LOCAL GOVERNMENT LEGISLATION AMENDMENT BILL 2019

Second Reading

Resumed from 11 April.

HON DONNA FARAGHER (East Metropolitan) [10.46 am]: I rise as lead speaker for the opposition on this long-awaited bill. This bill reflects the first of two phases of reform to the Local Government Act, albeit I think it is fair to say that this government is taking a fairly piecemeal approach to local government reform.

Through this legislation, a number of amendments are proposed. The government has indicated that the legislation is time critical. We have seen an editorial from the minister in the other place, David Templeman, in *The West Australian* of 5 June headed "Refining the art of local government". As I am sure have other members, I have received calls from mayors and councillors—both for and against the legislation, I might add—who have called on the opposition to bring on this bill for debate. I remind the government that it is responsible for parliamentary business and the parliamentary program, not the opposition, not the Nationals, not the crossbench and not the Greens. Let me tell members that I have told everyone who has contacted me about this issue that they need to speak to the government, and the government needs to explain why debate on this bill has been delayed until now. This bill has been sitting on the notice paper since 11 April 2019. When it has been listed on the weekly business program, it has been so far down the list that we were never going to get onto it. The government and the minister know that. We could have started debate on this bill a long time ago.

Hon Sue Ellery: Did you ask me to put it off for a week or not?

Hon DONNA FARAGHER: Does the minister want a response to that?

Hon Sue Ellery: Yes.

Hon DONNA FARAGHER: No; I have heard about that, Leader of the House. Apparently the minister held off for a week because of me.

Hon Sue Ellery: You asked me to.

Hon DONNA FARAGHER: If we are going to bring this into the open, we might as well do it right now.

I called the Leader of the House to see whether the bill would be listed for the first week back or the second. I said that if it was going to be listed for the first week, I would need to organise a briefing for some of my colleagues.

Hon Sue Ellery: And you told me that that would be inconvenient for you.

Hon DONNA FARAGHER: And the Leader of the House —

The ACTING PRESIDENT (Hon Matthew Swinbourn): Hon Donna Faragher, your second reading contribution is directed to the Chair, so please direct your comments through me.

Hon DONNA FARAGHER: Yes, it is, but an accusation has been made that I sought to delay the bill.

The ACTING PRESIDENT: Member, your comments should be directed through the Chair.

Hon DONNA FARAGHER: Well —

The ACTING PRESIDENT: Member, ignore the interjections and continue with your speech to the Chair, please.

Hon DONNA FARAGHER: Well, no—an inference has been made

Hon Sue Ellery interjected.

The ACTING PRESIDENT: Leader of the House, please cease with your interjections. It is distracting the speaker on her feet.

Hon DONNA FARAGHER: An inference has been made that I sought to delay the bill. I simply called the Leader of the House to ask her whether the bill would be debated in the first week back or the second. The Leader of the House indicated to me that she had other bills. I said, "Okay, that is fine," because we would have a briefing for my colleagues in the week we returned. If the Leader of the House wanted to bring it on in the first week, fine. However, she should not suggest that I sought to delay the bill, because that is not the case. Notwithstanding that, that was a long time ago, and the Leader of the House has not brought on the bill for debate until now. I do not appreciate an accusation being made about me in this place by the Leader of the House.

Hon Sue Ellery: Perhaps we'll do these things by email in future.

Hon DONNA FARAGHER: Maybe we will. It is similar to another circumstance involving my office and the office of the Leader of the House on another matter. We will move on, but I will have a chat to the Leader of the House behind the Chair; I am happy to do that.

I will return to where I was at. If the government wants the bill to be dealt with in time for the October local government elections, some elements of the bill would be deemed to be time critical; however, there are others that are not. When we received a briefing, the response from the officials to my questions about those that were not time critical was that they were deemed to be high priority. As I understand it, the consultation around the first phase, which culminates in this legislation, centred around a reference group that included representatives from the Western Australian Local Government Association, Local Government Professionals Australia WA and the regional chambers of commerce and industry, as well as some limited public consultation and workshops. There were 243 submissions received, including 44 from local government authorities.

In summary, the bill focuses on a few key areas; namely, universal training, standards of behaviour, gifts, CEO recruitment and performance, and some general administrative changes. I make one key observation about this bill. One of the reasons there has been some disquiet in some quarters about the legislation is that there is an over-reliance on regulations, codes of conduct and the like, and that a lot of the detail is not prescribed more fully in the bill itself. A number of questions remain unanswered and the legislation simply does not spell it out. This complaint might be raised with a number of bills that come before this house, but it is a fault of this legislation.

I will give a couple of examples. A number of clauses relate to training, including clauses 15 and 64, with the latter inserting new division 10, which deals with training and development, albeit the matter is left almost entirely to regulation. As I understand it, the universal training program will include three components: candidate induction pre-election, council training for members post-election and continuing professional development. The indicative list of topics to be covered in candidate induction training are government in Australia, local government in Western Australia, the local government decision-making processes, the role of a councillor, the relationship between councillors and staff, and what one needs to do as a councillor. I am informed that five foundational units will be part of the training for council members once they have been elected, and that they will need to be completed within 12 months of becoming a member. Those units will cover the areas of understanding local government, serving on council, meeting procedures, conflicts of interest, and understanding financial reports and budgets, although, as I understand it, those areas are only indicative. What is not clear, because the bill does not prescribe it—rather, the regulations may—is all of the above. Given the time, I do not intend to go through it in more detail. At this stage, we are simply relying on the information that has been provided to us by the officers—I thank them for that. Ultimately, if this bill passes, those things will be done through the regulations, which, of course, can be changed from time to time.

Under clause 64, new division 10 states at section 5.126 —

> (1) Each council member must complete training in accordance with regulations.
>
> (2) Regulations may —
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> (a) prescribe a course of training; and
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> (b) prescribe the period within which training must be completed; and
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> (c) prescribe circumstances in which a council member is exempt from the requirement in subsection (1); and
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> (d) provide that contravention of subsection (1) is an offence and prescribe a fine not exceeding $5 000 for the offence.

Given that all of that can be left to regulations, I have a number of questions for the Leader of the House. I am aware of her answer to some of them, but I think it is important that they are detailed in *Hansard*. What are the ramifications, if any, if a councillor does not complete the units? What mechanism is to be applied to determine whether a candidate has completed the online induction? Who will determine the full content of the training? By that I mean, will it be the department? Will it design the program, and will it then be delivered via a registered training organisation? I just want to know the mechanism for the relationship between the department and the RTO, which everyone presumes will be the Western Australian Local Government Association, but the Leader of the House might be able to inform us further on that. Who will be required for the training? Certainly WALGA, although supportive of the legislation, does not believe that it should pay for it. What costs will be incurred by the department? What costs will be incurred by local government authorities? How often will training be required to be repeated? Will it be with every re-election?

Hon Sue Ellery: Honourable member, will you take an interjection?

Hon DONNA FARAGHER: Yes.

Hon Sue Ellery: I am just seeking advice on another question you asked. Did you want information about the relationship between the RTO and the department?

Hon DONNA FARAGHER: Yes. I understand that an RTO will deliver the training. Will the department effectively develop the course, if I can put it that way, and the RTO deliver it? How will that work? That may still need to be worked through, but that is my question on that. Did the minister get my other questions?

Hon Sue Ellery: The payment of training and regulation versus prescription?

Hon DONNA FARAGHER: Yes.

A number of amendments relate to codes of conduct for both the CEO and other employees. The bill leaves matters surrounding the content of and other matters in relation to codes of conduct to regulation. Similar to the training provisions, it states that regulations "may prescribe", not that they "shall prescribe". I ask the minister why that is the case. In the case of CEOs, a number of matters are canvassed in this legislation; however, I will reflect briefly on one issue that has caused significant concern—the provisions on senior employees in the bill before us. I understand that the CEO is required to inform the council of a proposal to employ or dismiss a senior employee. The council may accept or reject that recommendation by the CEO, but if the council rejects the CEO's recommendation, it needs to provide reasons for doing that. Currently, senior employees might be directors or similar, with large portfolios or budgets, but as I understand it there is no restriction on the number of senior employees that a council may have. In fact, it may be unlikely, but everyone might be deemed a senior employee. Typically, they report to CEOs, but the act as it currently stands does not define the criteria that should be used to define what would be deemed a senior employee.

The Local Government Legislation Amendment Bill 2019 seeks to remove the provisions for senior employees; I understand that that came from a transparency point of view, essentially. I note from the supplementary notice paper that when we move into Committee of the Whole on this bill, the government will oppose the clauses and therefore the status quo will remain. The minister may be able to respond to this, but as I understand it, the government wants to get the bill through and it is prepared to remove the contentious element and maybe reconsider it in the second reform phase. I am sure the minister can confirm that. If that is the government's decision, we will not oppose that; it is a matter for the government to work through and to explain to others, but I will say that there are certainly different perspectives on this issue. Certainly, I have received correspondence and phone calls, as other members will have. The Mayor of the Town of Cambridge, for example, has been very strong on this matter. In the first reform phase, if I can put it that way, 32 local government authorities commented on this issue. Of those, 23 supported removal—that is, what is currently in legislation—and nine supported the retention of the senior employee designation. It is clearly a matter on which there are differing opinions and is therefore an issue that will not go away.

I do not intend to canvass every matter in my contribution to the second reading debate. However, a number of new provisions relate to the disclosure of gifts and attendance at events. There are also important matters relating to complaints and breaches, including changes to confidentiality provisions, particularly the disclosure of information relating to complaints. I will have a couple of questions on that when we go into committee. The bill also makes some changes, perhaps more administrative, relating to modes of communication and advertising. With regard to local public notices, I refer to clause 5, which states, in part —

> Where under this Act local public notice of a matter is required to be given, notice of the matter must be given in accordance with the requirements prescribed for the purposes of this section.

The explanatory memorandum states, in respect of clause 5 —

> This clause provides that the requirements for a public notice will be set in regulations, which will allow for changes in technology and communication methods over time.
>
> Local governments will be required to publish these notices on their official website.

Reading the EM—because we cannot yet see the regulations—it can be seen that these notices are required only to be placed on the website. During debate in the other place Minister Templeman indicated that there would be a requirement for three forms of communication and that that would be stipulated in the regulations. This might be seen as a fairly minor matter, but I contend that if there is a requirement for three forms of communication, it should be stipulated in the bill. I am happy for the types of communication to be left to the regulations, because that can change. But as a member of Parliament—I do not think I would be alone in this—one of the issues that is regularly raised with me by members of the local community is that they do not believe they have been informed of something happening in the local area; I see a couple of members nodding. It might be a planning issue, a road safety issue or a development matter. Reducing the requirements through regulation is not appropriate, in my view. We need to be clear about what requirements will be placed on local governments giving notice of actions that are to be taken. After discussions I have had with the government behind the Chair, I am pleased that there will be some amendments to clause 5 on the supplementary notice paper, and I indicate our support for those and I thank the government for its willingness to listen to the issues I have raised.

In concluding my remarks, I acknowledge the many people who have contacted me about this legislation, both for and against. It is important that we, as parliamentarians, hear all sides and perspectives on this issue. It is fair to say that there remain some concerns about certain aspects of this legislation, while others in the community very strongly support every element of it. I also indicate that others have raised some matters that I would say are not necessarily relevant to this bill. Work is being done by the government on the second reform phase and the green bill, through which some of these issues will be canvassed. Equally, this house agreed yesterday to the establishment of the Select Committee into Local Government, which will provide another opportunity to canvass some of the issues that have been raised with me that do not necessarily fall directly under this legislation but that are, nonetheless, important. There are now a couple of different avenues through which to raise those concerns.

I indicate that the opposition will not oppose the bill, but there appears to have been fairly limited consultation. It is a rather piecemeal approach, and I say that on the basis that when criticism has been made of this bill, the response from the government has been, in part, "Well, we're bringing it in, but if there are issues, we can look at it again through a green bill and further reform in a years' time." It is not a whole-of-government review being done in one hit. I can see that some of the issues we will raise today will be raised again as part of phase 2. Noting that, I will obviously ask some questions of the government during the committee stage but, as I say, the opposition does not oppose the bill.

HON MARTIN ALDRIDGE (Agricultural) [11.07 am]: I rise on behalf of the Nationals WA to make a contribution to debate on the Local Government Legislation Amendment Bill 2019.

The ACTING PRESIDENT: Are you the lead speaker for the National Party?

Hon MARTIN ALDRIDGE: Yes.

