LOCAL GOVERNMENT AMENDMENT BILL 2023

Committee

Resumed from 9 May. The Deputy Chair of Committees (Hon Dr Sally Talbot) in the chair; Hon Jackie Jarvis (Minister for Agriculture and Food) in charge of the bill.

Clause 29: Section 4.31 amended —

Progress was reported after the clause had been partly considered.

Hon MARTIN ALDRIDGE: I was waiting to see whether the minister had any new information for us overnight, but it does not appear so. I asked a question last night, but do not ask me what it was. I think we were dealing with clauses 29 through to 32, which I have grouped together as the clauses relating to sham leases and the government's intended policy response to sham leases. As I said, a number of provisions have been left to regulation-making powers. Probably the easiest way forward here is to ask the minister to summarise or describe how regulations will be applied to address the issue of sham leases for the purpose of standing for election or for enrolling as an elector to vote.

Hon JACKIE JARVIS: I think that the member is alluding to the discussion we had yesterday about the mayoral elections. I am advised that I will have some information about that when we get to that clause, which I think is in the 90s. But with regard to clause 29, which we are dealing with now, as previously advised, this proposed section will provide a new head of power for regulation, so the matter will be dealt with by regulations. It is a head of power for regulations to deal with enrolment based on occupation. This amendment will mean that regulations can be made to the owner–occupier role and will provide the power to specify requirements in claiming eligibility for enrolment on the basis of either ownership or occupancy of a property, and that those arrangements can be used to create regulations to deal with dubious lease arrangements for the purposes of voting or nominating as a candidate of a district.

Hon MARTIN ALDRIDGE: I am just trying to get a taste of the regulations and what they will restrict or, in fact, prohibit from happening. I think we have talked about car parking bays and cleaning cupboards. Obviously, there will effectively be a class of occupation that would exclude a person from being an elector or standing as a candidate and becoming a council member or an elected member, but will there be other tests? For example, will there be a residency test? Let us say somebody owns two properties: they have a primary residence here in a metropolitan suburb and they have a holiday home somewhere in the Busselton area, or in a separate local government area. Is there an intention to limit a person to a primary residence for the purpose of voting or for standing for an election? Will some sort of residency test be applied?

Hon JACKIE JARVIS: I am advised that we are dealing with two separate issues. With regard to residency and the scenario the member used of somebody having a holiday home, I am advised that there will be no changes to the current act in the way that is managed. The clauses we are dealing with now relate to that head of power that will prescribe additional requirements for enrolment claims to deal with the issue we raised of businesses having sham leases. These heads of power will be able to prescribe additional requirements, which could include a copy of a lease agreement. It could require the claim of enrolment to include evidence to support that the candidate has a genuine case; it could include a statutory declaration by a candidate that they meet eligibility requirements in accordance with the regulations. Supporting evidence may include a copy of a lease agreement or proof of payment of rent. There could be a regulation to prevent a claim for enrolment from being accepted unless the claimant has a right of occupation for at least 12 months prior to the claim, or to prevent a claim of enrolment from being accepted unless the claimant has the right of continued occupation for at least three months from the date of occupation. As I said, these measures are to prevent the use of sham leasing for the purpose of obtaining election to office or securing votes.

Hon MARTIN ALDRIDGE: In effect, the policy intent is to ensure that somebody has a bona fide connection to the area in which they are either voting or standing for election. The minister has given some examples of what the government believes does not fall into that category, and I think that has been borne out by initially the City of Perth inquiry, but also other inquiries. My question is this. There have been some different views around this. I have heard at least two members of this chamber say that businesses that occupy in a local government area should not have a right to vote or stand for council, and I quite often hear the Leader of the House—I am going to quote her—say that we cannot have taxation without representation. Could these provisions be used by a Governor on the advice of a minister to exclude, say, all businesses from voting in a local government election or being elected to vote in a local government election?

Hon JACKIE JARVIS: It is important to note that not all businesses lease properties. Businesses have a right to vote, particularly if they are owner–occupiers. This section of the bill is literally to provide a head of power for regulations around leasehold businesses, so, no, there could not be a blanket regulation to exclude all businesses in a particular local government authority from voting. This provision is to deal with the exact issue that was raised in the City of Perth inquiry with regard to leasehold businesses.

Hon MARTIN ALDRIDGE: What part of these clauses will prevent a minister from making a regulation that will prevent a business from enrolling to vote by way of occupation?

Hon JACKIE JARVIS: This bill will not abolish the rights of people who legitimately own and occupy property, including business premises, from being enfranchised in local government elections. This bill only deals with leasehold businesses and that sham issue. Nothing will change for businesses that are owner–occupiers.

Hon Dr BRIAN WALKER: I have been listening with some concern about these various regulations in the legislation and the detail that the minister is going into. It strikes me that there is an eminently capable body already in existence that has dealt with these things effectively over some considerable time—that is, of course, the Western Australian Electoral Commission. Can the minister explain to me, please, in words that a five-year-old could understand, why we are recreating the wheel specifically for local government?

Hon JACKIE JARVIS: I am advised that the Western Australian Electoral Commission does not hold the roll for each local government; the owner of the roll is the CEO of the local government area. It is important to note that the Western Australian Electoral Commission does not conduct polls for all local governments, only those that choose this. Under the Local Government Act, the Western Australian Electoral Commission is a service provider when asked by local government. It does not maintain records of owner–occupiers. The electoral roll that is used for state and federal elections is separate from the local government roll, which is owned by the local government itself.

Hon Dr BRIAN WALKER: I thank the minister; that is very enlightening. Does this mean that we could, in principle, have every single local government applying to the Western Australian Electoral Commission to take charge of these elections?

Hon JACKIE JARVIS: As I said, local governments can engage the Western Australian Electoral Commission as a service provider to conduct their elections for them. Some choose to, some choose not to.

Hon Dr BRIAN WALKER: Bearing in mind that the elections that the Western Australian Electoral Commission undertakes are actually state-funded, whereas local government elections are funded by the local body itself at some considerable expense, what would prevent a local government saying, "We'll take the cheaper option and go to the Western Australian Electoral Commission to organise these very well-run elections"?

Hon JACKIE JARVIS: I am advised that local governments choose the Western Australian Electoral Commission on a user-pays basis. It is not free; it is on a user-pays basis. For some smaller local governments, it is cheaper to conduct their elections themselves.

Hon MARTIN ALDRIDGE: I think I am having the same difficulty that I had at an earlier clause, when we first discussed this policy issue. It is probably easier to look at the blue bill to see how this flows at proposed section 4.31, "Rateable property: ownership and occupation". The current section 4.31(1C) of the act states —

> A person occupies rateable property if, and only if, the person has a right of continuous occupation under a lease, tenancy agreement or other legal instrument.

Clause 29 of this bill will insert proposed subsection (1CA), which states —

> Regulations may provide that, despite subsection (1C), a person is not to be regarded as occupying rateable property unless prescribed requirements (in addition to the requirement of subsection (1C)) are met.

Effectively, that is saying "It's not good enough that you occupy a rateable property; we're going to create a head of power that is going to be more prescriptive. We're going to issue a regulation that is going to more finely prescribe the circumstances in which you do or, probably more aptly, don't occupy a rateable property." Proposed subsection (1CB) states, in part —

> The requirements that may be prescribed for the purposes of subsection (1CA) include (without limitation) the following —
>
> (a) requirements relating to whether any person is enrolled, or is regarded under section 4.29(2) as being enrolled, as an elector for the Legislative Assembly in respect of a residence that is the rateable property;

We have just canvassed the notion of being registered to vote or stand for council in multiple local government districts, based on the right to occupy or own property; but, as the minister knows, one can only be registered to vote in one Legislative Assembly district. I am trying to connect proposed section 4.31(1CB)(a), which makes reference to the Legislative Assembly and someone's right to vote in a Legislative Assembly district, with what the regulations that would prevent someone from participating in a local government election might look like.

