

LOCAL GOVERNMENT AMENDMENT BILL 2023

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Sandra Carr) in the chair; Hon Jackie Jarvis (Minister for Agriculture and Food) in charge of the bill.

Clause 58: Section 5.23A inserted —

Progress was reported after the clause had been partly considered.

Hon MARTIN ALDRIDGE: We were waiting for the minister to reply to my question.

Hon JACKIE JARVIS: Unfortunately, none of us took note of the question, so I ask the member's indulgence to repeat the question.

Hon MARTIN ALDRIDGE: That is assuming I can remember the question! I think we were talking about public participation. Regardless of the ban, if a council were doing a live broadcast either by regulatory requirement or choice, to what extent would the public be able to engage?

Hon JACKIE JARVIS: I thank the member for reminding us of that question. Because there will be a standardised meeting procedure, including question time, it is envisaged that when there is live streaming, the public will be involved in that question time as part of the standardised meeting procedure. It would tie into regulations. There will be discussion with the Western Australian Local Government Association about the implementation, but that is the intent of the live streaming.

Clause put and passed.

Clause 59 put and passed.

Clause 60: Section 5.28 amended —

Hon MARTIN ALDRIDGE: Clause 60 will amend section 5.28 of the act, and will increase the number of signatures required to convene a special electors' meeting from 100 to 300. It also empowers a mayor or president to decide not to hold a special electors' meeting or permit a particular matter and a special electors' meeting if a meeting has already been held on the subject in whole or in part or if a special electors' meeting has already been convened for that purpose. I ask this here because earlier in the course of this debate the minister tabled a comprehensive table showing all the reforms that were consulted on. I was not able to find where this reform formed part of the measures, which I think are grouped into six themes. Where was this matter consulted on? I do not know whether the minister is able to identify that or confirm that it was a matter that arose after the fact.

Hon JACKIE JARVIS: The member is correct that some triggers to this reform occurred after the consultation period. The member may recall that a number of local governments held special electors' meetings on the vaccine mandate. That caused significant disruption to a number of local governments. This proposed reform to increase the number of electors required to call a special electors' meeting from 100 to 300, or five per cent of the number of electors, whichever is less, resulted from that. I believe that during that time there were numerous attempts to call special electors' meetings. This provision will allow a mayor or a president to refuse to hold a second special electors' meeting if the matter raised has already been considered at special electors' meeting within the last 12 months.

Hon MARTIN ALDRIDGE: One of the examples the minister identified was that a number of councils were subject to electors' meetings over the vaccine mandate. Will this provision prevent that from occurring?

Hon JACKIE JARVIS: It will not prevent it from occurring but I guess it will raise the bar a little higher because 300 electors will be required to call a special meeting and special meetings cannot just be called on numerous occasions if the matter has already been dealt with in the previous 12 months. It will lessen the chance that special electors' meetings can be called at the drop of a hat.

Hon MARTIN ALDRIDGE: I note the Western Australian Local Government Association's submission into local government reform, which said —

That WALGA advocate to the Minister for Local Government to amend the *Local Government Act 1995* to provide protections against the misuse of special electors meetings by:

1. prohibiting a matter previously considered being resubmitted;

I think that is part of this clause. And —

2. ensuring that motions to be considered are relevant to Local Government.

Is it fair to say that the second limb of WALGA's request has not been satisfied? As long as the threshold of 300 people is met and the matter has not been considered in the past 12 months, an electors' meeting could be

called on literally anything. I think WALGA was arguing that the matter needed to be relevant to the scope of the local government for it to be subject to an electors' meeting.

Hon JACKIE JARVIS: It was felt that it was too subjective to simply have a regulation that talked about what is relevant. I guess we could say that if 300 electors, or five per cent of the electors, felt that a matter was relevant to them, that makes it relevant. In that regard, the decision was made to just increase the number of electors who can call a special meeting. It was thought to be too subjective to have a determination about what is or what is not relevant to the electors.

Hon MARTIN ALDRIDGE: Another issue I want to talk about at clause 60 is that we will remove the threshold of 100 and insert 300. How many local governments have populations with fewer than 300 people?

