

EMERGENCY MANAGEMENT AMENDMENT (TEMPORARY COVID-19 PROVISIONS) BILL 2022

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Steve Martin) in the chair; Hon Stephen Dawson (Minister for Emergency Services) in charge of the bill.

Clause 1: Short title —

Committee was interrupted after the clause had been partly considered.

Hon TJORN SIBMA: Minister, before question time intervened, you and Hon Nick Goiran were engaged in a reasonably illuminating discussion about the purported equivalence between a COVID-19 declaration order and other relevant emergency declaration pathways, I suppose, under the Emergency Management Act as it presently is. I want to propose a scenario that is not so much hypothetical, because it is presently bearing itself out in Victoria. Over the proposed two-year life span of this bill, we are likely to encounter at least two bushfire and cyclone seasons. I want to attempt to establish the pathways that will followed by the State Emergency Coordinator in these two circumstances that will be operating in parallel—obviously a COVID-19 declaration, and potentially also a cyclone or a bushfire or something of that nature. I will take the latter example first. I do not have a particular part of the Emergency Management Act available to me, but essentially upon the State Emergency Coordinator's recommendation, a Minister for Emergency Services would be obligated to approve the recommendation for a declared state of emergency, yet there is no ministerial role in terms of final approval or oversight with respect to these COVID-19 declarations. Can I just first establish, as I understand the case to be, that in the case of a cyclone, bushfire or whatever other disaster, the State Emergency Coordinator would have to seek ministerial approval or endorsement of a state of emergency declaration but, in parallel, that individual can make COVID-19 declarations without any ministerial oversight?

Hon STEPHEN DAWSON: It will generally be done by the SEC or a hazard management agency under an emergency situation declaration.

Hon TJORN SIBMA: Nevertheless, when we see that cyclone scenario, in what circumstances would ministerial approval or authorisation or a declaration be demanded?

Hon STEPHEN DAWSON: It would not, unless it kicked up to a state of emergency. I am not clear whether one has kicked up to a state of emergency previously. My advice is that it has not in the situation that the member described.

Hon TJORN SIBMA: Nevertheless, once it gets to that threshold—this is the scenario that I am going to postulate—over the next 24 months, we may see a natural disaster scenario that demands or necessitates the declaration of a state of emergency, either statewide, regionally based or very localised, that would require the Minister for Emergency Services to sign that state of emergency declaration. Is that a reasonable hypothesis? Is it plausible that that kind of scenario might take place during a COVID-19 declaration? The point I am trying to make is that the State Emergency Coordinator is more encumbered administratively in seeking a coordinated significant whole-of-government response to a natural disaster than they are in making a COVID-19 declaration. Is that the case or not?

Hon STEPHEN DAWSON: The SEC is not encumbered in making an emergency management declaration. The member asked whether it is possible; they were the words he used. I think anything is possible, but to my knowledge and that of my advisers, under the act we are amending, a state of emergency has never been declared around a bushfire, cyclone or whatever in Western Australia.

The honourable member can make his point without trying to drag me down different holes or whatever and say he does not agree with it or someone else could say there are lesser controls over it or whatever. The fact is that the COVID-19 declaration relates to COVID-19. Whether it is a bushfire or a cyclone, they are short events, lasting for between three and potentially five days. COVID-19 has been with us for the last two and a bit years, or 1 000 days as somebody said yesterday. The State Emergency Coordinator or the person that the current State Emergency Coordinator replaced have very effectively been dealing with COVID-19 for the last two years. The government has made a decision on proposed section 77C, and that is laid out before us. The member may not agree with that, and that is fine. It is open to any honourable member in this place to not agree with the legislation or parts of it. This is where the government has landed. It deals with COVID-19 and it relates to people who have been dealing with it for the last two and a half years and have done it well.

Hon TJORN SIBMA: For the record, I find it odd that there is absolutely no provision for ministerial oversight in these declarations. I find it astonishing that we have a bill of this kind under which the minister or the government can seek to deal the minister out of any oversight function. Presumably, there is good reason for the legislative requirement for ministerial sign-off in a state of emergency declaration. I just find the proposition that the minister has given very difficult to reconcile with standard legislative practices and the concept of ministerial responsibility, but I will not beat the drum on that too much longer.