Hon JACKIE JARVIS: The important word here is "may"—the requirements "may" be prescribed. Being enrolled to vote as an elector in a Legislative Assembly district is one way by which a person could qualify. For example, I am registered to vote in a state election in the Legislative Assembly seat of Vasse; that is where my enrolment details are.

Hon Martin Aldridge: I hope you vote the right way!

Hon JACKIE JARVIS: Let us just say I am in the minority!

However, I also own a property in Victoria Park so I am therefore also eligible to vote in local government elections in Victoria Park as an owner of a property. If I were a business owner in Victoria Park who leased a property and met the criteria of the regulations that require me to have had a lease for longer than 12 months, and it was not considered a sham lease, I could then vote as a business owner. The provisions the member referred to outline different ways in which a person could be eligible to vote or be a candidate. Yes, the requirements may be prescribed without the limitation that the person is enrolled as an elector to the Legislative Assembly. There are other requirements relating to current, past or future ownership, occupation or use of a rateable property, which would then allow those regulations with regard to whether someone has had that business lease for more than 12 months et cetera.

Hon MARTIN ALDRIDGE: The Legislative Assembly business is just a bit odd. Obviously they can only be registered to vote in one place. On my reading, the government could issue a regulation that says, "You only have a right under this section if you can prove that you are a registered voter within a Legislative Assembly district that the local government district occupies." That would in effect mean that, as a Vasse-registered voter, the minister would no longer be eligible to be an elector for the Town of Victoria Park. Is that possible under this head of power?

Hon JACKIE JARVIS: I am advised that it is not possible. The wording with regard to the Legislative Assembly is already in the existing act, which is why it is without limitation. The wording is that it "may" be one method.

Hon MARTIN ALDRIDGE: While we are on the topic of sham leases, in 2017 there was a local government election issue that flowed from the state government election of that year. There was a police investigation into voter fraud in the Port Hedland local government election. It was alleged that there were more than 100 electors registered at one post office box in that local government district. I do not believe charges were laid arising from the allegations because of insufficient evidence, but notwithstanding that I believe there are sufficient facts to establish that this occurred, to what extent will the provisions in this bill prevent that type of fraud from occurring?

Hon JACKIE JARVIS: Thank you for the question. I have been advised that a similar issue was flagged in the City of Perth inquiry; someone used one address for the registration of multiple voters. I am advised that this issue is well known and that it will be dealt with in the regulations through the use of a physical address for voters. Consultation has already commenced with the Western Australian Local Government Association and Local Government Professionals WA about what the regulations to deal with this matter will look like. It has already been flagged as an issue.

Hon MARTIN ALDRIDGE: In contemplating that response, the use of physical addresses is problematic, particularly in our regions, as I am sure the minister is aware. Not everybody can enjoy a daily Australia Post bike at the end of their driveway. At the moment, for someone to be on the roll of electors, it is linked to a physical address. I think the issue here is where the postal ballot will be sent. Obviously, the government has turned its mind to this. I suspect that there could be some challenges in moving away from the use of post office boxes because of the reliance on them in areas outside of Perth.

Hon JACKIE JARVIS: The member is correct. I may have used the wrong terminology when I spoke about a physical address. That is not the be all and end all. Obviously, some people use a PO box, a roadside mail box et cetera. My advisers tell me that they are fully aware of the complexities of the matter and that is why it will be dealt with in regulations. Everyone is acutely aware of the issue. As the member said, it was raised in 2017 at the Port Hedland election. It has also been explored in the City of Perth inquiry. That is why this will be dealt with in the regulations in conjunction with WALGA and LG Pro.

Hon MARTIN ALDRIDGE: Thanks for that clarification. Is this an area in which local governments could play a role—with the qualification being the extent to which they have the capacity—in scrutinising the people who are on their rolls? These provisions will allow them to disqualify people who are on their roll or who seek to be on their roll. In terms of identifying the 100 voters who apparently live at one post office box in the Town of Port Hedland, I thought it would not take too much analysis for those alarm bells to ring, yet those circumstances occurred even in a local government of a fairly reasonable size such as that.

Hon JACKIE JARVIS: I am advised that local governments already have this role to play in scrutinising the roll. It has perhaps been brought to the fore and local governments are being reminded of the importance to do this as a result of the City of Perth inquiry. Once the regulations are prepared, a guideline will be prepared on scrutinising the roll and keeping an eye out for multiple similar addresses.

Hon Dr BRIAN WALKER: This may be splitting hairs, but I can assure members it is not a matter of vanity! Proposed section 4.31(1CB)(b) states —

> other requirements relating to the current, past or future ownership, occupation or use of the rateable property.

All of this seems particularly nebulous and there seems to be a kind of catch-all. I wonder how a decision based on future events could possibly be estimated. Things that have not happened may not happen. How is this part of the legislation? How can this be justified using the current wording?

Hon JACKIE JARVIS: As we noted, this is providing a head of power to allow for regulations that meet that. Future ownership might be evidence of a lease into the future. We discussed that it will be a requirement that a business must have had a lease for not only the past 12 months, but also the past three months. It is a catch-all as a head of power to allow regulations to be written.

Clause put and passed.

Clause 30 put and passed.

Clause 31: Section 4.33 amended —

Hon MARTIN ALDRIDGE: My understanding is that, similarly, clauses 31, 33, 34, 35, 37, 39, 40 and 44 relate to the issue of extending the electoral period or perhaps matters relevant to the electoral period to account for slower postal services. This is something that I probably should have asked about earlier when we dealt with the caretaker period. The office of the Minister for Local Government has provided me with a very handy table that sets out all the provisions and what we are doing. I think it is fair to say from scanning it that we are basically adding a week to many of the statutory requirements, particularly when postal services are required. Can I get confirmation of that? I might ask the minister a second question. What impact is this likely to have on the caretaker period, which we have previously discussed in consideration of this bill?

Hon JACKIE JARVIS: I am advised that yes, the change will see an increase in the election period by seven days.

Hon MARTIN ALDRIDGE: With the invention of a caretaker period that will apply to all local governments, it will in effect be a week longer than has historically been experienced. From looking at this table, it seems to me that we will effectively be starting the election one week earlier at each of the points along the way. Obviously, local governments do this in different ways. I heard Hon Dr Brian Walker talk about the Western Australian Electoral Commission. Many local governments contract the services of the WA Electoral Commission to conduct their postal ballot election. I think there are still some in my electorate that have people turn up to vote at the council office.

Hon Dan Caddy: Cambridge.

Hon MARTIN ALDRIDGE: Does Cambridge do that? It sounds like some government members will try to get in on the debate shortly. Noting that not every local government conducts a postal vote but most do, is it correct that the time a person has to return their ballot will not change; and, if that is correct, what is the time frame for returning a ballot paper?

Hon JACKIE JARVIS: The polling day, if you like, will not change. People will have until 6.00 pm on polling day to vote. The member referred to a table that notes seven days has been added to a lot of the steps along the way. For example, the notice when enrolments will close will be 77 days before the poll, the call for nominations will be 63 days before the poll, and the call for nominations last day will be 52 days before the poll. Yes, most of those steps have been pushed out by seven days to account for postage taking longer but nothing will change with regard to polling day. As the member said, some local governments have in-person voting, and that will not change. The caretaker period starts at the close of nominations, which will be 44 days before polling day. The caretaker period is the 44 days before polling day.

Hon MARTIN ALDRIDGE: The close of nominations will be 44 days prior to the poll; whereas, at the moment, it is 37 days. We will effectively extend what will be the caretaker period by seven days, as I suspected.

Hon Jackie Jarvis: Yes.

Hon MARTIN ALDRIDGE: Postal ballots have to be received by 6.00 pm. At state elections they can be received for a period, many days, in fact, after polling day. The current arrangement for postal voting in a local government election is that they have to be received by then, but do they have to be date stamped by the post office? What is the measure that would rule a postal vote in or out?