Hon JACKIE JARVIS: I am advised that using the measure of 300 people, or five per cent, the threshold of 300 people would apply to local governments with more than 6 000 electors. Ninety-five local governments have fewer than 6 000 electors. In their case, they would use the five per cent measure.

Hon JAMES HAYWARD: Again, this is a very sensible change and I commend the government for taking the lead in bringing this forward. As has been outlined, one of the difficulties in local government is that sometimes people do not like to take no for an answer or they run a campaign by holding electors' meetings. Some people do not realise—those sitting around the table will understand this—that when an electors' meeting is held, it creates legal requirements on the council to do other things. They include having a vote and taking a motion formally to a council meeting. Sometimes these processes can take some time and when a council meeting is not held for perhaps six weeks or whatever, people can become impatient. Some people have tried to run multiple electors' meetings, which can really frustrate the ability of local government to get on with the job. I definitely think there is a demonstrated need for this and it is commendable that this provision is in the bill.

Of course, local governments can run other meetings that do not require those statutory requirements to be met. For instance, any council can have a meeting with a group of ratepayers or a group of interested people within their community. That does not trigger those other actions because they are not done formally. I wonder what the minister has to say about encouraging local governments to continue to talk to communities and use avenues other than these statutory meetings and whether any thought has been given to encouraging local government to go and do that.

Hon JACKIE JARVIS: I note that this clause deals specifically with the idea of holding special council meetings. I point out that we have discussed that the standardised meeting structures that will provide for public question time and there will be a requirement to put community engagement plans in place. There are numerous ways voters can engage with local government. This clause deals specifically with the ability to call a special electors' meeting.

Hon JAMES HAYWARD: Perhaps I will try to make my question a bit clearer. It probably was not clear. This clause will give mayors the ability to refuse to have a meeting. Obviously, that could create some angst in the community. The point I was making is that there are other avenues to consult with these people. What sorts of things could a mayor do if he decided not to have a formal meeting because there had been one already that year? What other bows in his quiver could he use to appease the people in his local community?

Hon JACKIE JARVIS: I am not sure I can answer the member's question. I can tell him that under this provision, a mayor or shire president can refuse to have a special electors' meeting if one has been held on the same issue in the previous 12 months. I am not sure whether I can answer how individual mayors can engage with the public in relation to the bill we are discussing today other than to point out that we will standardise meeting practices and we will require question time to be held at council meetings. I am not sure whether I can take it any further than that.

Hon JAMES HAYWARD: One last thing, if I may. The reason given for putting this provision in the bill is that it will give local governments some control over some of the difficulties they have had, particularly with militant or angry groups that are fired up about particular issues, and we will be giving mayors the ability to refuse their request. What thought has been given to what help the mayors may need for that, given that we will be potentially dealing with pretty motivated and grumpy people and that a mayor has refused to meet with them? Has any thought been given to what sort of support mayors might need to help them get through those kinds of things?

Hon JACKIE JARVIS: The bill does not specifically outline the matter the member was discussing. Obviously, the Western Australian Local Government Association and the department are on hand to provide advice to mayors. It would normally be the remit of the CEO as well to provide advice and support to the mayor on these types of matters.

Hon Dr BRIAN WALKER: The thought occurs to me that if a large group of people, who may be misinformed but who are certainly angry and agitating for change, descend upon a council, what safety provisions are there for the members of that council?

Hon JACKIE JARVIS: Again, this falls outside the scope of the discussion on this bill. I am sure that individual local governments make their own security arrangements.

Clause put and passed.

Clause 61 put and passed.

Clause 62: Part 5 Division 2 Subdivision 5 inserted —

Hon Dr BRIAN WALKER: I do beg your pardon for this delay. The point I bring out here relates to proposed section 5.33A(2)(k)—I have to confess I have actually lost my place after looking, sorry.

Clause put and passed.

Clause 63: Section 5.38 replaced —

Hon MARTIN ALDRIDGE: Here we are simply replacing section 5.38 in the act with this provision titled “Annual review of CEO’s performance”. Can the minister outline to the house the differences between the current provision and the new provision?

Hon JACKIE JARVIS: This proposed section incorporates the new requirements for the performance review of CEO’s within the existing requirements. This amendment will implement a reform proposal to generally require that key performance indicators for local government CEO’s be published. It expands on the current general reference to annual performance reports to the process of preparing a performance report that includes performance criteria, and it also provides for the publication of relevant indicators and results.