I indicate from the outset that the National Party will not be opposing the bill before the house. I am not the person with primary responsibility for this bill; that is the member for Moore, Mr Shane Love MLA, in the other place. He made a quite significant contribution to debate on the bill as it passed through the Legislative Assembly earlier this year.

This bill has certainly made some interesting progress. Indeed, I believe that at one point there was agreement that the bill would be discharged from the notice paper and referred to a committee inquiry, which obviously did not occur. We are here now debating the second reading of the bill on the last sitting day prior to the winter recess. I draw members' attention to a couple of things. One is a contribution by the Minister for Local Government to issue 101, April–May 2019, of the *Western Councillor*, a Western Australian Local Government Association magazine. His contribution commences —

> Landmark Local Government reforms passed the lower house of Parliament in early April.
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> This marks the first step towards providing the Local Government sector with a substantive reform package that includes the introduction of universal training for election candidates and Council members, a mandatory code of conduct, CEO recruitment and performance management standards, a new framework for the acceptance of gifts and improved reporting to the community.
>
> This is a great milestone and it was encouraging to note that the Opposition declared their overwhelming support for the Bill, which was passed unanimously in the Legislative Assembly.
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> I firmly believe we need these reforms to be in place before the Local Government elections in October; thus it is essential that the legislation passes through the upper house by the end of June.
>
> I encourage the sector to share support for these reforms with local members of Parliament to ensure a timely passage of the legislation.

They were the opening remarks of Minister David Templeman, MLA.

Also in May, the first issue mentioned by the president of the Western Australian Local Government Association in its newsletter is the Local Government Amendment Bill. She outlines to her member councils a range of things that the bill will do. I want to quote a couple of sections of that. One is —

> The Minister's proposal around Universal Training includes the requirement for all candidates at Local Government elections to attend a candidate's information session as part of their nomination requirement. This will be an on-line information session that the Department of Local Government, Sport and Cultural Industries will run and will not include any assessment. In addition, all new and re-elected Elected Members will need to carry out training on five (5) core units in 12 months following being elected.
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> Those elected members not up for election until 2021 will not need to do the training until after October 2021. In respect to funding for training, it is the Association's position that the training is the States idea, so the State should pay. We will continue to advocate for funding to be provided.

> The Bill will need to pass through the Parliament by 30 June 2019 to allow for the provisions around Universal Training to apply for the 2019 elections.
>
> The Local Government Amendment Bill is an important piece of legislation for the Local Government sector and it is important that the Bill progresses through the Parliament as quickly as possible. I encourage all Elected Members through your Council, to seek the support of your local politicians in seeing the Bill progress through the Parliament and be enacted prior to the end of June 2019.

It is interesting that at about this time I started receiving phone calls from some local councils in my region. It started with, "I hear the bill is now in your house and I hear you're holding it up." I thought that that was an interesting concept, but they were right in one respect: the bill is in our house. The bill was introduced on 11 April 2019 and I believe that the first opportunity we would have had to debate the bill was on 7 May. I pointed out to them that I am not in control of the business of the house or the orders of the day and that that is the responsibility of the government and the Leader of the House, so they should direct their inquiries to the Leader of the House who happens to also have carriage of this bill. If we look at the sitting schedule through that period, we find, as I said, that this bill could have progressed on 7 May, but it was not listed on the weekly bulletin. It was listed in the weekly bulletin for the weeks 14–16 May, 4–6 June, 11–13 June, and 25–27 June. It has been listed now for four sitting weeks in the weekly bulletin. This is the first day, the last sitting day prior to the winter recess, that this bill has been brought on for consideration and it appears that it is being brought forward with government amendments, so it will need to be returned to the Legislative Assembly. That is interesting given that this government carries on saying that it will not accept any amendments to its legislation and that its view is final: "If it gets sent to the Legislative Council and if you don't like it, vote it down." I heard it again this week from government members. I do not know why, after more than two years in office, this government has not learnt that that is not the way to achieve success for its legislative agenda in this place.

On this occasion, it is not members of the opposition or the crossbench who have proposed amendments; it is members of the government who want to amend the government's own bill. Indeed, in some cases, those amendments oppose the bill, but the reasons are not yet clear to me. Although Hon Donna Faragher alluded to them in her second reading contribution, I am interested in hearing some explanation as the bill progresses. I want to make it clear to those elected council members in my electorate who contacted me and those who did not contact me that it was not me or my party who has delayed the progress of the bill in this place.

On that note, when this bill came to this place, I made some effort, as I said yesterday on the motion to form a select committee, to write to the 60-odd local governments in my electorate to outline to them what the bill seeks to do and I sought some feedback from them. I want to quote some of the letters that I received. I will not identify the people or the councils who responded because I have not had an opportunity to seek their permission to disclose their names. However, I want to quote some of the feedback, which is not plentiful; I received about half a dozen pieces of correspondence. This one is from a chief executive officer and it states —

> My view is that it will provide a range of worthwhile and long overdue reforms.
>
> - Minimum training obligations for Councillors I think is essential both for candidates and newly elected Councillors. It would also be good to have some continuing professional development obligations as well, though this is not contemplated. Perhaps once legislation is in place this can be included in future regulations;
> - At present every Local Government is required to have a code of conduct, but at present the code of conduct is not enforceable and relies on Councillors behaving with goodwill and acting in good faith, and neither of these things are a given. There should be a separate Code of Conduct for Elected Members and staff. There are too many differences between Councillors and employees for a single document to effectively cover both.
> - The reforms to CEO recruitment, selection, performance review and dismissal are welcome and overdue. It requires an absolute majority to appoint a CEO (if there are 9 Councillors that is a minimum of 5 votes) to appoint a CEO, but a CEO may be dismissed by a simple majority, that is as few as 3 votes. Even these reforms do not cover the circumstance I am presently facing. Despite 6 consecutive positive performance reviews Council has decided not to renew my contract.
> - Having a gift system that makes sense and is included in a single document would be a good start. Attached is a guide from produced by a Local Government lawyer setting out the present process.
> - Present advertising requirements are outdated and expensive.
> - Any streamlining of compliance processes is welcome.

I turn now to correspondence I received from a shire president in my electorate, which states —

> Yes our council is in agreeance with the changes in phase one of the Local Govt Act review.
>
> These changes have been brought through the council and Zone for our review and input.
>
> Thank you for the support you give to our council and we look forward to future support.

This is another from a shire president, and it states —

> I don't have too many problems with the legislation, I would like to provide a couple of comments:
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> 5 units in 12 months, how is this being funded? And what's then consequences for not doing it? Whilst I acknowledge we have a training budget, the cost of 5 units for 4 councillors in 12 months is an impost to a lot of councils the state government should provide some assistance.
>
> Other than that I think they are making some good changes.

Another shire president said —

> I am across the amendments and support them. I have been in Local Govt for 14 years and work broadly across the State mentoring or advising.
>
> These amendments will bring better trained Councillors who in turn will make better decisions on behalf of their communities.

Another chief executive officer said —

> Whilst most changes are supported by this Council, our biggest concern is the mandatory training for elected members. From a CEO perspective training is supported however it may also be a deterrent for new persons wishing to become an elected member. Due to time constraints and having their own busy lives, running businesses, attending training courses could be an issue for country based members, especially if they are held in Perth. Also the cost for training appears that it will be at the local governments cost, this we are concerned about. Another issue is what happens if an elected member does not do any training, do they lose their seat automatically, if so another cost is borne by the local government for an extraordinary election. Training of Councillors needs to be carefully thought out so it does not discourage new members and is at minimal cost to the Council.
>
> Interesting that local government elected members are going to be required to undertake training yet state government representatives do not, where is the balance.
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> From an administrative point of view I believe there needs to be more emphasis in getting the Act changed to simplify the administrative and compliance burden processes we currently have. Attached is a list of matters that we have raised in this area for your perusal.

The last one was from another chief executive officer, who said this —

> In relation to the issues which are raised within the Bill, … would certainly be appreciative if the following matters could be considered relating to training requirements for Councillors: —

Members can obviously see a theme here around training —

> Whilst it is appreciated that Councillor training is necessary and important, the following should be part of the legislation:
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> - Recognition of prior Learning—there is absolutely no point in Councillors redoing the same courses over and over again. Perhaps an ability to recognise prior courses and complete different or more advanced courses would be more appropriate
> - The cost to small councils will be prohibitive. A return to the funded (R4R) —

That stands for royalties for regions —

> courses would be appreciated
>
> - Provision of courses in the regions to save time and costs to councillors
> - Perhaps removal of the need to undertake the pre qualification training for current councillors standing again—it should be presumed that if they have just served a 4 year term they understand what serving on Council is about

There are a range of views. Some of them are consistent, some are not. With respect to those half a dozen or so councils, elected members and chief executive officers have written to me.

In the course of considering this bill, I met with the Western Australian Local Government Association on 13 May 2019. I have reflected on my notes from that meeting. The first dot point that I wrote in my notes was that the WA Local Government Association supports every aspect of this bill. The Leader of the House gave a slightly different version of this in her contribution yesterday on the motion to form the Select Committee into Local Government. I want to elaborate on this during my contribution today. I will quote from the uncorrected *Hansard* of Wednesday, 26 June 2019. The Leader of the House said —

> Opinions on the future of local government vary considerably. The reforms do not capitulate to the will of the sector; there are clear distinctions between the reforms and the position of the Western Australian Local Government Association on such things as universal training, the mandating of CEO recruitment standards and gifts.

I am somewhat confused, because the Western Australian Local Government Association told me that it agrees with everything, whereas the Leader of the House and the minister responsible for this bill tell me it does not. Perhaps the Leader of the House might be able to clarify that during her response to the second reading. When I met with the Western Australian Local Government Association on 13 May 2019, I raised the issue of universal training. That issue was raised with me quite considerably by both elected members and CEOs. I must say there is a varying view on it. The first thing I put to the association during my briefing was whether it supports mandatory training. The answer was, "No, we do not support mandatory training." I said that mandatory training is included in this bill. The minister made it clear, the department made it clear at the briefing, and the explanatory memorandum makes it clear that this bill has regulatory powers that will allow the minister to enforce the universal training standard. Obviously, the penalty could be a range of things. They will be prescribed by regulation. I anticipate that it could result in the loss of office. One of the matters contemplated by one of the local governments that wrote to me was its concern about bearing additional costs in dealing with a vacancy.

There is a varied view about mandatory training, or "universal training" as it is called in this bill. It is interesting that some of the fiercest opponents of mandatory training draw a comparison between us, as elected members of state Parliament, and them, as elected members of a local government. Although I can appreciate the comparison, there are also quite clear distinctions. Elected members of state Parliament are not necessarily members of the executive government; we do not have any ability to hire and fire and we do not have any ability to execute contracts, issue tenders or make budget decisions. I think the roles are quite different. Notwithstanding that there is an induction and professional development process for elected members to this place, there is no mandatory formal training requirement. There are distinctions between the roles.

One of the concerns that I raised with the department during the briefing related to the induction process. This is the process before a person stands for nomination to council. I think it is a good thing. A lot of local governments are already doing it in their own way. My concern is how we inform the general public of that between now and October. Actually, I think it is even earlier than that. Nominations close sometime in August perhaps, or maybe they open in August and close at another time. How are we going to inform people of this new obligation, if this bill passes in its current form? I would much prefer the state to take that on board, rather than 137 local governments. The 137 local governments could certainly bolster, improve and add to that communication, but the core strategy needs to be delivered by the state. That information needs to not only encourage people to run for office, but also remind them of their new obligations with respect to running for office.

Another common theme in the feedback I received from my local governments was cost. Maybe things have moved on since my briefing, but it was clear that the Western Australian Local Government Association was one of the parties, amongst others, to express an interest in being one of the training organisations to deliver this training. A key concern of local governments was how they might cover these training costs. Obviously, the minimal cost option will be the online learning environment. I must say that that is not a conducive learning environment for everyone. Not everyone has an advanced level of computer literacy, nor may they necessarily need it to do online learning. Sometimes some of the best and most valuable learning is done in a group environment in which people can learn together, challenge things and ask questions by participating in a group conversation. Some local governments will be looking to hold intensive face-to-face training opportunities. I am told that each of these five modules would take about one day to complete. If it were done in that format, each module would require about a day's training—so five days in total. One week over the course of four years does not seem like a long time, but when we consider that probably most of these training organisations will be Perth based, what will be the cost to small local governments in the Kimberley, for example, or small local governments in my electorate or the goldfields in terms of travel, accommodation and fees associated with trainers travelling to local governments to deliver these training opportunities?