Hon JACKIE JARVIS: I am advised that there is no change to the current act, which states that all ballots must be in by 6.00 pm on polling day. They can be handed in on the day but that is when all votes must be in.

Hon MARTIN ALDRIDGE: When I last voted at my local government election, I think I had the option of lodging my ballot paper—the Western Australian Electoral Commission conducted the election—at the council office or posting it. I assume it would have to be received by either the Electoral Commission or the local government by 6.00 pm on polling day for it to be a valid vote. Is that correct?

Hon Jackie Jarvis: Yes.

Hon MARTIN ALDRIDGE: I am trying to get a sense of the period because it is not in this table that outlines the changes to the time frames. Because there is such a rigid closure date compared with a state election, for which postal ballots are received for at least a week, if not two weeks, after polling day, can the minister give me a sense of when a local government can first issue a ballot and the period from that date to polling day? Is that three weeks or six weeks?

Hon JACKIE JARVIS: I am advised that the process has not changed; it is just that a number of days have been added. The close of nominations will be 44 days before polling day. The CEO will then prepare the roll 43 days before polling day. Councils will obviously need to print ballot papers and send them out or engage the WA Electoral Commission to send them out, and it will be as soon as practicable after that. The exact period has not been determined because councils have different capacity to manage that and it will depend on whether they are going through the WAEC or managing the poll themselves. It will be as soon as possible after 43 days, to give them time to print and post ballots.

Hon MARTIN ALDRIDGE: I guess it depends on how quickly a local government, or somebody providing a service on its behalf, can do it. Looking at the table, the latest day for public notice of election day is 26 days before polling day. It would be strange to send out ballots by post prior to public notice of an election being given, or could that be done?

Hon JACKIE JARVIS: Basically we are saying that the CEO must have the roll ready 43 days before. The member is correct that a public notice about the election will be required 26 days before the poll. The period in which the ballot papers would be printed and posted is between the 43 days, which is the close of nominations and preparation of the roll, and when a public notice about the election goes out. That is that area of leeway. I assume they can prepare the ballot papers and print them and get them ready to post. The latest date possible for the public notice about election day is 26 days before the poll. Presumably the announcement can be made earlier, given that the wording is that that is the latest day. Again, that allows the time frame to get it organised.

Hon MARTIN ALDRIDGE: Would it invalidate a ballot if a local government issued a ballot prior to giving notice of an election?

Hon JACKIE JARVIS: I am trying to seek some clarity on this question. Obviously, election days for local government elections are pre-determined, so the date is set. This is certainly not saying, "The poll will be on this day", because everybody knows it will be on that day. The notice I refer to is the public notice about election. That is a requirement and would be an advertisement in the local newspaper or *The West Australian*. The member would appreciate that in country areas newspapers are published on different days; some might be only once a week. That line on the public notice about election is just stating that the last day that there can be a published public notice is 26 days before the polling date.

I am advised that, as far as we are aware, it does not invalidate ballot papers. For example, I assume that in the Shire of Augusta–Margaret River, ballot papers could be printed and distributed. The *Augusta Margaret River Times* does not come out until Friday, but I am not aware that that would invalidate a ballot paper that was distributed before that. I am not sure that the two are connected. We will seek further advice on that.

The advice I have received—this may be repeating what I have just said—is that the public notice about election, the period we are talking about, should be given as soon as practical after preparations. Under clause 44, "Section 4.64 amended", the provision that it not be later than on the nineteenth day before election has been changed to not later than the twenty-sixth day before election. Basically, that line is stating that statewide public notice about election must be given in according with regulations, including details of how, when and where the election will be conducted and who the candidates are. That is simply giving notice of who the candidates are. There is nothing in this bill that we can see that would invalidate a ballot paper being printed and distributed before that date.

Hon MARTIN ALDRIDGE: I think where we got to is that there is no hard and fast provision that says that a local government has to issue a ballot paper not before or not after a point in time. There are some obvious constraints—the close of nominations and a closed electoral roll to be able to issue the ballots. Sometime after those two things is probably the critical time. If the CEO left it to the latest day, it would be 43 days before polling day. Sometime between then and polling day itself, the local government will issue and receive back, hopefully, as many ballot papers as it would like. It is quite a big window, but as the minister said, it depends on who is conducting the election and their capability. Obviously, the Electoral Commission is doing more and more. As an organisation it has a lot of resource, but potentially it will have a lot of local governments requiring its resource as well.

From my electorate's perspective, getting mail to and from it within seven days is probably not unthinkable, whereas further north in Hon Neil Thomson's electorate, in the Pilbara and more so the Kimberley, those time lines slip significantly. I do not know how prevalent it is for particularly those remote local governments relying on the WA Electoral Commission. The issue with that is that mail is sent from Perth to the Kimberley and then back to Perth. Worse still, if the local government conducts the election itself, it is often the case that mail from that area goes to Perth for processing and then comes back again. There may be a disincentive for some remote local governments

to use the WAEC services because it could add to the delay of receiving ballot papers and could increase the number of ballot papers received after polling day. They are just observations from my perspective. They are probably the only questions I had about changing those dates.

I assume this was a matter of consultation with Australia Post. Is Australia Post confident that it will be able to meet the time frames that have been indicated that will change in this bill?

Hon JACKIE JARVIS: I cannot confirm whether Australia Post was consulted. Obviously, there was extensive consultation with the WA Electoral Commission. I am advised that the WA Electoral Commission is acutely aware of the regional service delivery issues and that it prioritises ballots going out to regional seats as a priority in local government. However, the advisers here cannot tell me whether Australia Post was engaged in this conversation.

Clause put and passed.

Clauses 32 to 35 put and passed.

Clause 36: Section 4.42 amended —

Hon NEIL THOMSON: This is about the supply of rolls to returning officers, members and candidates. I understand there has been a longstanding practice to supply rolls to candidates in accordance with the regulations. I assume that the reason we will now apply a much stricter definition to the provision of the rolls is that there has been some misuse of that information. We are now inserting a much tighter requirement for the use of information and retention of that information.

Hon JACKIE JARVIS: I think we are all aware that we are entering a phase in which the retention of people's private data is highly controversial. This regulation power requires candidates who were not elected to destroy or delete the electoral roll to prevent the misuse of that electoral roll. Essentially, it will provide a power to require a person to certify that they have complied with the requirements to destroy or delete a roll. I think that is just common sense with regard to people's privacy.

Hon NEIL THOMSON: I think the intent is fine but I note the issue of data and the management of people's electoral information, particularly being able to reach out to people in the state of a campaign is something that I am sure everyone in this room is very aware of. There are also a number of other sources of information that can be used. I am thinking, for example, of SLIP—the Shared Location Information Platform. I believe there is quite a bit of information on it. If people are prepared to pay for it, they can get information on landowners—who they are and their addresses. There is a lot of information out there.

I wonder whether there are specific examples. Could the minister advise us why there were these amendments to subsections (3) and (4), which seem to be significantly limiting the provisions, particularly insofar as they will require the destruction of a supplied copy at a point in time? I assume that will be at the discretion of the CEO, or the Electoral Commissioner. There seems to be a requirement to destroy the copy.

Hon JACKIE JARVIS: I cannot speak to other sources of data. I can say that the current act lacks clear powers to prohibit the misuse of electoral rolls supplied to candidates. I am advised that similar provisions have existed in the Electoral Act and other legislation for some time and that these amendments can require a person who is supplied with a local government roll to destroy it.

Clause put and passed.

Clause 37 put and passed.

Clause 38: Section 4.46A inserted —

Hon MARTIN ALDRIDGE: Following on from the clause that Hon Neil Thomson just examined, clause 36, we are now at clause 38, which will create a new restriction and penalty relating to misuse of the roll. I guess a good place to start is the provision that Hon Neil Thomson was just looking at on the supply of rolls to returning officers, members and candidates. Is there a broader entitlement to access a local government electoral roll; and, if so, what section of the act is it in?