Clause put and passed.

Clause 64: Section 5.39AA inserted —

Hon MARTIN ALDRIDGE: This proposed section flows on from the amendments that we just discussed about the way in which the annual review of the CEO’s performance should be undertaken, but with respect to the publication of information relating to the CEO’s performance. The explanatory memorandum is quite helpful in this instance and states that it —

... requires the publication of:

- the CEO’s performance criteria as set out in their contract; and
- any report prepared under the new section 5.38(4) relating to the CEO’s performance; and
- the CEO’s response to any report given under new section 5.38(5) to the statements under section 5.38(4).

I think there was some contention in this area particularly between the association that represents the CEOs—either the LGMA or possibly LGPro—and perhaps the view of other stakeholders. Have we arrived at this concession that allows a CEO to respond to something that is in the report or is it something that was always considered would form part of this provision?

Hon JACKIE JARVIS: It was always intended that this would be part of the reforms. It was important to provide the CEO with a right of reply or an explanation as to why certain KPIs might not have been met. It was pointed out that during COVID, circumstances may have prevented KPIs from being met, so it was always intended that the CEOs would be able to respond. Again, it was always intended that some things may not be published. For example, if the CEO has a KPI about reducing staff numbers due to budget constraints, they could make an application to the department to not include that in the publicly available information.

Hon MARTIN ALDRIDGE: That last point would exercise the power in proposed section 5.39AA(2) —

The Departmental CEO may, if satisfied that it is in the public interest to do so, direct that specified information be excluded from anything published under subsection (1).

The minister just gave an example that I did not quite understand of an instance in which the departmental CEO may think it is in the public interest not to disclose something.

Hon JACKIE JARVIS: It was an example of when one of the KPIs might be around budget cuts that might then lead to staff redundancies and that might be considered quite sensitive if dealing with other staffing matters or perhaps another matter that deals with a different staff member. It applies to KPIs considered to be sensitive to the rest of the employees or any KPI that the CEO feels should not be made public.

Hon MARTIN ALDRIDGE: I am not sure that I necessarily agree. I was thinking of something far more sensitive than that. I would have thought that if there was a difficulty in achieving a KPI because of the budget or because the council is on some cost-cutting agenda that has stripped 20 per cent out of the budget and the CEO has had to sack 200 staff and, therefore, KPIs are not being met, that would be a perfect example of where a CEO would make a statement that would be presented with the review of performance. The question that I have now is that throughout the course of this bill’s consideration, which we are rapidly approaching the end of, there have been plenty of occasions when government has said, “This is something that we do at a state level, so local governments should

be doing too. If it's good enough for us, it's good enough for them." I am just wondering whether the performance criteria for CEOs and reviews against the performance criteria in the public service, maybe under the minister's control, are public, because obviously they are controlling many more staff, much more public money and bigger agencies. I am not sure whether there is transparency around these sorts of things for chief executives in the state public service.

Hon JACKIE JARVIS: I am not sure I can answer the question. I am certainly aware that there is a process of reviewing KPIs for my director general. I am obviously a relatively new minister. I am not sure what is publicly available. I do know there are KPIs for the agency. I am more than happy to take that question on notice. However, we are dealing with this bill. The proposed section lays out what is required for CEOs and so I do not know that this bill mirrors anything that applies to the state government other than the fact that the provision of the bill is there to allow CEOs' KPIs to be publicly available.

Hon MARTIN ALDRIDGE: I thank the minister for the response. I have to make this point in finishing speaking on this clause, which is that the McGowan government is clearly committed to gold-standard transparency—or at least it purports to be. As I said in my second reading contribution, we often need to remind ourselves as legislators and pause and ask ourselves through the course of debating this bill whether we are asking local government to do something that we are not prepared to do ourselves. I put to the minister that I do not believe that chief executives and directors general of the public service have made publicly known their key performance criteria nor their reviews against them. I find it quite an interesting situation in which the CEO of the department of local government and the conglomerate under its new name will exercise legislative power to redact information relating to this provision around transparency and performance reviews when that very same individual is not subject to a similar provision as a CEO of the state public service. I think this is a clear example of where we as a legislature are once again telling local government to do something that we are not prepared to do ourselves.