There is a fund under the control of the Minister for Regional Development called the country local government fund. It started out as a fund to invest in infrastructure owned and controlled by local governments but became

more of a capacity-building fund. Indeed, it funded capacity building for local government–elected members and delivered training programs at low cost throughout regional Western Australia. From memory, the out-of-pocket expense for a local government councillor to participate in a training program under that model was about $50. One of the clear messages I got from my local governments was about funding. I do not think there is appetite from the government to consider supporting local governments in that way. This will disproportionately burden some of our smaller local governments in regional Western Australia compared with metropolitan ones, which probably have a greater capacity to pay and a lower cost involved in delivering training to their local government–elected members.

Another issue that was raised was that the code of conduct will now apply to candidates running for election, but will be enforceable only if those candidates are elected. I am unsure whether there is a better way to do this. I put to the responsible minister that sometimes people run for election not to get elected but for a range of other reasons, including to avoid somebody else getting elected and advancing their particular cause. Sometimes, groups of people will do that, like a disruption movement. We see that particularly in local government elections. Not having a code of conduct apply to one class of candidate, as opposed to another class of candidate, is a bit of an issue. I would be interested to know why we cannot have a different method of applying and enforcing the code of conduct, whether we end up with an elected member or not.

The other issue that was raised was gifts. I have had some concern about gifts ever since the house dealt with the City of Perth Bill 2015, which was a bill to give legal status to Perth as the capital of Western Australia and also to create the City of Perth Committee, and effect some forced boundary changes. The consequence of that bill passing this house was an amendment negotiated by the then Labor opposition to create additional transparency measures on gifts. We now have, for elected council members, a 10-day disclosure requirement, and a requirement to publish on the local government's website. I believe the present bill will narrow the scope of gifts to those received in the ordinary course of duty, which I think was the language used in the explanatory memorandum. When the City of Perth Bill passed this chamber, I said that it was interesting that we had set a bar of transparency for local government members that we had not set for ourselves. Elected members of this place are only required to complete an annual return, and even then there is a period after the end of the year in which that return can be completed. It amounts to something in the order of 15 months, if I am not mistaken. If a member receives a gift on 1 July, they are not required to complete an annual return until three months after the end of the financial year. We have a 15-month reporting requirement, in the worst case, but we force on our local governments a 10-day disclosure requirement. The Labor Party made commitments in the last election campaign to improve transparency on political donations, and I understand that it is tracking towards a quarterly reporting arrangement. That is still quite different from the 10-day requirement that we place on local government officials.

Having said that, I think that narrowing the scope is sensible. A range of issues arose from the current situation, under which people giving and receiving wedding gifts had to disclose them under the Local Government Act. There were also issues around local government councillors standing for election in a state election. It is not uncommon to see local government councillors standing for election to the state Parliament, but if that person was to receive a donation or gift in kind for the purposes of election to the state Parliament, that was disclosable under the Local Government Act, within the 10-day rule, and publishable on the website. We gave one of our candidates a bunch of corflutes, and that candidate then had to go and disclose that to his local government as a gift, and it had to be placed on the local government's website. There were some really unintended consequences, and they did not arise only from the City of Perth provisions. They primarily arose from a legal interpretation of a gift as defined in the Local Government Act, and obviously the 10-day rule exacerbated that issue.

While we are dealing with gifts in relation to this bill, I want to draw the attention of members to the second reading speech. It has a section on gifts, which begins —

> A key initiative of this bill is the introduction of a revised gift framework. Council members are key decision-makers in their district and the community expects that decisions be free from improper influence. The focus of the provisions in the bill are twofold: addressing the ability of gifts to influence decision-making; and increasing transparency and accountability to members of the community.

That sounds like a very noble cause. I now draw the attention of members to the timely receipt of an answer to a question on notice on 25 June 2019—just this week. I asked every minister in the government the same question —

> I refer to exclusive, invitation only clubs operated by Virgin Australia (The Club) and Qantas (Chairman's Lounge), and I ask the Minister:
>
> (a) please identify for each member of your staff, for each member of your immediate family and for each agency under your direction:

(i) the names of those offered membership from either Virgin Australia or Qantas and the date on which such an offer was made;

(ii) for each person identified in (i), the date on which an offer was accepted or rejected and the relevant decision by the intended recipient of the membership;

(iii) for each person identified in (i), when the membership is expected to expire if accepted; and

(iv) the benefits offered with respect to each membership offered and the estimated annual value of those benefits;

(b) with respect to Members of Parliament, has the gift received been disclosed in accordance with the *Members of Parliament (Financial Interests) Act 1992* for each year in which the gift was accepted;

(c) for gifts received by Minister's, has the gift been disclosed to the Chief of Protocol, Department of the Premier and Cabinet, and was such notification provided within the 30 days requirement of the Ministerial Code of Conduct;

(d) has the Minister declared any conflict of interest or abstained from any Government decision arising from the gift received from Virgin Australia or Qantas; and

(e) for each public service officer identified in (a), please outline what gift disclosure and conflict of interest reporting has occurred with respect to each agency?

The response I got from the Leader of the House representing the Premier was —

> As the Member would be aware, each of the airlines mentioned offer membership of their respective clubs to State and Federal Government Ministers and in some instances Leaders of the Opposition. As was the process in the previous government, the acceptance of airline lounge memberships by a Minister does not represent a conflict of interest.

Every other minister, I should mention, just referred to this answer, which was the Premier's answer. We are talking about community expectations, increased transparency and accountability, but the other thing is that we know that this government has done deals with airlines. Somebody was talking before about what a great tourism minister we have. We know that this government has done deals with airlines, particularly with Qantas. We know that it will not tell us about those deals, which it says are commercial-in-confidence. We do not know whether ministers of the cabinet excluded themselves from those decisions, or whether they complied with the act that I just mentioned in their annual returns. We do not know whether they complied with the ministerial code of conduct. The answer was, "nothing". The answer told us nothing. Here we are once again, a few more years down the track, talking about how we want to raise the bar, increase transparency, make our local governments do more in management of gifts and compliance, and in the very week that we are debating this bill, the government refuses to answer a basic question about whether it has complied with the law of the state. That is quite staggering and difficult to reconcile.

The supplementary notice paper lists a number of amendments, all in the name of the Leader of the House. Some of those relate to the senior employee provisions, which I have not discussed, but I have already spoken about in seeking some understanding why the government will oppose those clauses. Obviously, the proposed amendments to clause 5 seek to clarify the notice provisions for local government. I have not spoken about every aspect of the bill; I have focused more on the issues that have been raised with me by local governments in my electorate. I have not had a lot of feedback or correspondence from those that are not in my electorate. I acknowledge that I have had some correspondence from people outside my electorate, particularly in the metropolitan area, about the need for local government reform to go further, or perhaps they have some particular issue with the bill before the house. But I will leave their concerns primarily to the metropolitan members of this place to deal with. I have tended to focus more in my contribution on the matters raised with me by those in my electorate.

Having said that, I understand that this bill has to pass today, because the Legislative Assembly will be required to consider the government's amendments should they pass. Obviously, there is a narrow period before nominations will open for local government elections. As I said, I think that is likely to be in August, and, once this bill passes, there is probably a bit of work to be done on regulations and in preparation for some of those processes to take place, particularly the establishment of the code of conduct, which will be a responsibility of each local government, but they will apply during the election period for those seeking election to their respective local governments.

The National Party will not oppose the bill before us. Indeed, we thank the government for finally, on the last day of the sitting prior to the winter recess, allowing us to consider this bill, which appears to be so urgent for the government and the minister.

HON SIMON O'BRIEN (South Metropolitan) [11.41 am]: I will be brief because I have urgent business outside the house to attend to in a moment on behalf of the house, but I want to make the following observations. It is a pity that the Local Government Legislation Amendment Bill 2019 was first read in on 11 April and we have an obligation to deal with it before the house rises today, and we will. I do not think that the government is doing justice to the important issues at stake here. Nonetheless, my party has resolved that we will not oppose this bill, even though the government apparently will oppose a number of clauses and will propose that they be deleted.

My comments on this matter are intended with one purpose in mind. Something that I hope I have given effect to whenever I have been in a position to do so, including as a minister in several portfolios over the years, is to try to do some things that make it a bit easier for practitioners or participants in whatever sector it is to do the things that they have to do and to not encumber them unnecessarily. As the house knows, I will have a good look at some provisions relating to local government over the next 12 months or so, and I look forward to working through some of the issues that undoubtedly exist in the local government sector.

My observations on this bill give rise to these thoughts. I have previously suggested that the Local Government Act and other legislation around it are unnecessarily prescriptive. There might be reasons that some would advance for why it is necessarily prescriptive, and we will explore those matters on other occasions. The warning that I want to give to the house and to the government, not that it is prone to taking notice of anything, is that every time its legislation is too prescriptive and it thinks that by doing that it is being more precise and making things clearer, it is in fact making more problems for people, more unforeseen circumstances for people to be tripped up with, and more excuses for people of poor motivation to try to achieve gotcha moments and attack people who are trying to do the right thing for their community. Every time a government adds some little requirement that people have to do this, fill something out or do something else, and then gives a precise time frame in which to do it, it creates a potential problem that should not exist. We see it all the time when the Joint Standing Committee on Delegated Legislation disallows by-laws made by local governments not because there is anything wrong with the by-law, but because they have transgressed some little technicality that someone has put into law about the procedure, which does not make any material difference, but it is in black-and-white law and therefore if they have not followed it to the letter, the law becomes invalid and so the local government has to go back and start all over again. That is a colossal imposition and no-one in government has had the wit to say, "Perhaps we ought to back off on this a little bit to make things a bit easier and a bit more efficient." Maybe in due course they will.

When the government starts legislating for the matters that are contemplated in this bill—I appreciate that the tweaking of legislation that is going to occur through this bill is designed to make things less bad, so that is probably a good thing—it is an admission that the prescriptive nature of what has already been created and exists is failing: "Heck, there are unforeseen circumstances; people are getting tripped up. I know; let's bung in another few pages of black-and-white law to clarify things." However, it is in fact setting traps for people into the future. That is what it does when it mucks around with codes of conduct. Do members of this government seriously think that any responsible person in our community really needs to be told that they should behave themselves and that some sort of tribunal process is needed that introduces lawyers and all sorts into it and months of uncertainty, and that somehow that is a way of addressing someone's perceived poor behaviour? In the corridors of local government, any time that anyone does or says anything, someone is going to say, "I'm upset by that; I'm going to put in a complaint"—and that is what is happening. The response by government is: "Let's muck around with the prescriptive nature of it." That is not dealing with the issue at all. It is, in the first instance, an admission that when a previous Labor government brought in this sort of stuff in 2007, or whenever it was, it got it wrong and it has created a whole host of problems. The Labor government now has another bill before us—this is the third amending bill on local government—to try to correct those things. How? It is by making things more and more prescriptive. You do not need to be a rocket scientist, and I assure members opposite that they are not, to recognise that there are elements of this flawed concept that will end in more and more tears before bedtime, so why is the government doing it? It is another reason why we need a committee of this house to have a good look at local government, the way that local governments are operating and whether the legislation addresses the real requirements of that sector. That will happen in due course because we certainly do not have the time to do it now in the last gasp when the government has finally brought this Local Government Legislation Amendment Bill on for consideration. We have no real time to examine all the issues properly but we are told that even though the colonies got by without these provisions quite well for the past 190 years, if it is not passed by today, the sky will fall.

My remarks are intended to be constructive. I want to highlight the dangers being persisted with by the government being overly prescriptive. I will give one example that relates directly to this bill where the explanatory memorandum refers to universal training of council members. They will get training, whether or not they need it—the answer is training! Some people have been doing the wrong thing so everyone must receive training. Before we worry about who will prescribe the training, what will be in it, who will deliver it, how much they will charge for it and who will pay for it, it has been determined that everyone has to receive training to be a councillor. It will not matter whether they have been a former Minister for Finance or a legal eagle in their private life, or anybody.

They will need universal training—one size fits all. It will not matter whether they are in the Shire of Menzies, the Shire of "Peppy" Grove or the City of Stirling, one size will fit all. That is rubbish. Nonetheless, this is what is being legislated for. Questions have been asked: What will happen if they do not do the training? What will happen if they do not complete the training? What will happen if they fail the training? Will there be any assessment? If there is no assessment, what is the point of participating in training?