Hon JACKIE JARVIS: I am advised that section 5.94 already provides public access and viewing provisions of the roll for the public to go to the office and view the roll.

Hon MARTIN ALDRIDGE: Will this provision apply to anyone, whether it is a staff member involved with maintaining the roll, a candidate or a member of the public? I think the minister said it is section 5.94 so I will take a look in a moment. My understanding is that there is currently no restriction on the use of electoral rolls, for example for commercial purposes, which is one of the things that is anticipated in subsection (4) of this proposed section.

I quote —

> Person X must not use enrolment information for a commercial purpose.

Can the minister confirm that this will be the first restriction on the use of the electoral roll in the Local Government Act? If so, what has driven the need for this? Have there been examples of misuse? Has there been an attempt to prosecute somebody but there has been a lack of offence provisions? Can the minister perhaps elaborate on the mischief that we are trying to address through this, or is it simply a proactive measure, anticipating that this type of behaviour could occur?

Hon JACKIE JARVIS: Section 5.94 is about public access and view provisions, which is when someone must physically go into the office. The roll is not supplied to people. Clause 38, which we are dealing with now, specifically inserts a power to prevent the misuse of information by candidates and provides safeguards to ensure it is used only for the intended purpose, which is electioneering or the performance of an elected member's duties. It specifically provides that electoral provisions may not be used for commercial purposes. I guess that is the mischief—that someone has a roll and is using it for commercial or other reasons. It introduces new offence provisions for misuse of electoral roll information. It places a responsibility on candidates and elected members to inform any subsequent recipient of their obligations to use the electoral roll only for permitted purposes.

Hon MARTIN ALDRIDGE: Why are we limiting it to just candidates and elected members? I could see circumstances in which a staff member of a local government could misuse the electoral roll. I assume a staff member, like an elected member, would be subject to a code of conduct and potentially disciplinary proceedings if they were to do that. Why would there not be an all-encompassing penalty or offence provision here? I have just been looking at section 5.94. It gives somebody the right to —

> … attend the office of a local government during office hours and, unless it would be contrary to section 5.95, inspect, free of charge, in the form or medium in which it is held by the local government and whether or not it is current at the time of inspection —

There is quite a long list of things in here. In fact, it is a very long list. I have not got to the electoral roll yet because the list is so long. I assume there is no limitation on that. Someone planning to sell roller shutters to a certain suburb in a country town may spend the day recording as much information as they like from the local electoral roll to send unsolicited marketing material to people. This provision would not capture that person. Is there another provision that would capture that circumstance? Why is it that we are so narrowly focusing this restriction on candidates and elected members?

Hon JACKIE JARVIS: There are two issues here. I am advised that staff already have codes of conduct and are covered by confidentiality provisions. It would be serious misconduct if they were to use this data. I am advised that it is already dealt with through employment terms and conditions. With regard to public access, whilst people are allowed to view the roll, they are not allowed to take copies or record information; they are simply allowed to view it, presumably to check whether a particular business or person is on the roll. I understand that that public access provision will be unchanged in the act. The clause that we are currently dealing with relates specifically to candidates and elected officials.

Hon MARTIN ALDRIDGE: I understand the minister's explanation around staff, but elected members are in many instances subject to the same code of conduct as staff. They are also public officers for the purpose of the Corruption, Crime and Misconduct Act in terms of misconduct and serious misconduct. That does not necessarily explain it. I accept the minister's argument about staff, but I would have thought that would have been adopted to apply to elected members to say: we do not need to restrict elected members in this way because we already have another way to restrict members from using the information they have privilege of access to for this purpose. It does not necessarily answer my question.

I take up the minister's last point about section 5.94. The minister said to me that section 5.94 only provides a right to inspect. There is a prohibition somewhere—I have not quite come across it yet—that flows from section 5.94 that states that in the course of inspecting the roll, a person cannot record any information, take any notes or photocopy anything. They can basically take whatever they can remember with them unencumbered, but, beyond that, they are entirely restricted.

Hon JACKIE JARVIS: The member's first point is that elected officials also have codes of conduct. I highlight that clause 28 also deals with unelected candidates. Therefore, unelected candidates or a person who does not re-contested their office will also be required to destroy all information about properties on the electoral roll because they will no longer have a legitimate use for it. If someone is not elected, they are obviously not necessarily covered by codes of conduct. As to public access outlined in section 5.94, I am advised that this is dealt with by regulations 29A and 29B in the Local Government (Administration) Regulations 1996 requiring that an individual will give a statutory declaration that they will not use information for commercial purposes. I believe the regulations deal with that aspect.

Hon NEIL THOMSON: I follow my honourable colleague. A provision restricts the use of information contained in rolls. It includes information that was derived directly or indirectly, wholly or partly, from any information supplied to "person X". That seems to be a fairly broad provision, and one that might be quite difficult to enforce.

For example, when someone ceases to be a member of a council and has information on a database collected over time, what does information derived "indirectly" or "partly" mean? How would that be determined?

Hon Jackie Jarvis: Which provision is the member referring to?

Hon NEIL THOMSON: I hope I am on the right clause—38. It is the very first proposed insertion entitled "enrolment information". It is in proposed section 4.46A(1)(b).

Hon JACKIE JARVIS: I am advised that proposed section 4.46A refers to "directly" and "indirectly" and provides for an individual who may have a photocopy of the roll or download it and put it in a spreadsheet and use it. It is just saying that an individual cannot take sections of confidential data from the electoral roll that has been given to them for a set purpose. They cannot extract certain information, take photocopies or put it in a spreadsheet for use later. That proposed section states —

> … any information that is derived (directly or indirectly and wholly or partly) …

This basically states that an individual cannot take sections of the electoral roll provided to them and use them for other purposes.

Hon NEIL THOMSON: Someone could use artificial intelligence, for example. A person pretty smart with information technology might create a roll that does not use any information provided through the roll. This is a reality today. Big data is out there. People are collecting information about people all the time from a whole range of sources. An individual might have a copy of the roll and use it for other purposes. A link may not be able to be provided about how that individual received that information. It would not be a breach of the act per se if that person could determine that that information was collated from some other source.

Hon JACKIE JARVIS: I am not sure how a person unlinked to local government creating a database of people unrelated to the electoral roll would be covered under the act. This proposed section deals with when an electoral roll is supplied to a candidate or elected member, and it outlines the purposes for which they can use it, and the offence when it is used for something else. People create databases from all sorts of places. If someone gathers data separately from the electoral roll of people who live in a particular local government, it would not be covered under this act.

Hon NEIL THOMSON: That is good to know. It is probably not that hard to have a roll of names and addresses of people within a local government. Someone who is a little bit smart in identifying locations could at least get a very close approximation of the existing roll. There might be some aspects to it that might not be included, particularly lease holders who had to apply to be on the roll when not on the state or federal electoral roll. In this day and age, it is pretty easy for someone with skills to develop a database of everybody in a certain location. It is good to know that persons who for legitimate purposes collate information using big data methodologies in order to promote themselves either through business or politics potentially—those might not be unrelated—will not be caught by this provision. I take it that there will have to be some sort of evidentiary flow for the use of that provision on the possession of that information if this is ever going to be moved down to because there are some fairly severe penalties in the bill for breaches of use of information. It seems that these penalties will not apply to staff; they will be subject to codes of conduct. Specific penalties will apply only to elected members. They could end up jail in for 12 months. I am always a bit reluctant to not talk about provisions when we are inserting provisions to lock people up, particularly when an elected member, someone doing their job, might be targeted for political reasons or whatever at some point after they have done their job and might have information on their person that reflects a roll but was not actually derived from that roll. Did the department, the drafters of the bill and the minister think about the proliferation of information and the modernisation of technology, particularly the incredible power of artificial intelligence in identifying significant databases and big data when they came up with these rather draconian provisions for the misuse of data?