Hon JAMES HAYWARD: Do some local governments already publish the KPIs for their CEOs?

Hon JACKIE JARVIS: Yes.

Hon JAMES HAYWARD: I am surprised about the second part of this proposed section whereby the departmental CEO will need to be involved in determining whether something can or cannot be published. We have the circumstance now in which some local governments publish their KPIs and probably a variety of different things happen out there; some probably publish a lot of information, others less and others none. We are moving to a situation in which everyone is going to have to publish everything. There is an acceptance that some things are sensitive and it is probably not in the public interest for them to be out in the public realm. That could be things to do with the CEO's personal circumstance if he has missed out on a KPI and his wife is in a terrible health position. Perhaps there is some reason of a personal nature that is really nobody's business for why a particular KPI was not met. We all accept that it is fair enough that those things would not be published, but I am alarmed about the bureaucratic process that we are putting in place here under which the CEO will now need to deal with 145 local governments that all have a responsibility to publish the CEO's performance reviews. I would not be surprised if there were 145 local governments applying to have some element of their reports not published.

Are we creating a bit of a monster here? Will this be managed? We imagine this is going to be a big workload for the CEO. What processes are in place? What sorts of things does he need to weigh in making a decision about these things?

Hon JACKIE JARVIS: We do not envisage that this will add considerably to the workload of the agency. The agency already works closely with the 139 local governments. These performance reviews are already done. KPIs are already set for CEOs. We would not envisage that 139 local governments would seek to use the provisions of exemption.

Hon JAMES HAYWARD: Are those CEO reviews all done uniformly? Do they all fall at the same time every year or is there a variety? How does that work?

Hon JACKIE JARVIS: There is only a provision that it is done annually. I assume that normal work practice would be that they will be done perhaps in the first few months after recruitment and then annually. There is no set time period as long as they are done annually.

Hon JAMES HAYWARD: I think the minister alluded to the fact that the normal process of dealing with these things is that the local government would write to the CEO with a request that certain pieces of information would be redacted or not published. Will that be the process? Will it require a formal process? Will it be as simple as ringing up and saying, "We do not want to put this in. Can you give us advice?", or will it need to be in writing?

Hon JACKIE JARVIS: Guidance notes will be published for local governments in the process and they can obviously call up and seek advice, and then they can submit a request. If they feel that there is a matter for which they would like to apply for an exemption, they could submit a request, but guidance notes would be provided in the manner in which that is done.

Hon JAMES HAYWARD: Lastly, on that point, will those guidance notes allude to an expectation as to how long it will take? Does the minister have any sense of how quickly the department will be able to give a local government an answer on these things?

Hon JACKIE JARVIS: I cannot provide advice on what may or may not be in guidance notes that have not yet been written. I would not imagine this to be a long, drawn-out process. I imagine that most of the exemptions would be relatively straightforward, but I am not going to provide a time line on how long the department CEO might take to consider.

Hon NEIL THOMSON: I refer to proposed section 5.39AA, which states in part —

(1) A local government must publish the following in accordance with regulations —

...

(b) a copy of any statement under section 5.38(4) relating to a review of the CEO's performance;

Proposed section 5.38 lists the different types of matters related to the CEO's performance, whereas proposed section 5.39 refers to the CEO's contract. Probably the most problematic part of proposed section 5.39AA is proposed subsection (1)(b) —

a copy of any statement under section 5.38(4) relating to a review of the CEO's performance;

Proposed subsection (1)(a) states —

the performance criteria specified in the CEO's contract of employment ...

If we look at that, there might be circumstances in which that provision could be excluded, but they would be quite limited, as Hon Martin Aldridge has stated. Broad performance criteria might relate only to the management of a confidential contract, for example. That might be something that is taken out. Proposed paragraph (b) is my point of consideration and focus. It states —

a copy of any statement under section 5.38(4) relating to a review of the CEO's performance;

That could be quite intrusive. It could have the effect of reducing the level of honesty by council or an independent body because sometimes councils employ a human resources contractor to undertake the work. There might be a case when there is —

Hon Martin Aldridge: An official and an unofficial version of the report.