The government is telling us that this bill will provide for not only all of those sorts of things, even for candidates—in fact, that might be one type of assessment that might be justifiable—but also they will have to complete certain prescribed training. It will be laid down. When do they have to do it? They will have to do it within 12 months—not 11 or 13 months, but 12 months. What will happen if a council member becomes crook just before they complete their training? What will happen if they flunk? What will happen if they are Barry Urban and say they have done it but they have not? The explanatory memorandum states in part —

> The Bill provides a head of power for, if required in the future,

Has the government not worked out whether it needs it? It continues —

> regulations to introduce a penalty if a council member fails to complete the prescribed training.

How many what-ifs and causes for concern are contained in that one sentence? There are heaps.

I warn government members that they are creating pitfalls for others who, in most cases, are trying to do the right thing by participating in civic affairs. I guarantee that we will be back in this space again because of the unforeseen, unhappy circumstances that will arise as a result of these further provisions, just the way they have arisen as a result of the existing flawed provisions. We cannot say they are 100 per cent unforeseen because I am telling the house that that is exactly what will happen. Surely to goodness, no member here does not know in their heart of hearts, intuitively, that what I am saying is true and it will come to pass. That is why the local government sector in government needs to rethink the thought processes behind what they persist in doing in providing unnecessarily prescriptive regulation.

Having said that, we will support the bill and on the government's head be it.

HON ROBIN CHAPPLE (Mining and Pastoral) [11.54 am]: The moment this Local Government Legislation Amendment Bill was introduced or talked about, we all started receiving a plethora of commentary from the public and people opposed to local government.

The ACTING PRESIDENT: Are you the lead speaker for the Greens?

Hon ROBIN CHAPPLE: Yes, I am, unfortunately!

We have seen the plethora of emails and the commentary made for and against local government, for and against CEOs and for and against the government in its involvement in local government. Unfortunately, most of the emails we received were directed at matters beyond the scope of this legislation.

It sort of brings me great pleasure to speak on this bill. Many members of this house and in the other place have served in local government. It has often been seen as a pathway to entry into Parliament. It is therefore no surprise that there is great interest in this bill and many thoughtful contributions have been made.

Our view of local government as a third tier of government is that it is a place where grassroots democracy should thrive. Local government is the closest tier of government to the people. In many ways, it has the most visible impact on our neighbourhoods and day-to-day lives. I am reminded of the book *If Mayors Ruled the World* by American author Benjamin Barber, which makes the argument that as the United States grapples and argues with issues and faces partisan deadlock in Congress, mayors and cities are creating meaningful change and leading the way on serious issues such as climate change. We see that within the Western Australian Local Government Association and the national Australian body representing local government. They are quite innovative and forward moving.

A similar argument can be made for WA and Australia generally. Although our system is focused on councils rather than the mayor, there is incredible potential for change and reform at the local government level. The Greens welcome this government's interest in making changes to the way local government works, both in the much anticipated Local Government Act review, the bill before us and, indeed, now the select committee that will look into local government.

This bill provides both small-scale improvements and amendments to governance as well as larger, more meaningful reform, particularly in the sphere of integrity and accountability. Perhaps the most crucial change this legislation will bring is the reform concerning gifts and associated integrity measures, something we would like to see taken up by the other political spheres of state and federal government. The Greens have always been strong supporters of transparency around donations of gifts. I note with some irony that if the same integrity measures

proposed for local government were applied to Parliament generally, there would be huge steps forward for transparency and democracy in WA.

Another area I wish to discuss is that of CEO recruitment and standards. As noted in *The Sunday Times* of 12 May, some shires and councils have experienced immense difficulty working with their CEOs. It is absolutely critical that the role of local government CEOs is well defined and measured so that the will of councils and therefore local people reigns.

At this time, I would like to thank some people who have been involved in the process, firstly, for the briefings we have had on the bill: Sheryl Siekierka, Luke Tyrone Stephens, Darrelle Merritt, Tarnya Widdicombe and Julian Hilton. External to the briefings, I am thankful for the conversations I have had with Gary Hamley and Minister Templeman. I believe that this bill addresses some of the problems affecting councils in Western Australia. Although I welcome the reforms, I certainly wish to see the roles of CEOs examined more closely in the review of the Local Government Act. I hope that the new select committee will look at some of those issues as well. The draft regulations provided for comment so far have indicated a partial improvement in the standards required for CEOs as well as the process for hiring and firing. However, a complete overhaul should be undertaken as part of the Local Government Act review.

I will briefly touch on the role of recruitment agencies, not necessarily within this sphere. In the sphere of recruitment of CEOs in other areas, such as Aboriginal communities, their due diligence has been quite appalling. It is all well and good to have a process in place, but if the recruitment agencies are not doing proper due diligence in the first place, we have another problem.

I want to thank Minister Templeman for being open to working with us on this bill—in particular, the amendments now proposed by the minister regarding the category of senior employees. We had some amendments drafted and I took them to the minister, who said, "Well, let us deal with them." Some amendments are before us. In the same way as Hon Donna Faragher raised her concerns, some amendments have been put forward by the government that reflect our views and, indeed, Hon Donna Faragher's interests about the advertising aspects of the amendments.

In relation to our concerns about the powers of hiring and firing by senior CEOs, these amendments seek to address concerns in the community and place further checks and balances on the process, and retain elected-member oversight of certain crucial human resource decisions.

On the subject of universal training for council members and candidates, I believe that the "Summary of Course Outline" document provided to us by the department reflects an attempt to create universal basic standards of which we are supportive. Any mandatory testing or training that creates barriers to involvement in the democratic process should be avoided. When we are putting these training programs in place, I urge members to be mindful of the fact that the demography of local government is wide and comprises many people of many different ethnic backgrounds. The proposed training course is simple. It is designed in a way that will bring councillors up to speed with basic governance in their role. The balance, in my view, has been maintained between democratic participation and the basic standards that are easily acquirable.

Other parts of this legislation are, of course, more mundane, but nonetheless important. Standardisation of identification, mandatory online storage of public information and other such measures may not attract headlines or get members' hearts racing, but they are part and parcel of increasing the accessibility and transparency of local government to residents and ratepayers.

The Greens will be supporting this legislation and we look forward to working with both the government and the community on further reforms to local governance in Western Australia. That in essence is my contribution. We will be supporting the legislation and I would like to thank, at a certain level, the many towns and councils that have written to us in support of the legislation.

HON RICK MAZZA (Agricultural) [12.04 pm]: I rise to make a few comments on the Local Government Legislation Amendment Bill 2019. I will state from the outset that I will not be opposing the bill. I want to make a few comments on it, though. The bill basically looks at universal training for candidates and councillors, a mandatory code of practice for standards of behaviour, CEO recruitment and performance management, declaration of gifts, public notices, and access to information and administrative effectiveness. I can understand the reasoning behind wanting to have an induction method for people who want to be candidates for council, but I think we also have to be a little bit careful that we do not start putting barriers in the democratic process. People with a passion for their community who wish to join a council might find that it becomes a bit too difficult for them or they are scared off by the modules or inductions that they find on the internet. Therefore, we have to be mindful that we do not discourage people who could turn out to be good councillors from joining a council in the first place. In this place, we do not have an induction before we come in, and often a lot of what we learn over time is through osmosis. Trying to pick up procedures and different things within the Parliament takes time. We can read the standing orders as many times as we like, but until we are actually in this place and experiencing it,

we do not tend to pick up those things and learn how they go. After six years in this place, I am still learning new things every day. We have to be mindful that we do not create barriers for people getting on to a council.

In regard to a mandatory code of practice for standards and behaviour, again, most people go on to councils with good intentions of doing the right thing for their community; they have a passion for their community. As to a standard of practice and behaviour, if someone has an issue surrounding their behaviour, maybe a code of practice will not stop them from conducting themselves in a way that others find offensive or not in the best interests of the council. CEO recruitment and performance management is an interesting one. My understanding is that there is no formal qualification that a person requires to be a CEO. Maybe the government could look at that in a full review of the act. I would think that the position of CEO of a council, particularly a large council, would be very complex. The CEO would have to be across many acts, building codes and all sorts of things within the council. It would take a fair bit of expertise to undertake those duties. Whether a person should have some formal training to make sure that they can carry out those duties properly before they actually qualify to be a CEO might be something that the government could look at in a full review of the act. Regarding the declaration of gifts, we have seen some issues around the Perth city council with gifts and those declarations. I do not have any issues with what is proposed in this bill, whereby gifts are declared properly, particularly if they are over a certain amount, and with the prohibition on councillors voting on issues when a council receives a gift from somebody and then a matter goes before that council.

Apart from those few comments, I am not opposing the bill. I do not see any issue with continued professional development, which many professions have these days; there is ongoing training. As I say, most of the stuff is learnt through osmosis, over time, and people on a council learn things every day. I will be supporting the bill.

HON DR STEVE THOMAS (South West) [12.10 pm]: I will make a few comments on local government reform in this debate on the Local Government Legislation Amendment Bill 2019. I will not hold up the business of the house long. It intrigues me that each tier of government has concerns about every other tier. The question we need to ask at some point in this debate is: do we believe in the three tiers of government? I agree with Hon Simon O'Brien that greater reform is needed. I think the government has said through the process that it is interested in more significant reform and a full review of the Local Government Act. I think that is required and is very important. The first thing that happens with all tiers of government is that they jump in and blame each other. When something goes wrong, we are all keen to make sure that everybody realises there is a problem in a different tier. We are very good at holding everybody else to account to standards to which we do not necessarily want to hold ourselves. Part of the problem goes back to the genuine structure of federalism and the three tiers of government. It is probably far too big an issue to debate before the house in one debate. I am interested to see how the committee, which will be chaired by Hon Simon O'Brien, will deal with the issue of the relativity of three tiers of government and how much independence each should be granted.

I was particularly intrigued by the debate a few years ago in which there was a push for recognition of local government in the federal Constitution as opposed to it being a responsibility of the state. I understand the distress of states that were opposed to that process, because it would have empowered local government and granted it a genuine standing as a third tier of government. Of course, states had some degree of concern about that. There was quite a frantic backlash to it. Obviously, some people believe that three tiers of government is actually two tiers, and a bit, of government. Local government thinks that that bit is a third tier of government. Unfortunately for governance in Australia, we have not clearly defined exactly where those boundaries should be and where they need to be established. We see this jump-over all the time. The genuine roles of the three tiers of government is ultimately something for the government's review in the longer term.

The commonwealth jumps over that all the time. There is a long history of the commonwealth government interceding in places that were not designed for that to occur. Corporations law effectively allows the commonwealth to make laws in relation to anything that involves a corporation and which immediately override a lot of the powers of the state. There was some conflict and resentment over that, but we have all now adopted and accepted that. We jump over the boundaries.

In my view, local government is jumping into a lot of roles and positions that local government should not be in. It was mentioned during debate yesterday on setting up the committee that many local governments in regional areas invest significant amounts of their revenue to maintain services in a town. That is not the role of local government. I get the argument that local government is the last bastion and that, to keep a doctor in town, it must therefore invest half a million dollars out of a $2 million budget. However, I think this is a case local government is stepping out of its boundaries. If it steps out of its boundaries once, it can step out of its boundaries for almost anything. Members who have been around for a while and who have observed local government might remember a local government that purchased a hotel because the last hotel in the town was going to disappear. Purchasing a hotel to ensure a social service—not just the provision of alcohol, but a meeting place—is ultimately not local government playing the role it should be playing. To be honest, that is a far bigger issue than the issue that this bill

seeks to address. I get that this bill is a small stepping stone for the government. It is a vexed area that the government has taken on in reforming local government.

I look forward to the day when we debate legislation that more fully defines the role of local government. One question concerns the areas of planning in which local government should be involved. I think local government should be removed from some areas of planning, and that planning should be done on a regional basis. I do not think it is always in the best interests of the wider community to have competitive local governments all trying to build the same thing. We saw that in the south west with recreation centres. We are currently seeing it with cultural centres, which are the new "in thing". Every town has to have a cultural centre that is slightly bigger and flasher than the centre in the town down the road, because we are all in competition for cultural centre dollars. Those sorts of processes are not an example of good local government. At some stage the state government, and Parliament ultimately, will have to work out how it can prevent those things from happening. In many cases, it will be a matter of the state stepping up and taking on the role that states should do, which is more of the role of regional planning and regional governance. I was a supporter of the development assessment panel process because I think it was intended to do some of that. It has been argued that it is not always done successfully and sometimes results in outcomes that some people do not like. However, it was a step under a former Minister for Planning, John Day, that was a good investment in an attempt to try to solve some of those issues. Some of those matters need to be readdressed. I hope the government, in the process of the full review of the Local Government Act, will address precisely what local government should, and to some degree should not, be doing.