Hon JACKIE JARVIS: Member, that was quite a wideranging discussion. I am not entirely sure what question the member was asking. This clause deals with a situation in which a roll has been provided to an elected official or candidate. The member asked whether, if official intelligence or big data is used to create a list somewhere else, there would have to be an evidence chain to show that it originated from a candidate. There would be a requirement to gather evidence under any law so, yes, if someone were to be charged then, of course, there would need to be evidence of wrongdoing. The Local Government Act 1995 is no different from any other act; evidence would need to be provided. It is highly unlikely that there would be a custodial sentence under this act. I cannot see anything in my notes to indicate that. The link between someone using AI or gathering other databases and this would have to be clear for this provision to apply.

Hon NEIL THOMSON: The minister said that it is unlikely that there would be a custodial sentence but the penalty for the misuse of information is one-year imprisonment or a fine of $5 000. The disproportionality between the fine and imprisonment seems a bit odd. If I were given the choice of paying a $5 000 fine or spending one year in prison, I know which one I would choose and I know which one most members would choose if they were

confronted with that choice. Given that these provisions will apply to people who are operating within the public realm, in the public service, I think we should be a little cautious. What motivated the minister to land on the penalty of one-year imprisonment? The bill states that a person must not use enrolment information, except for any of the following purposes, which include a purpose connected with a person's candidature in the election and the performance of a person's functions as a member of the council after the election. The provision does not refer to malicious intent; rather, it refers to the use of that information within those tight definitions with the penalty being imprisonment of up to one year. What was the motivation for penalty of one-year-in-prison option?

Hon JACKIE JARVIS: Member, I am advised that the penalties of one-year imprisonment or a $5 000 fine are used throughout the act as a deterrent; it is standardised throughout the Local Government Act. Obviously, it would be up to a court to decide. I will not pass judgement on what the judicial system may or may not decide; it is there as a deterrent. The member noted that there are penalty options for quite serious breaches of people's data. The penalty is standard throughout the Local Government Act.

Hon NEIL THOMSON: That consistency seems to be an off-the-shelf thing.

Proposed section 4.46A(4) states that enrolment information must not be used for commercial purposes. It could be argued that an elected member who had access to information went on to make a commercial gain, and that might be more serious. Once again, there is the penalty of one-year's imprisonment. An elected member who terminates their role as an elected member might not have known the full consequences of their actions and might have undertaken further engagement with the community on a very important community matter. They will still be subject to the penalty of a $5 000 fine or one-year's imprisonment if they did it beyond the time of their position. The day after they may send out a note to all their people thanking them for their support, but potentially there will be no distinction. If someone uses the information for commercial purposes, the penalty will be the same—that is, one-year's imprisonment, but the fine will be doubled to $10 000. The point I make is that there seems to be a blanket approach to this; it is not very nuanced. The issue is the harm that can be caused by the misuse of data. That is a much bigger discussion. I apologise for the broad discussion in the early part of this, but it is a huge issue in our modern age that we have not really grappled with. I would have thought that we should be looking at a harm reduction strategy in the development of these penalties. I would have thought that there are a lot of reasons and there is a lot of data out there that can be used for legitimate community purposes. I ask again: Did the minister give any contemplation to some of the impacts of technology? Should the government take more of a harm reduction focus rather than this blanket approach, which is very defined about the use of the data?

Hon JACKIE JARVIS: I am not going into hypotheticals about what the judicial system may or may not decide with regard to this. The member asked about data being used for commercial gain versus it being used for legitimate community engagement. I assume that using it for legitimate community engagement could be used as a defence. The member asked whether the minister considered the impacts of technology. I am not quite sure what he was alluding to. I will just say that there was recognition that the act lacked clear powers to prevent the misuse of electoral rolls. The member talked about the impacts of technology and the use of data in this day and age. I assume that informed the recognition that the act lacked clear powers to prevent the misuse the data on electoral rolls. As I said, similar provisions have existed in the Electoral Act and other legislation for some time. This amendment states that such data cannot be used for other than the purposes for which it is intended.

Hon NEIL THOMSON: How close do these provisions align to those in the Electoral Act?

Hon JACKIE JARVIS: I do not have that information at hand, member. Yes, we do—apologies.

Hon Neil Thomson: Thank you.

Hon JACKIE JARVIS: As I stated earlier, they are similar provisions. I do not have the exact information but the member can refer to the Electoral Act 1907. The most information I have to hand is that similar provisions have existed, noting that we are debating this bill.

Clause put and passed.

Clause 39 put and passed.

Clause 40: Section 4.49 amended —

Hon NEIL THOMSON: There is probably a bit of duplication in clause 40, and I seek clarification as to why that is the case. I refer to proposed section 4.49(bb) of the blue bill, which states —

> (bb) if the candidate is an occupier (as defined in section 2.19(2B))—the nomination paper is accompanied by the following for the purpose of establishing that a requirement prescribed for the purposes of section 2.19(2A) is met or was met at the close of enrolments —
>
> (i) any statutory declaration required under regulations;
>
> (ii) any other prescribed information, document or item;

I may be splitting hairs a bit here but it seems like there is a requirement to provide the same information that was already required for that candidate to be enrolled. What happens if that name does not appear on the electoral roll? I thought it would be automatic when someone becomes a candidate because they would already have been through the process of making a statutory declaration. Is this a duplication? Is it a small red-tape issue that creates an additional requirement for the candidate to resubmit the documentation that they had already submitted in order to establish themselves on the roll?

Hon JACKIE JARVIS: Nominations close before the roll is finalised. That is one point. This clause provides the power to require a candidate to disclose the basis of their nomination. It is a consequence related to the requirements for the candidate's enrolment. Yes, they enrol on the basis of the occupation of property, addressing the issue of sham leases. The legislation provides that if they nominate as a candidate, they should also provide that information, noting that nominations close on a different date from the finalisation of the roll.

Hon NEIL THOMSON: I guess the question is: why do we not just trust the roll? If a candidate does it once and they do it right, that is what is required. When someone turns up, I assume they have to provide some sort of form—a section A. They would fill in the form. There are certain requirements to do that. It just seems unnecessary to be required to present other documents that they needed to provide in order to be on the roll. Someone should have simply gone to the database. If they were on the roll, I would have thought they were able to be a candidate provided they fill in the form.

Given that we are adding more lines to this act, I think there is unnecessary duplication, which could create extra hassle for people and lead to someone at local government or the Electoral Commission, whoever is managing that nomination, duplicating that assessment.

Hon JACKIE JARVIS: I am advised that it is fairly standard that a completed nomination form is returned by the returning officer with all required information. Asking for a statutory declaration with the candidate's nomination, if that is required in regulations, reduces the burden on the CEO to go back through the roll to verify that data, depending on what date the person was put on the roll. It is simply a matter of everything tying in. It is a consequential amendment from the sham lease issue when a local government can ask for a statutory declaration at the time of nomination to reconfirm that that person is eligible to nominate for council.

Clause put and passed.

Clauses 41 to 44 put and passed.

Clause 45: Section 4.69 replaced —

Hon NEIL THOMSON: This clause sets out how voters' votes are cast in elections. We are seeking to introduce a form of optional preferential voting. I think it was one of the few issues opposed by the membership of local government in a broad sense. It may create a number of problems, which I raised, along with some of my colleagues, including the opportunity to create tickets. By having an optional preferential system, we could argue that when a disciplined ticket is run, candidates might be more empowered. We obviously saw what occurred in the Mining and Pastoral Region where there was no optional preferential system and manipulation by people behind the scenes, with deals done. We can see how that operates. It was probably not a politicisation of the system that got my honourable colleague Hon Wilson Tucker, MLC, into his position with 98 first-preference votes but more a case of having somebody behind the scenes who was able to arrange a whole bunch of disparate people together to get a result.