Hon NEIL THOMSON: That is right; exactly. I listened to Hon Martin Aldridge's comment. For the sake of Hansard, there might a case in which there is an official and an unofficial version of the report. Potentially, this will denude the level of honesty and frankness that occurs in performance reviews because this could be extremely intrusive in that sense. The review will deal with very sensitive issues, which in the public domain could end up becoming a circus.

I also have concerns from an industrial relations point of view about how this might lead to all sorts of things playing out in the public domain before they can be resolved. There may be some tension when the CEO and the council do not get along, which occurs, and some mitigations might be put in place and some work might be going on to try to bring things back together to get things back on track, but we could end up with an absolute feeding frenzy. I will not go into specific examples, but I have seen it firsthand in my region. Sometimes you have to ask what is driving the feeding frenzy behind the scenes and whether it is politically motivated. Is it people wanting to grandstand and jump on the bandwagon before those elected representatives can get on with the job of dealing with the problem? They are the people who are the custodians of the local governments. They have been elected by the community to ensure that their CEO operates to the standard required, and sometimes things need time to be dealt with and sometimes there needs to be a frank and fearless conversation and reporting. I am really worried about proposed paragraph (b) because the provision to publish a copy of any statement under section 5.38(4) relating to a review of the CEO's performance is very intrusive. That provision is very broad.

What is meant by "any statement"? Is there any way that a note from the HR division of the local government related to the review of the CEO's performance could be exempt from this provision? Could there just be a notification about a potential breach or problem in relation to the CEO's performance?

Hon JACKIE JARVIS: Proposed section 5.38(4) is literally the provision that will enable KPIs to be published. Proposed section 5.38(4) refers to the statements that should be published, being each performance criteria against which the CEO's performance is reviewed—in other words, the KPIs—and a summary of the outcome of the review for each of those performance criteria. Therefore, it is that proposed section that we have been debating this whole time that quite literally says that a local government should publish the statement of KPIs and a summary of the outcome of the review of those KPIs.

Hon NEIL THOMSON: I hope the minister is right, but can we just make this clear? I am confused now. I am reading the words “a copy of any statement under section 5.38(4) relating to a review of the CEO’s performance”. Is the minister saying that it can never be a statement to do with the performance outside that review period? Is that what the minister is saying? What are we saying here? If a CEO is falling short on their key performance indicators and there is some internal correspondence on that, that is not covered by this. Is that what the ministry saying?

Hon JACKIE JARVIS: No. I will repeat myself: proposed section 5.38(4) states what needs to be published, being —
... a statement that —

- (a) sets out each performance criterion against which the CEO’s performance was reviewed; and
- (b) for each performance criterion, summarises the outcome of the review; and
- (c) includes any prescribed information.

Therefore, the proposed section under clause 64, which the member is referring to, will give effect to the proposed section in clause 63 by outlining what is included and what should be published—that is, key performance indicators and a summary of the outcome of the performance review. The member referred to proposed section 5.39AA(1)(b) in clause 64, and all that does is refer back to proposed section 5.38(4) in clause 63, which outlines what is required to be published.

Hon NEIL THOMSON: I think the minister has clarified this. Therefore, it is only the statement in relation to how the CEO is reviewed; it is not the actual review itself. That seems to be the case.

Clause put and passed.

Clauses 65 to 67 put and passed.

Clause 68: Section 5.56 replaced —

Hon NEIL THOMSON: This proposed section seems to place more definitions around a council plan and has requirements relating to it. I think it may have some links to some other changes that have occurred in the Land Administration Act. I am checking to see how that will work, because amendments to the Land Administration Act came through recently. A provision in there tightened up the application of plans for public open space, for example, where plans had to be ministerially approved. I am wondering whether there is any link. Rather than going into it to any extent, is there any relationship whatsoever between the changes that were made in this house to the Land Administration Act only a few weeks ago and this much broader definition of council plan?

Hon JACKIE JARVIS: I am advised, no, there is no link.

Hon NEIL THOMSON: We have a much bigger provision in the bill than what is in the act. Section 5.56, “Planning for the future”, reads —

- (1) A local government is to plan for the future of the district.
- (2) A local government is to ensure that plans made under subsection (1) are in accordance with any regulations made about planning for the future of the district.

