.

Clause put and negatived.

Clauses 29 to 31 put and passed.

Clause 32: Section 45 replaced —

Mr D.A. TEMPLEMAN: Do you see how cooperative I am, minister?

Mrs G.J. Godfrey: You want to go home early!

Mr D.A. TEMPLEMAN: No, I am very keen continue to legislate here. It is very important business.

This clause defines "Executive Director, Public Health", which is defined in the City of Perth Act. It also defines "public health" and goes through the purposes of that. Proposed section 45(2) relates to the island, of course, because this whole division relates to Rottnest Island. Can the minister give me a very quick clarification of the context of the Rottnest Island elements of this bill?

Mr A.J. SIMPSON: Clause 32 of the bill deletes section 45 of the Rottnest Island Authority Act and replaces it with a new section. The purpose of this amendment is to allow the Executive Director of Public Health and all persons authorised by him to exercise and perform any of the powers and duties of the local government over land designated under the Rottnest Island Authority Act for the purpose of protecting, promoting and improving public health. The executive director will have the power to make and enforce local laws under the Local Government Act, and prior to the making of local laws, the executive director must consult with the Rottnest Island Authority and must consider advice provided. The local law will be published in the *Government Gazette* as well as the public information about the local law. This new section also provides that the executive director can repeal local laws, and if there is any conflict or inconsistency between local laws made by the executive director and one made by the local government under the Local Government Act or any other act, the local law made by the Executive Director of Public Health will prevail to resolve the conflict of inconsistency.

Clause put and passed.

Clause 33: Act amended —

Mr D.A. TEMPLEMAN: I will speak to clause 33, but I am happy for the minister to give me a general answer because, essentially, a number of divisions in this bill, from my understanding, are simply there in the context of the bill amending other legislation to accommodate the regional subsidiaries component of this bill. Clause 33 relates to the Biosecurity and Agriculture Management Act 2007, and then we move through the Building Act 2011, the Building Services (Registration) Act 2011, the Business Names (Commonwealth Powers) Act 2012, the Child Care Services Act 2007 and so on. That is my assumption. If the minister will just clarify whether that is correct, I am happy to go through to clause 62 as my next point of debate.

Mr A.J. SIMPSON: Part 4 of the bill contains clauses 33 to 97, which list the consequential amendments required to other pieces of legislation as a result of regional subsidiaries being introduced in this bill. The bill provides for 31 other acts to be amended, so that regional subsidiaries are treated in those acts in the same way as local governments and regional local governments are currently treated. Clauses 33 to 97 amend other acts.

Clause put and passed.

Clauses 34 and 35 put and passed.

Clause 36: Section 125 amended —

Mr A.J. SIMPSON: I move —

> Page 25, line 19 — To insert after "section 125(2)" —
>
> in the definition of ***public body***

Clause 36 amends the Building Act 2011 to include regional subsidiaries. This is a minor amendment to add "in the definition of public body." after "section 125(2)". This clarifies where the amendment is to occur.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 37 to 52 put and passed.

Clause 53: Section 3 amended —

Mr A.J. SIMPSON: I move —

> Page 29, lines 20 to 23 — To delete the lines.

Clause 53 amends the Community Protection (Offender Reporting) Act 2004 to include regional subsidiaries. The Parliamentary Counsel's Office advised that a minor amendment to insert "or" in paragraph (a), which defines "public authority", is no longer necessary as the amendment has been effected through other legislation since the bill was drafted.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 54 put and negatived.

New clause 54 —

Mr A.J. SIMPSON: I move —

Page 30, after line 6 — To insert —

Division 11 — *Corruption, Crime and Misconduct Act 2003* amended

54. Act amended

This Division amends the *Corruption, Crime and Misconduct Act 2003*.

Since the bill was drafted the title of the Corruption and Crime Commission Act 2003 has been amended, and the act is now known as the Corruption, Crime and Misconduct Act 2003. This amendment corrects the title of the act in this bill.

New clause put and passed.

Clause 55 put and negatived.

New clause 55 —

Mr A.J. SIMPSON: I move —

Page 30, after line 6 — To insert —

55. Section 3 amended

(1) In section 3(1) in the definition of ***minor misconduct*** delete paragraph (c) and insert:

(c) conduct engaged in by —

(i) a member of a local government or council of a local government; or

(ii) a member of a council of a regional local government;

(2) In section 3(1) in the definition of ***public authority*** paragraph (c) delete "regional local government" and insert:

regional local government, regional subsidiary

Mr D.A. TEMPLEMAN: Basically, this amends the current minor misconduct arrangements. We are just saying regional subsidiaries are relevant to those, too.

Mr A.J. SIMPSON: Consequential amendments are required to the Corruption, Crime and Misconduct Act 2003 as a result of the regional subsidiary being introduced by this bill. These amendments amend the definition of "minor misconduct" and "public authority" in the Corruption, Crime and Misconduct Act 2003 so that the regional subsidiaries are treated in the same way as local governments and regional local governments.

New clause put and passed.

Clauses 56 to 71 put and passed.

Clause 72: Act amended —

Mr D.A. TEMPLEMAN: My understanding of this amendment is that a regional subsidiary will now be able to make application to Lotterywest for funding of a project that it may be undertaking.

Mr A.J. SIMPSON: Under the current Local Government Act, a local government can do that, so we are saying that it can continue to do that as part of a regional subsidiary group, as the charter allows.

Clause put and passed.

Clauses 73 to 75 put and passed.