When we have an optional preferential vote, it raises some concerns, one obviously being the spent votes. Those who might not be part of a political party—they might not have a political allegiance—may just know one person to give them a tick. All the political machinery can get involved and suddenly 200 or 500 people will vote in a more disciplined manner according to preferences, as outlined on the how-to-vote card. This is not a good thing. I do not support this clause. I think it is disappointing. No system is perfect, especially in the first-past-the-post system, whereby many candidates can get dispersed and some random results occur. We know that in most local government elections, there is probably a group of known candidates who seem to operate fairly and we get the person with the most votes.

Why has the government chosen to use this process over the current process and how will it improve democracy in our local government arena?

Hon JACKIE JARVIS: I am advised that preferential voting in local government elections has been used in WA for some time. The Local Government Act 1960 established preferential voting for use in all local government elections. That system was in place for decades. Preferential voting was in place until a Liberal–National Court government brought back the first-past-the-post system in the mid-1990s. Preferential voting was then restored to local government elections in WA in 2007 but was again switched to first-past-the-post in the Barnett government days. It is important to note that there are no preferential vote flows other than what electors put on the ballot paper and that the preferential system is a single transferable voting system. Preferential voting is optional. It replaces

the first-past-the-post system, sets out how the vote is to be cast and requires electors to cast their first-preference vote at minimum. If they want to, they can then rank candidates in order of preference.

Hon NEIL THOMSON: Some of us might have been scrutineers in the past at state elections. I note that in local governments where people might have English as a second language this might impact their understanding of the rules because they are a bit more complicated now. There will now be optional preferential voting, so it must be clear that it is an option. On a ballot of seven names people might only fill in names one to three, for example; that is how the system will work. If a person just ticks a box, will that vote be counted?

Hon JACKIE JARVIS: I am advised yes.

Hon Dr BRIAN WALKER: I am sure the minister knows this off by heart, but the 2022 Australian Labor Party policy states —

> We support the rights of universal franchise by way of "one vote–one value" and the use of preferential voting at all levels of government to ensure genuine electoral equality and representation.

It is probably clear that I also support very much this tenet. As far as I am aware, there are no plans to ensure that this happens at local level. Could the minister expand on that please?

Hon JACKIE JARVIS: I am not quite sure what the question is. Is the member referring to the size of local government areas?

Hon Dr BRIAN WALKER: For clarity, I am suggesting here that with the idea of preferential voting at all levels of government, in the way it is currently organised there is no obligatory voting so only a part of the population will vote.

Hon JACKIE JARVIS: I can only comment that there are no plans to make voting in local government elections compulsory.

Hon Dr BRIAN WALKER: Again, to my understanding, with optional preferential voting, but not with compulsory voting, there is a skewed result that may not reflect the will of the people.

Hon JACKIE JARVIS: It is the will of the people who choose to vote. As I said, there are no plans to bring in compulsory local government voting. The only change is the option for preferential voting for those who choose to vote.

Hon Dr BRIAN WALKER: However, that would imply that the deliberate decision has been taken to possibly skew this because people will choose not to vote—even donkey votes or postal votes. On ABC radio the Mayor of Swan demonstrated that it cost half a million dollars to get 98 000 ballot papers out, with a very, very low return, which he said was probably pushing 22 per cent. The minister was present at this conversation. This seems fairly similar to other local governments. He was saying that with two local governments with $1.5 million, give or take, to run an election, they would get a low return costing about $18 per ballot. If there were to be compulsory voting, it would bring the cost down to about $3 per ballot.

Hon JACKIE JARVIS: I cannot answer questions that are not related to this bill. Member, I apologise, I can only answer questions related to the bill before us.

Hon Dr BRIAN WALKER: Bearing in mind that this is state Labor Party policy, who recommended the retention of voluntary voting in WA local government elections?

Hon JACKIE JARVIS: We are not here to discuss Labor Party policy; we are here to discuss the bill in front of us. I can only discuss what is in the bill before us.

Hon Dr BRIAN WALKER: It appears also that the public has not really had input into this matter.

Hon JACKIE JARVIS: There was public consultation on all elements of the bill.

Hon Dr BRIAN WALKER: The 2012 Robson report said —

> The Panel agreed that local government elections should have the same standing as State and Commonwealth elections and therefore recommends that all local government elections are managed by the Western Australian Electoral Commission, and that voting is compulsory.

Did the minister consider that report?

Hon JACKIE JARVIS: I do not have specific information on a report that is now 11 years old. I can tell the member that we have 139 local governments and implementing compulsory voting would be very complex and costly for them. I am advised that the potential for compulsory voting in local government has been considered in detail on many occasions. It has not been progressed in WA for many reasons. Firstly, many local governments in WA operate in a biannual election cycle, with about half of each council up for election every two years. This

brings some benefits in itself. WA has a large number of local governments, I think the highest number of any state, and a great level of diversity. As I said, implementing compulsory voting in those 139 local governments at this stage would be complex and costly, and it is not the intention of this bill nor is it included in tranche 2.

Hon Dr BRIAN WALKER: In a media release on 24 March, the minister claimed that these amendments were to strengthen local democracy and to bring local government elections more in line with state and federal elections. That seems to be in conflict with what I have just heard.

Hon JACKIE JARVIS: Deputy Chair, as I have stated numerous times, I can only deal with the matters before me in the bill. The member is bringing up matters that are not part of the bill. I can only deal with what is before me.

The DEPUTY CHAIR: Minister, you are not obliged to reply.

Hon Jackie Jarvis: Noted.

Clause put and passed.

Clause 46 put and passed.

Clause 47: Section 4.72A inserted —

Hon NEIL THOMSON: This provision is related to re-counts. There is quite a significant insertion here. The minister might be able to enlighten me. In the blue bill it is a little hard to follow whether there was a specific provision for re-counts previously. It did not seem to be in the act. In that respect, I refer to the component in the bill. Quite an extensive provision has been inserted on the re-count of votes at proposed section 4.72A(1), which states —

> The returning officer may arrange for some or all of the votes to be re-counted if, and to the extent that, the returning officer considers appropriate.

There seems to be a discretion for the returning officer to undertake those re-counts; is that correct?

Hon JACKIE JARVIS: I am advised that the returning officer has always had the ability to arrange for a recount of the votes using their own initiative if they feel there is a need. This proposed section will simply provide clarity and allow for regulations to be created for how the recount of votes will occur. The returning officer has apparently always had the ability to initiate a recount.

Hon NEIL THOMSON: Is the minister saying that this will simply codify the practice of a returning officer? Proposed section 4.72A(2) in particular says —

> The returning officer may arrange a re-count under subsection (1) —
>
> (a) on the returning officer's own initiative; or
>
> (b) on the written request of a candidate or scrutineer, which must —

It then goes through the process of what a scrutineer or candidate has sought. Is the minister saying that that provision was already there, or will we now codify it in the act?

Hon JACKIE JARVIS: This proposed section provides for regulations to be made. Again, it provides a head of power. I am advised that at the 2021 ordinary elections, different approaches were taken to recounting votes in similar situations, which resulted in some confusion. This amendment will create a head of power for regulations to provide more detail on how recounts may be conducted. Once established, the regulations will provide greater clarity for candidates, scrutineers and returning officers.

Hon NEIL THOMSON: Will the regulations provide some clarity? I see that a candidate or scrutineer might put their reasons forward. Will it provide some clarity on the limitations on how those recounts might progress and when they might progress, or will it remain at the discretion of the returning officer to make that decision?

Hon JACKIE JARVIS: I am advised that we are currently consulting with the Western Australian Local Government Association and the Local Government Professionals WA on the implementation of the regulations.