As I walk around the south west I watch local governments involving themselves in a range of populist issues. A good example in the south west is shires introducing dam policies. As the local government, they have the responsibility to look after the community. Despite it being the job of the Department of Water and Environmental Regulation—the old Waters and Rivers Commission—to manage catchments, councils are running around putting in dam policies. People now have to apply to their council as well as the Department of Water and Environmental Regulation to put in a dam. I do not think that is a healthy process, if for no other reason than not many catchments are contained entirely within one local government. I am talking about local governments outside the north west, where local governments are massive. Catchments in the south west are rarely contained in one local government area, but individual local governments are making regulations and by-laws for things that, in my view, they should have no capacity to do. Redefining that is probably the most important role.

It is easy for us. I understand that, now and again, when things looks difficult, state governments of all persuasions take out the big stick and whack local government because it is a nice diversion, in the same way that the commonwealth government takes out the big stick and likes to whack state governments over things that are not the purview of the commonwealth government; for example, on whether we invest in coal-fired power stations. It is states, not the commonwealth, that deliver power. It is a very common process to have a crack at another tier of government. It is quite useful. I often say to my local councils in the south west that, as much as I am supporting them, to be honest there are probably more votes for me in taking out the big stick and whacking them like everybody else.

The reality is that there is a disjoint between the three tiers of government and the roles they each perform. The most important task ultimately for legislators, particularly at a state level, is to define what those roles are and, I suspect in the end, to limit the powers of the tiers of government to the roles they are required to perform. Outside of that we have massive debates about the conflict between the tiers of government. I would never object to a person in any tier of government holding an opinion, but when one is a decision-maker, that changes the system. There should not be multiple approvals across tiers of government, when a tier of government should not be involving itself in that process. This is not a criticism of just local government. In my view, the commonwealth government's Environment Protection and Biodiversity Conservation Act was enacted to get some environmental outcomes that were highly political at the time. It allows the commonwealth government to be the decision-maker of what are effectively land-management decisions. Land management is vested with the states under the Constitution, but we get that crossover between the various tiers of government because they can. No-one has stood up and said, "Hang on a minute: these are the roles we expect you to take."

I am not suggesting that we take local government all the way back to roads, rates and rubbish and nothing else, because I do not think that can apply anymore. However, local governments are currently involving themselves in a great range of things when, in my view, they should not. To me, that is the most important thing that this Parliament could address. Although I am sure the bill before the house will progress in a timely manner and be passed, I am waiting for the greater review, as committed to and promised by the minister, which I hope in the fullness of time will not turn out to be a Sir Humphrey measure, but a measure that is faster than that.

HON COLIN TINCKNELL (South West) [12.19 pm]: I was not going to speak today, but the Local Government Legislation Amendment Bill 2019 is a very important bill. I will make this short. I indicate that Pauline Hanson's One Nation will be supporting the bill.

We have listened to the discussion that has taken place in this chamber. The last speaker, Hon Dr Steve Thomas, made some great sense with his last few comments. Local government undertakes a massive role these days. The Shire of Menzies has only 80-odd ratepayers, whereas the Cities of Joondalup and Wanneroo are massive. However, it has become very difficult over the years for shires, councils and cities to perform their roles at a standard level. Many problems have arisen. We have seen problems arise in city councils, such as the City of Perth, and the discussions that have taken place around that. In many cases, we only get to see or read about the problems; we do not see the great work that the bulk of shires and councils perform all around the state. Most of that is done very quietly and they go about their job very well; however, in most cases they lack funds and resources and, as Hon Dr Steve Thomas mentioned, they sometimes become sidetracked by matters that possibly should be more in the realm of the federal government.

In short, I want to let members know that we are very happy that there will be a select committee to look further into this bill, and we are also very happy that the government is doing a review. Pauline Hanson's One Nation will be supporting this bill.

HON SUE ELLERY (South Metropolitan — Leader of the House) [12.22 pm] — in reply: I thank members for their contributions to the second reading debate on the Local Government Legislation Amendment Bill 2019. I will endeavour to respond to each of the issues that have been raised in members' contributions, but if I cannot, I am sure we can cover them when we go into Committee of the Whole.

I will begin with Hon Donna Faragher, who first asked what the ramifications will be if councillors do not do the training. Local governments will be required to report annually on who has completed the training, and that report will be available on the local government website. It is the government's view that community and peer pressure, if you like, will ensure that councillors complete their training.

Hon Donna Faragher also asked why penalties for noncompliance will be in the regulations. We are not proposing to put noncompliance penalties into the regulations automatically; we hope that we will not have to and that, in fact, the first series of reports will show that everyone has completed the training. However, that will enable the government to create an offence if it becomes necessary in future to deal with council members who may refuse to complete training. We do not anticipate that that will be the case. The department will have a record of everyone who has completed the training, and there is a penalty for making false or misleading statements on the nomination form.

The member also asked about the relationship between the department and the proposed registered training organisations that will deliver the training course content. The department has developed the content and it will be delivered by independent registered training organisations that have responded to the expression of interest process and have demonstrated capability. I am advised that there are currently three organisations that are qualified: North Metropolitan TAFE, South Metropolitan TAFE and the Western Australian Local Government Association. These will be listed in the regulations as approved trainers, and the department will enter into a memorandum of understanding with each provider. The department will monitor the quality of training and will have the power to remove a provider if necessary. Training organisations will report to the department on completions of the course.

A couple of members asked who would pay for the training. The arrangement is that local governments will pay for council members to complete the foundation units. It is the government's expectation that this will be seen as a sound investment in ensuring that each of those councils will be able to operate properly, because council members will be better equipped for the roles that they need to undertake. Although the precise cost of training is at this stage unknown—and will not be known until the expression of interest process is completed—to draw a comparison, WALGA currently delivers five similar modules and, according to its website, they cost approximately $2 500 to complete. The advice I have makes the point that by undertaking an EOI process and not just automatically appointing one provider, market forces will rule. If it is a competitive process, prices will be reasonable. A couple of members asked a range of questions about training. Every council member will be expected to undertake the training within 12 months of the next local government election after these provisions come into effect.

Hon Donna Faragher asked about the lack of a definition for "senior employee". There is deliberately no definition because all local governments are different and have different organisational structures, which means that there is no one standard organisational chart. Of course, as members will be aware, there is significant variance in the size of local governments and, accordingly, their budgets. For example, major metropolitan local governments may have a number of directors or heads of business units who need to be classified, on their judgement, as senior employees, but that will not be the case for some smaller local governments. That makes it difficult for us to come up with a definition that captures the variance in size between respective local governments. However, that issue will be considered in phase 2 of the reform process; it remains to be seen where that will end up.

Training will be repeated after eight years. Legislation and best practice change over time, so it was deemed appropriate that repeating the training would allow for refreshment of principles and information on any updates on

aspects of local government that may have changed. Courses will be available both online and face-to-face. I take the point made by Hon Martin Aldridge that online learning is not necessarily suitable for everyone. Face-to-face training will include training at the trainers' premises and at the local government, if the local government wishes to organise that for a specific number of attendees. It is proposed that there will be a lot of flexibility in the provision of training.

Hon Martin Aldridge also asked why action against someone for a breach of the code of conduct can be undertaken only after the candidate has been elected, and why we could not have a different method of application. The sanctions available to the standards panel are training, an apology or public censure, and those would make little sense if the person had not gone on to be an elected member. By the time action might be taken, they could be an ordinary member of the public. The honourable member raised an interesting point about the effectiveness of that in the course of an election, but that will be further considered during phase 2 of the review.

There was some discussion about gifts and the difference between local councillors and members of Parliament. Hon Martin Aldridge was quite right when he pointed out that there are differences between members of Parliament who are not members of the executive and councillors, because councillors are, indeed, members of the executive. They make budget decisions, decisions about the appointment of staff and decisions about policy that councils must implement every day. Therefore, there is a fundamental difference between those roles. Of course, the point needs to be made that when MPs become members of the executive, they are subject to another layer of accountability and reporting, and to governance measures that have been put in place around conflicts of interest et cetera.

Hon Martin Aldridge also asked how the Department of Local Government, Sport and Cultural Industries will tell people about training requirements. There will be a range of measures, including circulars, attending zone and other meetings, councillor briefings, media releases, WALGA notifications, information on the department's website, and a media campaign to support and encourage candidates to nominate.

Hon Simon O'Brien raised a number of issues about some core policy issues of the bill and the requirement for any training at all. The first step will be to ensure that everyone has a basic level of understanding of the responsibilities and skills that are needed to be effective and in compliance with all the laws of a councillor. I think the point the honourable member was making is that the code of conduct of itself cannot stop people behaving badly. That is true, but there will be consequences for failing to abide by the code of conduct, and it is seen as only one part of the process that is encompassed by this legislation and potentially future legislation. It is just one part of the mechanisms to ensure a higher standard of conduct in local government. In respect of universal training, if council members fail to pass the training, they will need to redo the relevant unit.

Hon Dr Steve Thomas raised the perennial issue about the three tiers of government. Frankly, on the last day of the sitting, that is too much of an existential issue for me to put my mind to. I am not going to have an existential debate about that.

Hon Donna Faragher: Come on!

Hon SUE ELLERY: No, I do not have the capacity in me, so I am not going to enter into that debate. It is one that is perennial.

Hon Donna Faragher: Disappointing.

Hon SUE ELLERY: I am sorry if I have disappointed members.

Hon Rick Mazza raised a question about whether the measures will result in people being less willing to stand for council. That is certainly not the intention, and it is not our expectation or our hope. This is about ensuring that councillors who make decisions about, for example, the expenditure of many millions of dollars actually have the necessary skills and expertise, and that they know what skills and expertise requirements they need to comply with before being elected. A question was raised about whether the training will be beyond the capacity of some people. Candidates are expected to use the same techniques to understand the training material that they will use when dealing with complex agenda papers and matters for council decision. Some candidates may be deterred by that, but, frankly, if that is the case, they would be going onto council without the capacity to deal with complex issues. There has been feedback that some people are currently reluctant to nominate because they think that they lack the sufficient skills to undertake the role. Those people will be encouraged to nominate in the knowledge that they will get the training and support that they need, but that will be a decision for an individual to make.

Hon Donna Faragher referred to the three ways of providing notice. She will have noted that there is an amendment in my name on the supplementary notice paper that will give effect to that. Members will also note another, I think, three amendments in my name on the supplementary notice paper, which were the result of discussions with the Greens, that will make changes for senior employees. The government proposes to not proceed with those

amendments and to allow the status quo to remain for now, but it will be considered as part of a wider package, and everyone will have their say on what that looks like. With those comments, I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Adele Farina) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 1 put and passed.

Clause 2: Commencement —

Hon DONNA FARAGHER: I have a couple of quick questions on the commencement. I understand, and perhaps the minister might advise the chamber, from the minister in the other place that should this bill pass, which we expect it will, whether further consultation will be required on some of the measures that are required to come into place for the October elections. What are those consultations and what do they relate to?

Hon SUE ELLERY: There is no need for further consultation on the actual conduct of the elections, but there will be further consultation on the code of conduct and the CEO recruitment standards.

Hon DONNA FARAGHER: Whom will that consultation be with?

Hon SUE ELLERY: Consultation papers will be made available to everyone for public comment.

Hon DONNA FARAGHER: My final question is: what is the time frame for the release of that consultation paper and how long will the period of consultation be? I note that nominations are open from the middle of August, so it would be helpful to know the time frame for that consultation.

Hon SUE ELLERY: It is expected they will be released in July and be out for comment for two months. It is not anticipated that this would have a material impact on the conduct of the election.

Hon DONNA FARAGHER: I presume that any matter needing to be consulted upon is perhaps more relevant after the October elections.

Hon SUE ELLERY: For clarification: that is correct.

Clause put and passed.

Clauses 3 and 4 put and passed.

Clause 5: Sections 1.7 and 1.8 replaced —

Hon SUE ELLERY: I move —

> Page 3, lines 11 to 13 — To delete "be given in accordance with the requirements prescribed for the purposes of this section." and substitute —
>
> be —
>
> (a) published on the official website of the local government concerned in accordance with the regulations; and
>
> (b) given in at least 3 of the ways prescribed for the purposes of this section.