That will be deleted and we will have another provision, which is at least twice the size, so we are going against the recommendations of the task force that was put in place by the minister’s government and had those esteemed people on it, including one of the government’s local members chairing it. Not only that, we are also now establishing regulations that may prescribe this plan. This seems to be a big move to prescription around how the council makes its plan. Is there any evidence that the plans provided by local councils, under what will shortly be the old law, have been deficient?

Hon JACKIE JARVIS: No, this is not to fix a deficiency. This is to simplify things. The amendment will replace the current, vague reference to “plan for the future” with council plans. Templates will be created and provided. Council plans will be relatively short. They will be developed for local governments to use or adapt as they wish. Currently, councils are required to review their strategic community plan every four years and undertake a desktop review every two years. Council plans will replace these strategic community plans and will need to be reviewed only every eight years. As I said, a template will be provided. The aim is to simplify the matter.

Hon JAMES HAYWARD: I think the minister has touched on this. What sorts of things does the minister think will be captured in these plans? Will it be exactly the same as the strategic plans that councils already have? Will these plans be subject to review by the department?

Hon JACKIE JARVIS: These will be publicly published council plans. They will not need to be submitted for review. They will basically be simplified council plans that set out high-level objectives. A short-form template will be provided by the department. They are intended to be high-level objective plans that will be publicly published and available to electors.

Hon JAMES HAYWARD: Is the minister in a position to show us what one of the templates may look like or have they not yet been created? If they have not yet been created, when does the minister think they will be? How soon after the bill is enacted will the template be rolled out?

Hon JACKIE JARVIS: The templates will be developed in consultation with the sector so I cannot give advice but, obviously, there will not be a requirement to use it until the template is available.

Hon JAMES HAYWARD: The minister said there will not be a requirement to use it until the template is available but we do not know how long that will be. It will be developed with input from the Western Australian Local Government Association and no others, no doubt.

Hon Jackie Jarvis: Yes.

Hon NEIL THOMSON: To follow-up on that, assuming the regulations are finalised, is it anticipated that all local governments will comply with this new planning template by the end of the financial year, for example? Will there be a deadline for them to revisit all their plans and finalise their plans in accordance with the new model?

Hon JACKIE JARVIS: There will be transitional arrangements. Obviously, a local government that has already completed a major strategic plan will not be required to. There will be a longer lead-in time. The next time the LGA is considering its strategic community plan, it will move to this new format.

Clause put and passed.

Clause 69: Part 5 Division 5A inserted —

Hon NEIL THOMSON: This is about community engagement charters. Many good local governments already have a charter. They are obviously an important tool to be used. I find it interesting how we define things now. I thought we did away with the class system but it reads —

community member, in relation to a local government —

...

(b) includes a person of a prescribed class.

What are we going to do? Are we going to bring back the landed gentry? What has happened there?

Hon JACKIE JARVIS: I am advised that the term “person of a prescribed class” is a standard drafting term. It basically allows strategic plans to identify who they may wish to consult with. An example is residents versus business owners. It could be that a city might wish to consult with employees who come and use the city on a daily basis for work but do not reside there. It is a standard term that is used.

Hon MARTIN ALDRIDGE: I was not going to ask a question on this clause but Hon Neil Thomson has piqued my interest. This bill is full of regulation-making powers and this is another one for a “prescribed class”. It will allow the minister, via the Governor, to issue a regulation that prescribes classes of people—not of organisations, of people because it includes a “person” of a prescribed class. I would have thought that the example the minister just gave would fall within the definition of proposed subsection (1)(a), which —

means a person who is a member of the district’s community or who otherwise has an interest in the local government’s activities;

If a person does not reside in a local government district but they operate a business, deliver a service or have some other connection to the district, I would have thought that it would well and truly fall under proposed subsection (1)(a). What type of person does the minister anticipate prescribing in accordance with proposed section (1)(b)?

Hon JACKIE JARVIS: The charter states “a person who is a member of the district’s community or who otherwise has an interest in local government activities”. That is quite a broad and nebulous description. As I said, particular classes of residents or other users of a local government that they want to survey can be specified. It is a new regulation-making power that will provide for the use of surveys to be expanded to specific classes and therefore surveys will become more consistent so that results can be directly compared. As I said, an example is a survey of business owners or others. I think we might be reading into this a little bit too much. I am advised that the term “person of a prescribed class” is a standard term used in a number of acts.