Hon NEIL THOMSON: The minister is saying that she does not quite know how it will work yet, but the government has inserted half a page of legislation on it. How consistent is this provision on recounts compared with the Electoral Act?

Hon JACKIE JARVIS: I do not have the Electoral Act before me, so I cannot provide a comparison between this bill and the Electoral Act. This proposed section provides regulations that can be made for the recount of votes. As I said, in particular, it creates a head power for regulations to provide more detail on how recounts may be conducted.

Clause put and passed.

Clause 48 put and passed.

Clause 49: Section 4.73A inserted —

Hon NEIL THOMSON: We had a discussion about the unusual arrangements for the backfilling of a mayor or shire president when a casual vacancy occurs through —

Point of Order

Hon MARTIN PRITCHARD: I am finding it difficult to hear the member.

The DEPUTY CHAIR (Hon Steve Martin): I am not sure whether that is a point of order, but it is a good piece of advice. The honourable member can speak up.

Committee Resumed

Hon NEIL THOMSON: Thank you, chair. I am obviously not fired up enough!

Several members interjected.

The DEPUTY CHAIR: Order, members! Carry on loudly, honourable member.

Hon NEIL THOMSON: For my good friend and colleague Hon Kyle McGinn's benefit, who was out on urgent parliamentary business, I have been asked to speak up a little. I am a bit quiet at the moment. I thank you for that advice; very good.

We have a procedure when a councillor whose term has not expired becomes a candidate for mayor or president. I assume this would occur only when we have the two-year half cycle and a councillor decides to put their hand up to be a shire president or mayor while they are still a councillor at that time. Is that correct?

Hon JACKIE JARVIS: I had a number of scenarios presented to me yesterday. I got confused and think that I may have confused the house. I apologise to the house; I may have given some incorrect information. I now have the correct information. Providing the context and a scenario may clarify clause 49. We discussed this issue at an earlier clause. Yesterday, we discussed the scenario of having three mayoral candidates. We talked about the first candidate becoming the mayor and resigning within the first 12 months. That is when the backfilling would apply. We talked about a mayoral candidate who also nominated to be elected to a council and was elected to the council. If a candidate who was elected as mayor resigned during the first year of their mayoral term, the second mayoral candidate who had been elected to council would be eligible to backfill the position of mayor. If the candidate agreed to do so, they could withdraw or resign from their elected council position. Once their council position was vacated, they would be directly elected as the mayor. That is the clarity on the incorrect information I provided. The second candidate who backfilled a position could step down from council. If the second candidate's election to council occurred within 12 months, the consequent vacancy could be backfilled if there was an eligible candidate who was next in line for that non-mayoral election. I hope that provides some clarity. A councillor who had nominated to be a mayor within the backfill period could certainly step up to fill the role of mayor. I think that covers that.

If that has not explained the member's question on clause 49, I will ask him to repeat the question.

Hon NEIL THOMSON: I have a simple question. Will this provision enable an existing councillor to be a mayoral candidate while they are sitting on a council? I am wondering why this provision has been added, given that it might already have occurred in some situations.

Hon JACKIE JARVIS: It is because we now have directly elected mayors. The election for councillors and the election of mayors are considered two separate ballots. We are saying that the backfill provisions note that if a particular councillor had also nominated for the position of mayor, they may fill the mayoral position under the backfill provisions within the first 12 months.

Hon JAMES HAYWARD: I have a quick question on this. I understand why this provision is there, and I think it is an important one. To give a practical example, in the City of Bunbury, a councillor who had been a councillor for two years became the mayor. That created a vacancy for his council position that had to go to an extraordinary election, which is obviously expensive and, frankly, ridiculous, given that there was a live election process. I understand that this provision will deal with that so that it can be sorted out on the night without putting local councils through that extra expense. I want clarification on the term that a person would take up in this circumstance. Would it be for two years, as opposed to a four-year term? Is that correct?

Hon JACKIE JARVIS: Member, I hope we get the scenario right. I think the member said that a councillor has been a councillor for two years when a mayoral election is held. They nominate, they are duly elected mayor and they then serve as mayor for the full four-year period. Backfill provisions would apply to their vacant councillor position. Does that answer the member's question? I will sit down and perhaps the member can rephrase the question as I may have got it wrong.

Hon JAMES HAYWARD: At the moment, without the backfill provisions, an extraordinary election is held. Is it being proposed that that position will be filled by the next person available?

Hon Jackie Jarvis: By interjection, are we talking about the mayoral position or the councillor position?

Hon JAMES HAYWARD: The councillor's position has been made vacant because they have been elected to serve as mayor for a four-year term. They served two years as a councillor and an extraordinary vacancy has been created on the same day of the mayoral election. Ordinarily an extraordinary election would occur later on, but common sense is prevailing with this legislation in that it is saying that that is a waste of everybody's time and the next person on the list who just missed out on a four-year term as councillor is then elected for the remaining two years of that four-year term. Is that what will occur under this legislation?

Hon Jackie Jarvis: By interjection, I am advised yes.

Hon JAMES HAYWARD: I have only one question about that and I would be interested to know what the minister's advisers might have to say about this. In this scenario, we will be filling a position that has not been advertised because it has been created on the spot. There may be some prior knowledge of the possibility that the position might become available, but it did not actually become available until the count for the mayoral election was completed. This has created a vacancy from a different election cycle. As we know, those cycles run in four-year terms every two years, but it is appropriate to fill that position based on the results of that current election, which, by the way, I have no issue with; I think that is common sense. I am interested to know why that is acceptable. I am alluding to some potentially issues around clause 90, which we will talk about in some time. I am interested in getting some clarification about why it is appropriate here.

Hon JACKIE JARVIS: I take the member's point. The provision exists to try to reduce the number of extraordinary elections and the cost to local governments. As the member notes, clause 49 provides an alternative method for filling a vacancy created in the office of a councillor when that incumbent councillor is elected to mayor or president but their office of councillor is not up for election. It is an unusual circumstance but this provision establishes a circumstance in which this section will apply and it provides a mechanism to alleviate the need to provide for another extraordinary election straight after the mayoral election. This clause deals with that scenario.

As we said, we do not envisage it happening very often, but it strikes that balance of ensuring that councils are not up for an extraordinary election simply because a councillor has nominated and become mayor.

Hon JAMES HAYWARD: Thank you for that. I think that is exactly right. Again, I commend the government for bringing in this provision because it is really important. The people who live within these communities and participate in these elections could never understand why, when a vacancy for the office of councillor occurs on the night of a mayoral election, somebody they voted for in the councillor elections, who may have missed out by a single vote, was not moved into that position and they have to go through the whole election process again in three months. I commend the government on this provision. It is a commonsense approach. For clarification, is it appropriate because, as you have explained and as I have understood it, they are the ground rules that have been set and that is the way it will run?

Hon Jackie Jarvis: Yes.

Clause put and passed.

Clauses 50 to 55 put and passed.

Clause 56: Section 5.19 amended —

Hon Dr BRIAN WALKER: My question on this clause is quite simple: why is it that only parental leave affects a quorum?

Hon JACKIE JARVIS: It is not only parental leave that affects a quorum. This clause reflects the policy intent that parental leave should not significantly impact the ongoing operation of local government.

Hon Dr BRIAN WALKER: My second point is that a quorum for any local government can be two people. I assume that the minister refers here to the lower level of councillors.

Hon JACKIE JARVIS: Yes, a quorum cannot be reduced to fewer than two members. For example, if a council has five members and one member is on parental leave, the quorum is two.

Clause put and passed.

Clause 57 put and passed.

Clause 58: Section 5.23A inserted —

Hon MARTIN ALDRIDGE: Clause 58 inserts new section 5.23A that sets out the requirements for electronic broadcasting and video or audio recording of council meetings. Again, this provision is another head of power about which we know some detail already through the consultation process and the bill briefing. If my memory serves me well, it is a requirement for band 1 and 2 councils to broadcast audiovisually and for band 3 and 4 councils

to broadcast the audio. I understand that exemptions will be put in place for when councils hold meetings outside of chambers. Can the minister put forward the government's policy on this, which will become regulations in due course?