The proposed amendment follows negotiations with the opposition. It will introduce into the Local Government Act minimum requirements for public notices rather than just putting them in the regulations. Hon Donna Faragher referred to this in her contribution to the second reading debate. It will amend section 1.7 to specify that all local public notices have to be published on the local government's official website. In addition, local governments must choose three other options, which will be outlined in the regulations. It is proposed that the following additional methods will be listed in the regulations: a notice in a newspaper circulating generally throughout the district; on a state government website, such as the Electoral Commission website for election notices; on a social media platform; published in a newsletter or newsletters available to the majority of residents in the district; exhibited on a noticeboard at every local government office and library within the district; and an electronic mail distribution list. Prescribing those options in the regs will allow for the flexibility of changing technology, and community expectations.

Section 1.8, which sets out the requirement for a statewide public notice, is being amended to specifically include in the act that it is to include the requirement for a local public notice. It had been intended to specify this in the

regs. These amendments will now make it clear in the act what the minimum requirements are, whilst still allowing flexibility for changing methods of communication as time passes.

Hon DONNA FARAGHER: I rise to indicate that the opposition will be supporting the government's proposed amendment. As I indicated during my contribution to the second reading debate, I appreciated the government's confirmation that it would move this amendment. I had some concerns about leaving the requirements to the regulations, because it was not clear. This issue is often raised with me as a local member when constituents believe that they have not been adequately informed by local government on a particular matter. The proposed amendment makes it clearer. I also note that in the debate in the other place the Minister for Local Government, in one instance, referred to "at least three" forms of communication and then said "up to three". Obviously, there are two different ways to look at that. It is now very clear what actually is required by local governments. I indicate that the opposition will support the proposed amendment.

Hon ROBIN CHAPPLE: The Greens will support the proposed amendment. I thank Hon Donna Faragher for literally bringing it to our attention. It is a very valid point. It has been touched on in previous legislation we have dealt with in this place about the ability of the community to become aware of matters before local government. We will be supporting the amendment moved by the Leader of the House.

Amendment put and passed.

Hon SUE ELLERY: My amendment on the supplementary notice paper at 5/5 is consequential to the one we just passed. I move —

Page 3, line 17 — To insert after "in accordance with" —

section 1.7(a) and (b) and

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 6 and 7 put and passed.

Clause 8: Section 3.12 amended —

Hon DONNA FARAGHER: I am presuming that this section is being deleted to effectively remove the cost burden on local councils from having to advertise statewide. I want some clarification on that.

Hon SUE ELLERY: No, and you learn something new every day! There is no longer a newspaper that is delivered statewide. *The West* no longer delivers to the Kimberley, so it is not possible to give effect to that, which I think is shocking.

Hon DONNA FARAGHER: That is not quite what I thought the Leader of the House was going to say. This is a hypothetical question: should there one day be another paper that delivers statewide, would there be a requirement for this to be reinserted into the legislation?

Hon SUE ELLERY: Thanks for the question. I am advised no, because within the regulations there will be the capacity to ensure, if that ever happened, that it could be accommodated. I am advised we would not need to amend the legislation.

Hon RICK MAZZA: That explains why we do not now have the requirement to advertise in what I considered to be a statewide paper, but obviously it is not. Can the Leader of the House define what "local" means?

Hon SUE ELLERY: The honourable member may well have been out of the chamber on urgent parliamentary business; I am not sure. It will be a notice in a newspaper circulated generally throughout the district and published in a newsletter or newsletters available to the majority of residents in a district. There are a range of other methods, but I think those two answer the honourable member's question.

Hon DONNA FARAGHER: I am not trying to be difficult here, but I am keen to understand. I appreciate that it may not be the case now, but we are effectively removing a provision from legislation that is currently in place simply because, at the moment, we do not have a statewide newspaper, except the fact that it does not go to the Kimberley. It seems a funny way to do things—to remove something simply because at this point of time *The West Australian* is not delivered to the Kimberley. I would have thought we would keep the section in. It may well be a hypothetical situation, but we are responding to an operational decision by *The West Australian*. I do not understand why we would not just keep it where it is.

Hon SUE ELLERY: We are proposing, as I said, to list in the regulations a notice in a newspaper circulated generally throughout the district; therefore if, in this case, for example, *The West Australian* or any other newspaper was circulated generally within the Kimberley, that would be picked up in the regulations already.

Clause put and passed.

Clauses 9 to 14 put and passed.

Clause 15: Section 4.48 amended —

Hon DONNA FARAGHER: I am not sure whether this is the right place to ask this question, but if it needs to be referred to another clause, I am happy to do so. This is the proposed amendment relating to the course. I want to ask a couple of questions about the induction course, if I may. Again, some of the information may be prescribed through regulation. If a candidate is not able to complete or undertake the induction online, what are the other mechanisms by which they can complete it?

Hon SUE ELLERY: The options will be that they can go into the local government office or the local government library. The office or library will be able to print out a hard copy for them, and they can complete the induction there.

Hon DONNA FARAGHER: I am presuming that will be specified through the regulations.

Hon SUE ELLERY: I am advised that it will not be in the regulations, but that local governments have committed, I guess, as part of the discussions about how it will operate—they want people to be able to complete the induction—to make their offices or libraries available to ensure that people can do those inductions.

Hon ROBIN CHAPPLE: On the same point, I move out into my electorate, where we have the Shire of West Pilbara, or the Shire of Warburton for that matter, where many people elected to those councils are hundreds, if not thousands of kilometres away, with little or no access either to email or the ability to drive into their local authority, without incredible cost. How will they get the induction?

Hon SUE ELLERY: If they were seeking to be elected, they would need to consider how they would access the council papers, for example, and all the information they will need to be a councillor. They already have to make the commitment themselves that they are going to do that. The process I have outlined is that if they do not have electronic access, they can go into the local government authority or the library. If electronic access is a problem, it will also be a problem for them if they are elected, so they will have to make the commitment to do that.

Hon ROBIN CHAPPLE: By way of explanation, when a person is elected, the council usually goes about the provision of services to enable agendas, notice papers and all the rest of it to be provided, quite often through electronic systems, or whatever, to that individual. In my view, the problem then becomes: how does an individual who seeks to get elected go through this process when their council does not supply those services?

Hon SUE ELLERY: There is no way other than what I have described. They need to make the decision themselves to go into the council office or the library to get a hard copy and complete the induction that way.

Hon ROBIN CHAPPLE: I understand what the minister is saying. I think, in many cases, in relation to places where there are people who do not have the communication methods available to them, whether that be in remote places such as Halls Creek, Warburton or Wiluna, I am beginning to see a bit of an impasse, I am afraid.

Hon SUE ELLERY: Each of the three towns the member just named has those facilities. I appreciate the member may be asking about remote stations or whatever. I understand the point the member is making, but the explanation is that those people are going to have to make a commitment. If they absolutely have no access to electronic information exchange, they will have to go to the local government in the town, which, despite remoteness, all people need to do for a range of reasons. If they are making a decision that they want to run for council, they will have to make the effort to go into the local government office or the library.

Hon DONNA FARAGHER: While I allow Hon Robin Chapple to collect his thoughts and perhaps ask another question, my question is perhaps slightly different. It relates to ensuring that there is an ability—I am assuming that the government is already considering and allowing for this—for anyone who seeks to become a councillor to put their name forward, recognising that there may be some people with a particular disability or barrier that may make it difficult for them to do the course in the standard way. I am keen to understand, from the government, what mechanisms will be put in place to ensure that those people, whom we would like to participate in local government and other government forums, have that opportunity do so. I would not like to see any restriction on their ability to participate.

Hon SUE ELLERY: In preparing the material, the department ensured that Inclusion WA, which the honourable member may well be familiar with, reviewed the induction pack and gave some feedback and suggestions, which were adopted. As part of the operation, for those people who need it, there is, for example, a spoken version. There is a program online where a spoken version of the induction can be given, for those who are visually impaired, for example.

Hon DONNA FARAGHER: Thank you for that. I am pleased that there has already been consultation with relevant agencies that would take a keen interest in this. I appreciate that we can look at this from a wide

perspective, but each individual has their own specific circumstances. If, despite what other measures have been put in place, they still have some challenges with the courses and what is required of them, I am presuming there will be an alternative avenue for them to put forward their concerns about participating in this part of the process. If so, who would they put those concerns to?

Hon SUE ELLERY: It is a good question, and despite the best efforts of many government agencies, thinking they have every element of disability covered, they quite often do not. The catch-all protector, I guess, is that they can contact the department, which will then endeavour to resolve whatever the access issue is.

Clause put and passed.

Sitting suspended from 1.00 to 2.00 pm

Clause 16: Section 4.52 amended —

Hon DONNA FARAGHER: I have a quick question in relation to this. I am seeking to understand why some words in section 4.52 are being deleted. I understand that the government is seeking to require that the profiles be placed on a website. I presume there would still be a requirement for the local government authority to have something available to someone who wanted to come to the local government offices to inspect who the candidates are. I just want a bit of clarity around that.

Hon SUE ELLERY: They are able to print out what is on the website and just give people a hard copy.

Clause put and passed.

Clauses 17 to 19 put and passed.

Clause 20: Section 5.29 amended —

Hon DONNA FARAGHER: I just want to clarify this, and I must admit that I brought it to the attention of the officers when they were behind the Chair so that they could have a quick look at it. We have obviously made some amendments to new section 1.7, through the amendment that was moved earlier. This clause seeks to insert in section 5.29 the words —

> the notice is first given and is to continue in the prescribed way

The clause refers to the deletion of the words relating to section 1.7(1)(a), (b) and (c). I appreciate that section 1.7 will be deleted by this bill and replaced with a new section 1.7, as amended. As a result of that earlier amendment, should we still be referring to this with the words "in the prescribed way" or should we actually be saying "in accordance with section 1.7(a) and (b)"?

Hon SUE ELLERY: I am advised that there is no consequential impact from the amendments that were passed earlier.

Hon DONNA FARAGHER: I am not trying to be difficult here; I just want to make sure that if we need to make an amendment, we do it now. My question is: why?

Hon SUE ELLERY: The effect of the amendment is that the notice is first given and then is to continue in the prescribed way. Notice will not just be given; it is to stay on the relevant website.

Clause put and passed.

Clause 21: Section 5.37 deleted —

Hon SUE ELLERY: Three further amendments appear on the supplementary notice paper in my name. Each of them proposes that we oppose the clause to which they relate; that is, clauses 21, 23 and 25. We are at clause 21 now. Following further negotiations, in particular with the Greens, these amendments to the bill will retain the status quo of senior employees as a class of employee in the Local Government Act. The intention of removing the classification of senior employee from the Local Government Act was to more clearly separate the role of the council from that of the administration. The government has decided not to proceed with that amendment at this time. It will be reconsidered as part of a wider package of reforms to be introduced in the future, which will deal with the relationship between councils and their administration. By opposing the clauses, we are reversing the amendments that appeared in the bill.

Hon ROBIN CHAPPLE: I would like to thank the minister for her explanation. We had started the drafting of amendments to deal with these factors and then, through negotiation with the minister and Mr Gary Hamley, we came to the conclusion that it was better that the government actually draft the amendments. Having said that, I am interested in what the minister has said in terms of "at this time". I think the role of local government managers, as an entity, needs to be pulled clearly into line. We have to remember that local government, as the elected body, is the spokespeople for the people and should have some oversight of what goes on in the administration of its council. They cannot be separated out. Local government–elected members are defined by the community to reflect its will and direction. Although I quite clearly understand that administration should be managed at an administrative

level, certainly the appointment or dismissal of senior officers is, in my view, the purview of elected members. Although the minister has indicated that it might be revisited at some stage in the future, I hope that it will not be.

Hon DONNA FARAGHER: I indicate that the opposition—it is a funny one—will not oppose the position that has been put by the government. What I would say in response to Hon Robin Chapple's comments that this not be revisited is that I suggest it will be revisited by the government. From what I understand, the reason it has been removed is simply to expedite the passage of this legislation, and that it will come forward again. Given the fact that it was raised in a number of submissions and there is a diversity of views on this issue—there is no doubt about that—I expect that we will see this brought forward again for debate. The government has chosen to do this. We will not stand in the way.

Clause put and negatived.

Clause 22 put and passed.