Hon NEIL THOMSON: Will the prescribing of that class be done through proposed subsection (5), which states “Regulations may do any of the following”? Is that where the government will bring back the class system? I thought that the Labor Party wanted to turf that; we seem to be moving that way. Will proposed subsection (5) prescribe those classes and bring back the class system? Clearly, that is a Labor Party move.

Hon JACKIE JARVIS: I am advised that it will be done through regulations in consultation with the sector.

Clause put and passed.

Clause 70 put and passed.

Clause 71: Section 5.68 amended —

Hon NEIL THOMSON: I assume that this provision may have come out of the work around the review of the City of Perth et cetera. I am wondering why we have this quite significant addition and deletion. What is the purpose of changing this provision around gift registers and the declaration of gifts?

Hon JACKIE JARVIS: I am advised that this clause will prevent a council from waiving an interest arising from an electoral gift. It will provide consistency in gift declarations by aligning the requirements for electoral gift declarations with other gift declarations. It will clarify the application of this provision in relation to electoral gifts being disclosed. Proposed subsection (1) will provide that participating in meetings does not apply to situations in which electoral gifts are disclosed in accordance with section 4.59.

Hon NEIL THOMSON: Will this stop a loophole and deal with election donations? I would not have thought they were covered under the Electoral Act 1907.

Hon Martin Aldridge interjected.

Hon NEIL THOMSON: Electoral provisions. Excuse me for not understanding how the current provisions operate. Will this patch up a gap in donations or other gifts that might be used during the campaign period?

Hon JACKIE JARVIS: I am advised that the clause is about providing consistency in gift declarations by aligning the requirements for electoral gift declarations with other gift declarations that may occur outside an election period.

Hon NEIL THOMSON: Transparency around election-related gifts is very important. How will this relate to the level of transparency that we currently have—this was mentioned in this chamber recently—around gifts from donors to certain political parties at the state level?

Hon JACKIE JARVIS: I cannot provide comment on that. I only have notes and advisers here to advise on this bill.

Hon MARTIN ALDRIDGE: Something that just occurred to me while listening to the minister's exchange with Hon Neil Thomson and having a chance to look at the explanatory memorandum is that it looks like the status quo allows an interest to be waived by council. I suspect that means that if an elected council member has an interest and discloses it but still participates, that is done by the council itself waiving that interest. The change here is that we will remove that power for council to waive an interest, with the power being held by the minister. The issue I want to raise is: what will happen when the minister has an interest, particularly a political interest? I think we will see more political party involvement in local government elections. I think two local government elections ago, a flyer circulating in the Swan Valley informed residents how to vote for their local Labor councillors. What will happen when the minister, who will probably always be a member of a political party, is faced with making a decision of this nature and he or she alone will be exercising a power as opposed to an elected group, the council collectively, exercising that power? One person in the government, a member of a political party, will be exercising a power to waive interests arising from electoral gifts.

Hon JACKIE JARVIS: Currently, a council member who has an interest arising from an electoral donation or gift could have the council vote to set aside their interest. As the member pointed out, this will require the approval of the minister. Conflicts of interest or declarations of conflicts of interest are not dealt with in this legislation, so I am not sure that I can answer the member's question.

Hon MARTIN ALDRIDGE: Under the current regime, if Councillor Thomson declares an interest in a matter —

Hon Neil Thomson: Mayor Thomson.

Hon MARTIN ALDRIDGE: — arising from an electoral gift and council takes a decision to waive that interest to allow Mayor Thomson to participate in the decision, would that matter be minuted and placed on the record of that local government's meeting?

Hon JACKIE JARVIS: Can I just clarify the question? Is the member asking whether the decision to refer it to the minister is minuted?

Hon Martin Aldridge: No, I am referring to the current position, so in terms of a council waiving its interest.

Hon JACKIE JARVIS: My understanding is that the council can currently vote to waive the interest. I am assuming that if that is a vote of council, it will be minuted as all decisions are minuted.