Hon JACKIE JARVIS: As previously advised with regulations, there are ongoing discussions with the Western Australian Local Government Association and Local Government Professionals. The government intends to establish a tiered requirement for band 1 and 2 local governments to live stream video, whilst band 3 and 4 local governments will be required at a minimum to publish audio recordings. The bill will allow for exemptions to be made in emergency situations or due to unusual circumstances. As the member said, those circumstances refer to when a council may wish to hold a meeting for a remote community or when it might be temporarily impractical to organise live streaming facilities. As I said, regulations will be made in consultation with the sector.

Hon MARTIN ALDRIDGE: The definition of "electronic broadcasting" means "broadcasting by way of the Internet or other electronic means". Therefore, we are not necessarily talking about a live broadcast of council meetings; although, it could be a live broadcast. What are the limitations of this? Perhaps it is not in this provision, but I thought I had read somewhere that there would be a requirement to publish—it might be in the explanatory memorandum—at the same time that the minutes would ordinarily be circulated following a council meeting. Can the minister clarify for us what is meant by "electronic broadcasting" and whether it anticipates both the live broadcasting and a simple recording being taken and then posted on the local government's website along with the minutes of the meeting?

Hon JACKIE JARVIS: The requirement to publish audio recordings of meetings is for band 3 and 4 local governments. Sorry, I may have a correction; one moment. My apologies, member. It is the government's intention that all local governments, regardless of their band, will publish either an audio recording or the video, with band 1 and 2 having to live stream video. It has been pointed out to me that depending on the technology used, the live stream may not be instantaneous; there may be delays in buffering et cetera. The intention, when possible, when those unusual circumstances do not apply, is that band 1 and 2 will live stream the video and have it available after, and the audio recordings will also be published, as a minimum, for those smaller local governments.

Hon MARTIN ALDRIDGE: Therefore, the intention is that band 1 and 2 will have to live stream as well as publish the audiovisual recording after the fact.

Hon Jackie Jarvis: By interjection, yes.

Hon MARTIN ALDRIDGE: Band 3 and 4 local governments will need to, at a minimum, take an audio recording, not necessarily live stream it, and publish it after the fact. Will there be a time limitation on the publishing of the recording?

Hon JACKIE JARVIS: That will be dealt with in regulations, but it is envisaged that that will align with the current regulations around when the minutes must be published.

Hon MARTIN ALDRIDGE: I think I spoke about this during my second reading contribution. I am hopeful that the department will contemplate some technical standards because the COVID-19 pandemic forced many of us in many organisations into this virtual environment of meeting and conferencing, and I am sure that the minister would agree that some do it much better than others. On that note, some consideration should be given to supporting some of our smaller and remote local governments to implement the technology required to meet those standards. Obviously, if we simply say that they have to take an audio recording of the meeting, the CEO could just whack their iPhone in the middle of council chambers, take a recording and stick it up on the internet the next day. I am sure it would result in a pretty low quality form of recording. Obviously, some technical standards need to be established. But, in some instances, there may need to be some support for local governments with limited capacity to implement or meet those standards.

Hon JACKIE JARVIS: I take the member's point. IPhones are pretty good. Some of my best GWN appearances were recorded on an iPhone!

Hon Martin Aldridge interjected.

Hon JACKIE JARVIS: The member's point is noted. Discussions with the peak bodies noted the need for flexibility. The peak bodies talked about developing case studies of what technologies are being used, and sharing best practice. I am advised that there will be sufficient time for the introduction of these measures to ensure that people have the resources available and the systems in place.

Hon MARTIN ALDRIDGE: The minister's last point is probably where I was going with my next question. We are very rapidly approaching the end of the financial year and local governments are contemplating their budgets. In terms of implementation, what is anticipated in terms of timing? I suspect if a council has no infrastructure, we are probably looking at an investment in the order of tens of thousands of dollars to get good quality audiovisual recording of council chambers. Can the minister provide any more information on the implementation of this?

Given the answer the minister just gave, will there be no financial support from the department for smaller local government to implement technology?

Hon JACKIE JARVIS: I do not have a set time line for the member but I have been advised that there will be enough lead-in time to bring everyone along on the journey. In bands 1 and 2—the larger councils—23 of the 44 do have the technology in place. I am advised that part of the idea about developing case studies and best practice is sharing how other local governments have done it. I understand that a number of small local governments have implemented this at a significantly lower cost than the tens of thousands the member was talking about. I cannot give the member exact figures on the number of band 3 and 4 local governments that already have the technology in place, just that the agency will work through with those local governments to make sure they have sufficient lead-in time. On funding, as I alluded to in my reply to the second reading debate, covering IT systems is a matter for local government. This will be seen as business as usual for them as part of their upgrades to technology undertaken as required.

Hon MARTIN ALDRIDGE: What happens when a council moves into closed session to consider a confidential item? I assume, obviously in that instance, it would not be broadcast, but what will be required of a council for recording and the retention of that recording?

Hon JACKIE JARVIS: A local government will be required to make recordings of all proceedings of council meetings. However, recordings of parts of the meeting that may be closed to the public under section 5.23 may not need to be broadcast or published so there is provision that they do not have to live stream them. Regulations will be made about specific provisions in those circumstances. However, it is important, and the bill notes that it is important, that recordings are made during proceedings about confidential items because those recordings may be necessary if there is a dispute or complaint about conduct at that part of the meeting. Recordings of confidential items will be required to be retained by the local government and provided to the department upon request.

Hon MARTIN ALDRIDGE: Thanks for that response, minister. There are probably lots of examples of reasons that local governments would move into closed session. An example would be the review of the performance of a CEO. When they do move into a closed session, is a staff member still present for the purposes of minute taking or can they move into a closed session in which it is literally councillors only if there is a requirement for any formal resolution to be provided and minuted as part of the minutes, but obviously without the deliberations?

Hon JACKIE JARVIS: I am advised that it would be quite unusual for there not to be at least one member of staff present, normally the CEO. Under the act, the presiding member is responsible for keeping minutes, which would be the shire president, but in practical terms I am advised that there would normally always be a member of staff present. This provision deals with the making of recordings; the recording would still need to be made regardless of the circumstances.

Hon MARTIN ALDRIDGE: The obvious place for recordings to be retained—in fact, they should be retained within the local government itself. If a council moved into closed session discussing a very sensitive matter—it could be the termination of the CEO's contract—obviously they can have a discussion without any formal resolution and therefore the minutes would reflect nothing apart from the council moving into closed session and coming out of closed session. There would be no resolution but, if we now record these council meetings, how will that information be protected from people who should not have access to it?

Hon JACKIE JARVIS: I am advised that councils already have policies that deal with matters of confidentiality and decisions that are made in closed sessions. This will be subject to regulation. The regulation would expand upon the existing policies and what regulations are required will be explored with the local government sector.

Hon MARTIN ALDRIDGE: I am sure it is not insurmountable but it will be interesting to see how local governments develop, effectively, firewalls within their own organisations. Members can imagine it may be to protect them from different staff, for example, or even other elected members if they were excluded from the closed session because of a conflict or something like that. There is obviously going to be a need to contemplate how that information is not released or is not made accessible to people who are not authorised, keeping in mind the amount of data and records that a local government has and obviously somebody like the CEO has access to—I would have thought just about all of it, if not all of it. The last question I have is, if we are live streaming, particularly with tier 1 and tier 2 councils, but even if a band 3 or 4 council wants to live stream, is it anticipated that the community will be able to engage via live stream as well, or will they still need to be physically present, for example, for a deputation, to ask a question or to participate in other ways?

Committee interrupted, pursuant to standing orders.

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