Clause 23: Section 5.39 amended —

Hon SUE ELLERY: I draw to the attention of the chamber that this is the second of the three clauses that I propose to oppose, for the reasons I outlined when we were dealing with clause 21.

Clause put and negatived.

Clause 24: Sections 5.39A to 5.39C inserted —

Hon DONNA FARAGHER: I have a couple of questions about this clause. My first question is on the model standards. Am I correct in understanding that an expert panel will be formed to provide recommendations on these standards; and, if so, can the minister provide some more detail?

Hon SUE ELLERY: The Department of Local Government, Sport and Cultural Industries will develop the standards but will seek input from an expert panel comprising representatives from the Public Sector Commission, the Ombudsman's office, the Western Australian Local Government Association, and Local Government Professionals Australia WA.

Hon DONNA FARAGHER: Is this part of the body of work that will also be put out for public consultation?

Hon SUE ELLERY: Yes, that is correct.

Hon DONNA FARAGHER: Moving on to another matter, proposed section 5.39B(4) states —

> A local government may include in the adopted standards provisions that are in addition to the model standards, but any additional provisions are of no effect to the extent that they are inconsistent with the model standards.

My question centres around the term "inconsistent". How will that be determined?

Hon SUE ELLERY: If it is raised with the department, the department will provide advice about whether, in the department's view, they are inconsistent. If the department's view is that they are inconsistent, the local government authority will be asked to remove them. The judgement will rest with the advice of the department.

Hon DONNA FARAGHER: If the local government authority chooses not to remove them despite the advice of the department, what is the course of action then?

Hon SUE ELLERY: The director general of the department can issue a direction—I think it is called a directions notice—that the relevant local government authority remove it.

Hon DONNA FARAGHER: I want to be clear. When a direction is given by the director general, is that an absolute requirement that the local government authority is to remove it?

Hon SUE ELLERY: Yes.

Hon DONNA FARAGHER: I move to proposed section 5.39B(7). I want to clarify why this proposed section uses different wording. Proposed section 5.39A(1) states —

> Regulations must prescribe model standards …

Later on, proposed section 5.39B(7) states —

> Regulations may provide for …

I would have thought that matters surrounding the monitoring of compliance and contraventions are important. Why does proposed section 5.39B(7) not contain the word "must" or "shall"?

Hon SUE ELLERY: The member is comparing proposed section 5.39B(7) with proposed section 5.39A, is she not?

Hon DONNA FARAGHER: Yes, I am. Proposed section 5.39A(1) reads —

> Regulations must prescribe model standards …

If we then go to proposed section 5.39B(7) on page 11, the words are "Regulations may provide for". Obviously, additional things are anticipated.

Hon SUE ELLERY: At this point, we do not anticipate that any regulations will be drafted to take account of that. The department is hopeful that regulations will not be needed at all, but wants to retain the power to have them if they are required. It is not unlike the response I gave to the issue of training, which was raised by the member—regulations are not proposed, nor are they anticipated to be required, but the head of power is there in the event that something emerges that does require a response.

Hon DONNA FARAGHER: Would these regulations that "may provide for" fall under the responsibility of the department rather than the local government authority?

Hon SUE ELLERY: Yes.

Hon ROBIN CHAPPLE: I wish to go back to proposed section 5.39A, "Model standards for CEO recruitment, performance and termination". One assumes that we have established those standards. In the recruitment of a CEO, does this limit the people who can employ a CEO? Currently, CEOs are recommended by WALGA to local government, with some fairly strict limitations, and then there are other councils that elect their own CEOs through a process. These model standards will be going out to councils and different organisations that may be involved with the recruitment. Is there a one-stop shop for this, or is it going to be up to a council—say, the Derby–West Kimberley council—to go through a process of selecting its own CEO?

Hon SUE ELLERY: Best practice policy standards and procedures covering CEO recruitment and selection would include requirements to address job requirements, set out the selection criteria, advertise, have an independent person on the selection panel and use due diligence. These are to be adopted by local governments as a minimum standard. Councils will still be able to delegate the recruitment of a CEO to a subcommittee of council, which is what the member referred to. However, the full council will need to be involved in the commencement of recruitment, including a review of the job description form, selection criteria and responsibilities of the position; the review of the employment contract; and the endorsement of the final appointment.

Clause put and passed.

Clause 25: Section 5.41 amended —

Hon SUE ELLERY: This is the third amendment appearing on the supplementary notice paper in my name that proposes to oppose the clause. It has the effect of preserving the status quo of the CEO. The proposition is that we oppose the clause.

Clause put and negatived.

Clauses 26 and 27 put and passed.

Clause 28: Section 5.51A inserted —

Hon DONNA FARAGHER: My questions are on the matters surrounding the code of conduct for employees. I note that under this proposed section, the CEO must prepare and implement a code of conduct. Further down, proposed section 5.51A(4) states —

> Regulations may prescribe the content of, and other matters in relation to, codes of conduct under this section.

I am not necessarily advocating for it; I just want to get an understanding. The earlier proposed section dealing with CEOs stated that the regulations "must" prescribe the model standards; however, in this proposed section, it states that the regulations "may" prescribe the content. I am seeking some clarity. Given that it states that the regulations "may prescribe the content", why does the bill not simply require regulations to prescribe the information and allow the local government to amend it, as long as it is consistent, similar to the proposed sections we have already dealt with?

Hon SUE ELLERY: In this sense, similar to my previous answer, it is more about the power to make a regulation. The "may" relates to the power to make the regulation rather than the content of the regulation, if the member understands what I mean. It is a head of power saying, "We may make regulations about this", and the "may" applies to the capacity to make the regulation, not the content of the regulation.

Hon DONNA FARAGHER: Can I also clarify that given the responsibility will now be left with the CEO to prepare and implement it, is it anticipated that there will be any advice provided by the department for the preparation of

these codes of conduct and whether there would be any involvement of the Public Sector Commissioner or any other relevant bodies?

Hon SUE ELLERY: The existing regulations about gifts and declarations of interest will transfer over and the department will do some more work to align them with the standards that apply in the public sector. Yes, there will be discussions with the Public Sector Commission as a part of that.

Clause put and passed.

Clauses 29 to 31 put and passed.

Clause 32: Section 5.62 amended —

Hon DONNA FARAGHER: For ease of the minister, I refer to page 16, proposed subsection (1B). I do not know whether we deal with it here or when we get to proposed section 5.90A(1), which is referred to, but I do want clarification. Proposed subsection (1B) is referring to a new section that relates to attendance at events. I want to get an understanding about a city event such as a mayoral dinner, for example. Will a mayoral dinner or an event that involves a collection of councils that have come together for a particular event be an excluded gift for the purposes of this proposed section—that is, if the CEO or the mayor attends?

Hon SUE ELLERY: If the invitation is to the local government authority to send, for example, representatives of that local government authority to an event, that would be excluded. If the invitation was to the Mayor and the CEO of the City of Bayswater, that would not be excluded. It is when the local government makes the decision itself who will represent it that it is excluded, because council is making that decision. If it is an invitation to a person, personally as the mayor, and they make the decision about whether they accept it, that is counted as a gift.

Hon DONNA FARAGHER: In that instance, would the latter, if I can put it that way, then be subject to the conflict of interest provisions?

Hon SUE ELLERY: Yes, it would.

Hon DONNA FARAGHER: They would still need to register that?

Hon SUE ELLERY: Yes.

Hon DONNA FARAGHER: I want some clarity around that. I understand the minister's reasoning and how she has put it, and perhaps this is a different perspective on things, but the reality is that an event that the CEO has been invited to, in that capacity, might involve a variety of councils, and councils talk to one another. Take the Eastern Metropolitan Regional Council, which is a collection of councils that often share common interests. It will have events and activities that attending, we expect, would be part of a mayor or CEO's normal day-to-day role. I am trying to get some clarity around why that would be seen as a gift, when in actual fact, it probably would be part of their daily role.

Hon SUE ELLERY: The approach that has been taken is to avoid any confusion in an area that can be easily open to confusion. The cleanest, neatest way is to say that if council makes the decision about who attends, there is no perceived conflict of interest, no need to register and no need to treat it as a gift for the purposes of those provisions. If an individual has to make a judgement, the bill errs on the side of caution to treat it as a gift.

Hon DONNA FARAGHER: I presume a council will not waste its time every time it has an invitation, but that there would be a process that a council would adopt at some point that would be dealt with throughout the term of office.

Hon SUE ELLERY: Good practice would have the council set a policy, which is more efficient for decision-making, and not have to make individual decisions; it is cleaner and neater for everybody else. Proposed section 5.90A references a policy for attendance at events and what it should include. It states —

> A local government must prepare and adopt a policy that deals with matters relating to the attendance of council members … at events …

Clause put and passed.

Clauses 33 to 35 put and passed.

Clause 36: Sections 5.71A and 5.71B inserted —

Hon DONNA FARAGHER: Again for ease of the minister, I refer to page 20 and proposed section 5.71B(2), which states —

> The council may allow the CEO to provide the advice or report to which a disclosure under section 5.71A(1) relates if —
>
> …

(b) the council decides that the nature of the interest disclosed is unlikely to influence the CEO in the provision of the advice or report.

Can the minister give me a couple of examples of a situation in which they would probably determine that it is not relevant?

Hon SUE ELLERY: That is a good question and I will see whether I can. The combination of circumstances could be that members of the council and the CEO had attended the Eastern Metropolitan Regional Council dinner or an event hosted by it, and then council may be making a decision about whether to continue its membership of the Eastern Metropolitan Regional Council or whether to continue participating in joint rubbish recycling or whatever. I am trying to think of what went on during my visits to the Eastern Metropolitan Regional Council, which was a long time ago. It is that kind of event. When there has been an attendance and a subsequent decision is made, in those circumstances, the council will decide that the CEO's attendance at the dinner is unlikely to influence whether the council stays a member of the regional council—unless it was a really, really good dinner!

Clause put and passed.

Clauses 37 to 40 put and passed.

Clause 41: Part 5 Division 6 Subdivision 2A inserted —

Hon DONNA FARAGHER: My question is about proposed section 5.87C, "Provisions about disclosure". Proposed subsection (2) states —

The disclosure must be made within 10 days after receipt of the gift.

Is that the current time frame for disclosure?

Hon SUE ELLERY: Yes, it is.

Clause put and passed.

Clauses 42 to 46 put and passed.

Clause 47: Part 5 Division 6A inserted —

Hon ROBIN CHAPPLE: Proposed section 5.90A, "Policy for attendance at events", states —

(1) In this section —

event includes the following —

…

(e) an occasion of a kind prescribed for the purposes of this definition.

One would assume that that will be by regulation or some other process. What process will that be, and what might those kinds of prescribed events be? I am mindful that a member of a local government was previously not allowed to speak because they were a member of the Australian Conservation Foundation and were seen to have an interest in conservation. It was very bizarre, but it was raised with the former minister and he resolved the issue. How is "an occasion of a kind prescribed for the purposes of this definition" defined? Is it by regulation? What types of things may or may not be caught by proposed paragraph (e)?

Hon SUE ELLERY: The word "prescribed" refers to regulation. An event is defined, for the purpose of this definition, by proposed paragraphs (a) through (d). Proposed paragraph (e) refers to an occasion of that kind; that is, it is similar to a conference, concert, function or sporting event.

Hon ROBIN CHAPPLE: I am sorry that I am picking on the environment here, but would a person attending an ACF conference in Sydney be caught by this? The word "conference" is very broad.

Hon SUE ELLERY: The council is required to have a policy that sets out the kind of events that council members might be expected to attend and whether the council will pay the conference fee. The policy established by the council will set out those provisions, so there should be no confusion for the person the member is talking about. Going into the conference, they should know where the conference and the registration fees sit within the policy of the council.

Hon ROBIN CHAPPLE: Is there nothing in that that would preclude attendance at conferences of various types?

Hon SUE ELLERY: It is not envisaged that it would be about saying that a councillor cannot attend conference X. Individuals can attend any conference they want. The policy will be about who will pay for it if a councillor attends. That will be set out in the provisions of the policy.

Clause put and passed.

Clauses 48 to 52 put and passed.

Clause 53: Sections 5.103 and 5.104 replaced —

Hon DONNA FARAGHER: This provision deals with model codes of conduct for council members, committee members and candidates, and the adoption of the model code. I seek some clarification from the minister on whether these areas will be subject to the consultation that will commence in July.

Hon SUE ELLERY: Yes.

Hon DONNA FARAGHER: When are they expected to come into operation?