It is not clear to me whether the passage of this bill will absolutely necessitate the immediate cessation of a state of emergency declaration. It is likely from the minister's answer last evening that that will not be the case, immediately anyway. Upon the passage of this bill and the enlivening of the regulatory instruments and the like, could we also expect that the state of emergency declared under the Public Health Act would fall away? That seems to be the state of emergency declaration that is never really referenced. I appreciate that the minister is not the minister representing the Minister for Health, but I would like to get a sense of the government's policy on that.

Hon STEPHEN DAWSON: I cannot comment on what decision the Minister for Health might make under the Public Health Act. I have not been involved in a conversation with that person about that. We have my amendment bill before us and I can only comment on that.

Hon TJORN SIBMA: To apply the principle of charity to the government's intent, in its more academic sense, one might make the generous observation that a policy determination has been made—by the way, this is not my view, just to underscore this—that this is a superior way to go about managing COVID-19 contingencies in a post-emergency phase of the pandemic than is utilising available powers under the Public Health Act. I am attempting to understand where the Public Health Act is deficient or an encumbrance on a response to government. Has there been any serious evaluation of either better harmonising or utilising those mechanisms under a Public Health Act, which deals with a range of other issues, maladies and infectious diseases? Has that work been undertaken by government; and, if not, why not?

Hon STEPHEN DAWSON: I will touch on the rationale between the Public Health Act and the Emergency Management Act. A state of emergency declaration under the Emergency Management Act provides for a coordinated multiagency emergency response. The provisions of the Emergency Management Act are in addition to, and do not detract from, those of the Public Health Act. The Public Act allows the Minister for Health to declare and extend a public health state of emergency, having considered the advice of the Chief Health Officer following consultation with the State Emergency Coordinator and being satisfied that the criteria regarding the occurrence of a public health emergency and the measures required are met.

Deputy chair, I am having trouble hearing myself, so you might consider asking honourable members to take their noise outside.

The DEPUTY CHAIR: Members, could we move the conversation outside please.

Hon STEPHEN DAWSON: Thank you, deputy chair. Sorry, I was literally struggling. I wanted to make sure the member could hear the answer.

As I said, the Public Health Act allows the Minister for Health to declare and extend a public health state of emergency, having considered the advice of the Chief Health Officer following consultation with the State Emergency Coordinator and being satisfied that the criteria regarding the occurrence of a public health emergency and the measures required are met.

The Emergency Management Act allows the Minister for Emergency Services to declare and extend the state of emergency, having considered the advice of the State Emergency Coordinator and being satisfied that criteria regarding the occurrence of an emergency and the measures required are met. The relationship provisions in the Emergency Management Act and the Public Health Act anticipate and provide for simultaneous use of the powers. It is appropriate for directions to be issued by the Chief Health Officer under the Public Health Act and by the State Emergency Coordinator under the Emergency Management Act due to their corresponding purpose, scope and application.

In relation to the benefits of the Emergency Management Act 2005, to date, the pandemic has been successfully managed through a combination of mechanisms under the Emergency Management Act and the Public Health Act, but mainly under the Emergency Management Act. As the state transitions its COVID-19 response, there is a preference to retain in the medium term much of what has worked to date, while ensuring that COVID-19 can be managed outside of a state of emergency. Structures that have worked well under the Emergency Management Act include the State Disaster Council, which enables consideration of whole-of-government factors; the roles of the State Emergency Coordinator and the hazard management agency; and the coordination abilities afforded by the Emergency Management Act powers and structures. The State Emergency Coordinator and the Chief Health Officer also work very closely with each other to ensure appropriate management of issues as and when they arise, and this will continue after the state of emergency ends, if it ever does.

There are some limitations in relation to the Public Health Act. Under the Public Health Act, there is no State Disaster Council, State Emergency Coordinator or other legislative mechanisms for whole-of-government considerations and coordination. It was specifically recognised in the second reading for the Public Health Act that when a coordinated inter-agency response is required, the exercise of powers under the Emergency Management Act may be appropriate. There are also more limitations around who may be authorised officers, which impacts on the ability to implement a coordinated inter-agency response. Another limitation is that when exercising serious public health

incident powers, directions to isolate or quarantine must be reviewed by the Chief Health Officer after 24 hours, which presents an unmanageable administrative burden. There would need to be an infectious disease extreme circumstance declaration in place, which has a high threshold for this 24-hour review requirement not to apply.