New part 4, division 21A —

Mr A.J. SIMPSON: I move —

Page 34, after line 16 – To insert:

Division 21A — *Medicines and Poisons Act 2014* amended

75A. Act amended

This Division amends the *Medicines and Poisons Act 2014*.

75B. Section 95 amended

Delete section 95(1)(c) and insert:

(c) a person employed by —

(i) a local government or regional local government under the *Local Government Act 1995* section 5.36; or

(ii) a regional subsidiary.

This division amends the Medicine and Poisons Act 2014.

New division put and passed.

New part 4, division 21B —

Mr A.J. SIMPSON: I move —

Page 34, after line 16 — To insert —

Division 21B — *Mental Health Act 2014* amended

75C. Act amended

This Division amends the *Mental Health Act 2014*.

75D. Section 572 amended

In section 572(1) in the definition of ***State authority*** delete paragraph (d) and insert:

(d) a local government, regional local government or regional subsidiary;

New division put and passed.

Clauses 76 to 86 put and passed.

Clause 87: Act amended —

Mr D.A. TEMPLEMAN: If the minister wants to see an archer, this could be a very long bow! I refer to amendments to the Road Traffic (Administration) Act. This was before my time, but there was a time in Western Australia when policing of roads was a jurisdiction of local government.

Mr A.J. Simpson: The roads boards.

Mr D.A. TEMPLEMAN: I am not sure when that was, but this is in all seriousness, given the tragedies on the roads, particularly in regional Western Australia this year with a number of people killed on regional roads. I think the great southern has the highest road death statistic and the wheatbelt is not far behind. This clause amends the Road Traffic (Administration) Act. Is it at all feasible that we will see a regional subsidiary come together with a proposal to contract out regional road policing, if you like? I know it is a long bow, but would this bill allow a group of councils that want to see more patrol vehicles on regional roads—say, in the wheatbelt or great southern—come up with a proposal under the regional subsidiary process to undertake its own traffic policing? It might sound a little airy-fairy, but we know that some local councils in Western Australia already have security entities—the City of Rockingham, and the City of Stirling I think. They have limited powers; they do not have policing powers, but they are certainly badged as eyes on the street and as security. I am interested in how far an inventive, innovative regional subsidiary might go with that, or does the Police Act state that it is only police who can police roads? There is some thinking out there that we may need to think differently about how we address the trauma on regional roads. I am interested in that in relation to this clause.

In addition, this amendment to the Road Traffic (Administration) Act might have nothing to do with what I have just spoken about, but are there other elements of the Road Traffic Act that this might relate to?

Mr A.J. SIMPSON: This amendment relates to vehicle parking outside the premises owned or occupied by a regional subsidiary and other residential premises under the Road Traffic (Administration) Act. The member referred to a regional subsidiary setting up its own traffic policing, because councils are trying to combat the tragic number of road deaths in the wheatbelt. That would be under state legislation, so the regional subsidiary would have to go to the Minister for Police and work out with the Commissioner of Police how that would operate. I would not say no, if councils said they wanted to form a regional subsidiary to address the issue. Yes, they could do that.

Mr D.A. Templeman: And they may seek funding.

Mr A.J. SIMPSON: That is correct. Councils could approach an outside source and then work with the police to do that, but the Police Act would be quite clear on that. It could be done, but I do not think they could set up their own police force.

Mr D.A. Templeman: It's a good idea.

Mr A.J. SIMPSON: They could work with the police on that.

Clause put and passed.

Clauses 88 to 97 put and passed.

Title —

Mr A.J. SIMPSON: I move —

Page 1, in the 3rd bullet point — To delete —

the *Botanic Gardens and Parks Authority Act 1998*,

Mr D.A. TEMPLEMAN: The opposition supports the amendment. However, I want to the highlight that when the minister and I had a discussion at a Local Government Managers Australia or engineering function, I said that if he brought on this bill, the opposition would deal with it in a prompt manner. We have done that today. The bill that we will be passing to the other place is really important, and I will mention this in the third reading, which I think we will do tomorrow.

Mr A.J. Simpson: I'm not coming back tomorrow!

Mr D.A. TEMPLEMAN: We cannot—I keep thinking that we are coming back tomorrow. I am so keen! I love this place. Members can imagine why when I go home to my screaming children!

We would not be doing the third reading today anyway because we have just passed amendments, so I want to take this opportunity to reinforce that this bill has had a long gestation that commenced when the member for Moore introduced similar legislation, certainly with regard to the subsidiary aspect, a subject that was usurped by this bill, which included some additional and important amendments to the Local Government Act itself. It is important for members to understand, particularly with the regional subsidiary component, that this is a very important piece of legislation that enables local government to work cooperatively with neighbours and/or other councils that do not necessarily share a border but that may look at sharing resources, expertise and all those sorts of things. We know that many councils already do that. We know that councils in the metropolitan area support, through a memorandum of understanding or agreement, the delivery of planning services. I think that the City of Nedlands supports some councils in the south west or the great southern in a planning context, because the reality is that a council in the south west with 500 or 600 ratepayers cannot afford to pay a full-time planning officer; nor should they, quite frankly, as the demand for work is not there. This legislation formalises that, which is a good thing.

I honestly hope that this bill passes the other place quickly. I hope the minister will give instruction to his members. Certainly, the instruction to our members is that we do not want this legislation to be delayed any further. It is sensible and enabling, and we want the opportunity delivered to local government. When we jettison this bill to the upper house, I hope that those in the other place do not waste time delaying its passage because I think it is important that we get it in place as soon as possible. It is a beneficial piece of legislation.

Amendment put and passed.

Title, as amended, put and passed.