Hon SUE ELLERY: There is not a specific date, but it is anticipated that it will be in early 2020.

Hon ROBIN CHAPPLE: We are aware that some members of councils are currently sent for retraining to the gulag of the Western Australian Local Government Association to be counselled about matters they raise on Facebook that are not derogatory but are in opposition to the position of the council. When a member disagrees with a council decision, to what extent will these regulations inhibit them from making public comment about that?

Hon SUE ELLERY: Proposed section 5.103(2)(c) states that the model code of conduct must include provisions specified to be rules of conduct. Rules of conduct cover disclosure of confidential information, securing a personal advantage or disadvantaging others, misuse of local government resources, being involved in the administration of a local government without authorisation from the council or the CEO, directing a local government employee to carry out a task or using a threat or a promise of a reward to influence them, failure to disclose an impartiality interest, failure to declare a gift if the donor has a matter before council, or breaching the local government meeting procedures local law. If the example that the member has given could fit within those—for instance, the social media post was an inappropriate use of local government resources, which is one of the things that could be in the rules of conduct—it could theoretically be captured. The rules are less about what a person says and more about use or misuse. The most personal it gets is securing a personal advantage or disadvantaging others.

Clause put and passed.

Clause 54 put and passed.

Clause 55: Section 5.107 amended —

Hon DONNA FARAGHER: This clause deletes "2 years" and inserts "6 months". How was the six months figure arrived at?

Hon SUE ELLERY: The history of complaints was looked at, and historically only eight per cent of complaints had been made after six months, which is why that figure was picked.

Clause put and passed.

Clauses 56 and 57 put and passed.

Clause 58: Section 5.110 amended —

Hon DONNA FARAGHER: I refer to subclause (3)(c) on page 35 of the bill, which states —

> after paragraph (b)(iii) insert:
>
> (iv) the person against whom the complaint was made pay to the local government specified in the order an amount equal to the amount of remuneration and allowances payable by the local government in relation to the complaint under Schedule 5.1 clause 9;

Is that the current practice?

Hon SUE ELLERY: Currently the ratepayers pay it, so the council pays it. This is a new provision that will allow a council to recoup funds from the person who has actually committed the breach.

Hon DONNA FARAGHER: Was this matter subject to the phase 1 consultations; and, if so, what was the general response?

Hon SUE ELLERY: Yes, it was subject to the consultation. I do not have a statistic in terms of 57 per cent or whatever, but it was generally supported.

Hon DONNA FARAGHER: I refer to subclause (4) on page 36 of the bill. Subclause (4) inserts new subsection (8), which states —

> Regulations may provide for or regulate matters relating to mediation …

I reckon I know where the minister is going to go with this one as well, but I am interested to know why the word used is "may" and not "shall". I say that because when we are dealing with mediation, we are dealing with quite a formal process, and if a requirement has been set out within the act about how this should be dealt with, I am interested to know why the regulations "may" and not "must" provide information with regard to the appointment of mediators and the process, procedures and the like. I am keen to understand that because I think this is actually a formal process that should be clear.

Hon SUE ELLERY: It is the same use of the word "may"—that is, may applies to: we may make a regulation about this. It is anticipated that the Local Government Standards Panel will establish its own policy and if it becomes apparent that it is necessary to codify that in the regulations, this is the head of power that will enable that to happen. If we were to rewrite it to have the same effect, it would say: we may make regulations about X. It is about the power to make the regulation; it does not specify the content of the regulation.

Hon DONNA FARAGHER: I appreciate what the minister is saying. Perhaps I was not aware of what the process would be. The minister mentioned the Local Government Standards Panel and it no doubt already has a policy in place. Does the standards panel already have a policy in place?

Hon SUE ELLERY: Mediation is not currently available, so this is a new provision that will be available.

Hon DONNA FARAGHER: On that basis, given it is something new, I find it interesting that through this process we would not be providing concrete advice, effectively, to the standards panel on general issues regarding the appointment of mediators, procedures and the like. I remain of the view that something like this is important and, notwithstanding that the standards panel may well put forward a very good policy, I would have thought the parameters would be set in the first instance by the state, with the ability to have some flexibility, and that could be dealt with by the regulations. Why is the state effectively not setting the policy and the directions?

Hon SUE ELLERY: The standards panel is its own body—at arm's length from government may be the way to describe it. The chair is a nominee of the department, so the department is intimately involved in the standards panel and is not removed from the consideration of the standards panel. There is engagement to that extent.

Hon DONNA FARAGHER: I suppose to round this off, these regulations are here simply to give the government of the day the ability to step in if it does not feel that the standards panel is actually doing the right thing with policy in and around this area. I am speaking in general terms, but I think that is the upshot of where we are at.

Hon SUE ELLERY: It is a slight variation on it. If the standards panel feels it needs to be codified because people are challenging what it is saying, this is the head of power that will enable it to be codified in the regulations.

Hon DONNA FARAGHER: I hear that, but if there are complaints back to the department about the standards panel, is there a mechanism for the government of the day to actually do that as well?

Hon SUE ELLERY: Yes.

Clause put and passed.

Clause 59 put and passed.

Clause 60: Section 5.120 replaced —

Hon ROBIN CHAPPLE: The new section 5.120 inserted by clause 60 states —

> (1) The CEO may designate an employee of the local government to be its complaints officer.
>
> (2) If an employee is not designated under subsection (1), the CEO is the local government's complaints officer.

I think all of us have received lots of emails with complaints about chief executive officers. I think the new section 5.120(1) should state that the CEO "must" designate an employee of the local government to be its complaints officer. I am pretty concerned about that, unless I can get a very, very good explanation from the minister.

Hon SUE ELLERY: This new section and this particular complaints element is only about complaints about elected members. This provision does not appoint a general complaints officer to deal with complaints about staff or the CEO; this is only about complaints about elected members.

Hon ROBIN CHAPPLE: That might be even more worrying. We have seen quite clearly in many instances—there are a couple of cases at the moment—that when there is a relationship between the CEO and the mayor, and councillors make complaints about the mayor, then the CEO, if the council does not have a complaints officer, can be implicated in the process. I would have thought that the CEO at one level, because of his or her closeness to the administration of a council and working with councillors, would be the most inappropriate person to be the complaints officer.

Hon SUE ELLERY: I think the honourable member does not perhaps appreciate what this complaints officer does. They are not investigating, determining or making a decision. They are responsible for providing information to the standards panel about the details of the complaint. The CEO receives the complaint of a minor breach. Within 14 days, they must acknowledge the receipt of the complaint in writing, provide a copy of the complaint to the council member and send the complaint to the standards panel with any other relevant information, including details of other breaches. The complaints officer must provide anything else that the standards panel reasonably requests. Essentially, they are the post office to the standards panel. Then the standards panel must provide the

complaints officer with notice of how it deals with each complaint that has been lodged and the complaints officer must record in a register all complaints that result in a sanction.

Clause put and passed.

Clause 61 put and passed.

Clause 62: Section 5.123 amended —

Hon DONNA FARAGHER: This is just a point of clarification. This clause relates to issues surrounding confidentiality. Can I confirm that the changes around the confidentiality aspect are irrespective of whether a matter happens during the campaign period or any time thereafter?

Hon SUE ELLERY: Currently, there is confidentiality for the election period. This provision extends it beyond the election period. The fact that a complaint has been lodged is being used by some complainants to make public statements that imply guilt and tarnish the reputation of the council member. This can encourage poorly evidenced complaints with little or no chance of success because the complainant's goal is achieved through the adverse media exposure. Twenty-two per cent of the complaints lodged in 2017–18 were found by the standards panel to be frivolous, trivial, vexatious, misconceived or without substance, so this is an effort to try to address that.

Clause put and passed.

Clause 63: Section 5.125 amended —

Hon DONNA FARAGHER: Again, this is for confirmation. If there is a breach, it goes on the website. If it is appealed, no breach is found and the decision is reversed, I presume that it would be immediately removed from the website. I want to understand the process for such a situation.

Hon SUE ELLERY: It cannot be lodged in the first instance. It cannot be put on the website until the period within which they have to lodge an appeal with SAT has passed. The scenario that the member is talking about should not arise.

Clause put and passed.

Clause 64: Part 5 Division 10 inserted —

Hon DONNA FARAGHER: Again, I anticipate the answer that the minister will provide, but proposed section 5.126(2) says —

> Regulations may —
>
> (a) prescribe a course of training; and
>
> (b) prescribe the period within which training must be completed; …

I know that the minister has already answered that with regard to proposed paragraph (d) and an offence. But again, given that this bill essentially revolves in large part around training and the requirements that will be placed on others, why is it not regulations "shall" so that everyone is clear about what the requirements are?

Hon SUE ELLERY: It is about the power to make a regulation about those things as opposed to saying that if we are going to make regulations, they must include the following. It is about the power to make the reg in the first place. Regulations will be made in respect of proposed paragraphs (a), (b) and (c).

Hon DONNA FARAGHER: I thank the minister; that was the query. I appreciate that for proposed paragraph (d), we might have different perspectives on "may" versus "shall", but I understood that the government wants proposed paragraph (d) for future reference if required. So that I am clear and for anyone who is to read *Hansard*, there will be regulations to deal with proposed paragraphs (a), (b) and (c).

Hon SUE ELLERY: Correct.

Hon DONNA FARAGHER: I think I missed it in the minister's summing-up; I think she indicated three providers had put forward expressions of interest.

Hon SUE ELLERY: Three have got through the process so far is the best way to describe it.

Hon DONNA FARAGHER: To be clear, I think the minister mentioned two TAFEs and WALGA. I want to be clear on whether that process is now complete. Can councils be in contact with three training providers?

Hon SUE ELLERY: Three providers have been confirmed—North Metropolitan TAFE, South Metropolitan TAFE and the Western Australian Local Government Association. That is not limited in the future. Other providers may well come onboard.

Hon DONNA FARAGHER: Have they gone through the relevant tendering expression-of-interest process, so they are designated as providers?

Hon Sue Ellery: Yes.

Hon DONNA FARAGHER: Will the councils or councillors choose the relevant training provider from which they seek training?

Hon SUE ELLERY: It may well be either. It will depend on the particular circumstances. A particular council might have a policy that says that if a councillor wants it to do all the organisation and set up the whole thing, this is the one that it will go with.

Hon DONNA FARAGHER: I do not have a particular view on this, but, obviously, some matters have been raised about what would happen if the only provider were WALGA. The minister has been able to clarify for us that there are three alternatives. Councils may make the decision themselves that they will go through one particular provider. If they do not, individual councillors could then identify one of these three and/or any others to do the training.

Hon SUE ELLERY: Currently, they can choose from only the three that have been identified. My point about others is that it may well be that at some point in the future additional providers go on the approved provider list, if you like. Right now, councillors can choose between only those three.

Hon ROBIN CHAPPLE: Two questions have arisen from what Hon Donna Faragher has raised. Firstly, if a council has chosen to use one of the TAFEs or WALGA or whatever else, can an individual councillor determine, notwithstanding what the council has said, to get their own level of training at one of the nominated facilities?

Hon SUE ELLERY: It might be more convenient for the member if the council says that it is going with South Metro TAFE and it will do all the paperwork and whatever is associated with it. But it might also be more convenient for the member to go to WALGA. That is his choice to make.

Hon ROBIN CHAPPLE: Following on from that, do the two TAFEs currently do training in this area? I know WALGA does. Are they equipped to do that training at the same level as WALGA; and, if not, would that put them at a disadvantage?

Hon SUE ELLERY: Yes—both have a history of providing training to local government.

Hon ROBIN CHAPPLE: I thank the minister.

Hon DONNA FARAGHER: The minister might have responded to this in the second reading, and I apologise if I have missed it. What is the process if a councillor does not pass one of the foundational training units?

Hon SUE ELLERY: They do it again; and, if they need to do it again, they do it again.

Hon DONNA FARAGHER: They keep on doing it. Okay.

Clause put and passed.

Clauses 65 to 114 put and passed.

Title put and passed.

Report

Bill reported, with amendments, and, by leave, the report adopted.

As to Third Reading — Standing Orders Suspension — Motion

On motion without notice by **Hon Sue Ellery (Leader of the House)**, resolved with an absolute majority —

That so much of standing orders be suspended so as to enable the bill to be read a third time forthwith.

Third Reading

Bill read a third time, on motion by **Hon Sue Ellery (Leader of the House)**, and returned to the Assembly with amendments.