Hon MARTIN ALDRIDGE: As one would expect, because it would require a vote. We may not agree that Mayor Thomson's interests should be waived but, nevertheless, the vote would be recorded, regardless of the outcome. Now that we are moving to a unilateral decision-maker, being the minister, how will we know when the minister exercises this power?

Hon JACKIE JARVIS: Section 5.68(2) of the act states —

A decision under this section is to be recorded in the minutes of the meeting relating to the matter together with —

(a) the extent of any participation allowed by the council or committee;

That indicates that the decision of the minister would be recorded in the minutes, if I am reading it correctly. Subsection (3) states —

This section does not prevent the disclosing member from disclosing, or participating in the decision making process on, the question of whether an application should be made to the Minister ...

Hon NEIL THOMSON: I think this is another example of overreach and overregulation. This legislation is not about removing red tape or streamlining things. This provision could have a real impact on the decision-making of councils, simply because I imagine it would take a month or longer for a minister to make a decision on this matter. It is not consistent with the boards that operate within the public sector—for example, the Western Australian Planning Commission. Unless there has been significant change, I am sure we would not find a similar provision in the Planning and Development Act for the Western Australian Planning Commission, yet the commission is making significantly more detailed decisions on planning applications now that this new State Development Assessment Unit is providing it with recommendations on individual developments. That commission traditionally had the role of being the gatekeeper and providing oversight for those strategic planning instruments. It has had an approval role relating to crown land and some specific major projects. Now we are seeing that change.

I come back to the point made by Hon Martin Aldridge. It is setting a standard that the state is not prepared to set for itself, such as providing arrangements when a council has a discretion to make a decision on a matter that is nuanced. Someone might have been a recipient of some travel at some point in time in order to travel to a place as part of normal ongoing council business, which happens; there is nothing wrong with it. For example, a mining company might open a facility. We certainly see government members jumping on planes and travelling to mining sites and so forth to see new facilities. We see that quite regularly. It does not mean that that person is so compromised that they are not able to make an impartial decision. That is a decision made by the council with full transparency and reporting.

I think this provision is quite sinister in some respects, particularly putting it back to a single decision-maker, being the minister. I think that is a real problem. The minister will have a very direct political interest in the perception or the colour of a particular council. We have already seen that kind of behaviour and some disgusting behaviour by people. I have no confidence that this will be the right move. Some more stringent reporting requirements would have been sufficient, or maybe some better guidelines on what sorts of decisions are made when there are conflicts of interest.

Several members interjected.

Hon NEIL THOMSON: Maybe members on the other side need to listen. They are so exposed on this matter. I can see the level to which they are compromised with certain sectors of business. They will not listen. One day it will be their undoing. I make that point. This is something that I do not think will work out well for the local government sector.

Hon JACKIE JARVIS: I point out that the minister already has this power within the act. All we are doing is preventing a council from raising it —

Hon Neil Thomson interjected.

Hon JACKIE JARVIS: I have an answer for the member. I also point out that currently the other council members may vote to declare an interest. A council member who has an interest arising from an electoral donation could have their council vote set aside by other council members on a vote. This amendment will prevent that and will require the minister's approval to set aside this interest, so it works both ways. As I said, the minister already has this ability in a provision of the current act. All we are doing is preventing a council from waiving an interest, either way, arising from an electoral gift.

Hon MARTIN ALDRIDGE: I wish to confirm something for the avoidance of any confusion. A council could vote to request that the minister exercise his power. The council's vote would be recorded. We have asked the Minister for Local Government to waive Mayor Thomson's interest in this matter. The minister led me to believe—I want to ensure that this is right—that the minister's decision to either exercise or not exercise that power would be subject to the minutes of a local government meeting. I am pretty sure that is what the minister said. Given that decisions are made outside of local government meetings, I want to be clear how that would transpire. Is it just assumed that if Mayor Thomson participates in the decision, if we follow the trail of minutes that council requested the waiver, we would see that he participated, and it would be assumed that the minister waived the interest in this section? I want to get that clear in my head before we move on.

Hon Martin Aldridge; Hon Jackie Jarvis; Hon James Hayward; Hon Dr Brian Walker; Hon Neil Thomson

Hon JACKIE JARVIS: I am advised that when the minister's approval is given, the condition of approval will be required to be recorded in the minutes.

Progress reported and leave granted to sit again, pursuant to standing orders.