I think I have said this previously in the debate, or I may have said it in the house previously, but upon the completion of COVID-19, if it ever happens, a review will be undertaken. It has not been landed on whether that might be a national one, and there has been talk about a national inquiry or royal commission into COVID-19. Regardless, when COVID-19 no longer exists, there will be consideration by government of a review of how we have dealt with COVID over the last two and a half years. I cannot say what might come out of that and whether other acts might be amended or updated. Where we are now is that the government has decided that the best way to continue managing COVID-19 once we move out of the state of emergency is to have the powers that are before us in proposed section 77C.

Hon TJORN SIBMA: Thank you, minister. I have misplaced my second reading contribution, unfortunately, so I will go off the press release and what I recall. One of the apparent advantages of using this bill to deal with some of the issues that the minister just identified in his answer is referred to in the media statement of 20 September authored by both the minister and the Premier. It says among other things —

The Bill will enable the State Emergency Coordinator to make a temporary ‘COVID-19 declaration’ to continue managing the pandemic with sensible measures such as mask wearing and isolation requirements.

These are just the examples that have been identified, as I think they are the most well known by people. Is there no provision under the Public Health Act to direct the wearing of masks?

Hon STEPHEN DAWSON: Honourable member, I do not have a health adviser at the table with me, but there is one close by, so I will get that advice. They have indicated that there is no specific provision.

Hon TJORN SIBMA: If it is not possible to be assisted by someone from the Department of Health, because I do not want to ask a series of questions on which the minister cannot receive advice, I might go down a different route or perhaps just ask a question about isolation. My original question would have been, if an answer could have been health vetted —

Hon Stephen Dawson: The answer that I gave you was health vetted.

Hon TJORN SIBMA: It was health vetted, so there is no provision.

Hon Stephen Dawson: There is no specific provision.

Hon TJORN SIBMA: There is no specific provision. In the previous answer, the minister referred to a significant health incident or whatever—forgive me if I get the name wrong—during which there is the opportunity for the Chief Health Officer to direct somebody to isolate. However, I think the period of that isolation is limited to a 24-hour period or had to be reviewed after 24 hours. They are slightly different things, so I would just like clarification on that matter, please.

Hon STEPHEN DAWSON: Sorry, member; my advisers were talking to me at the same time, so please ask that question again.

Hon TJORN SIBMA: Sure. As I understand it, there is provision under the Public Health Act for the Chief Health Officer, or an agent delegated potentially, to direct an individual to isolate themselves to prevent the transmission of a contagion. I understood from the minister’s previous answer that that direction is either time limited to a 24-hour period or reviewable after 24 hours. I am not sure whether I have it right. Could the minister clarify the arrangements for me again, please?

Hon STEPHEN DAWSON: Although I indicated earlier that there is no specific provision, I am advised that serious public health powers could be used to effect mask-wearing directions. There is power under subsection (1)(k) of section 157, “Serious public health incident powers”, of the Public Health Act. Directions can be made but they are generally limited to individuals, not to classes of people. The Emergency Management Act allows us to direct classes of people to wear masks. Under the Public Health Act, if it were 2 000, 4 000, 10 000 or one million people, that would have to be done person by person, so there would be an administrative burden.

Hon TJORN SIBMA: The powers envisioned in this would largely be consistent, if I am to understand the minister from our previous experience, so that mask wearing could be mandated for whole swathes of the population, in particular in Perth, Peel and the like. In the government’s view, that is preferable to being limited to making individual directions. That being the case, I appreciate the constraints on our ability to predict the future, but I think as recently as last Friday, national cabinet’s step down on mandatory isolation came to an end. Are we at the mandatory isolation phase of COVID management in Western Australia now? Why are we about to gift the State Emergency Coordinator the power to direct isolation when the rest of the country has stepped away from imposing that mandatory period?

Hon STEPHEN DAWSON: We will still need to be able to require proof of vaccination and mask wearing in high-risk situations. Those powers will remain. There is a further outstanding direction concerning Department of Fire and Emergency Services officers driving ambulances, but I am sure that will fall away. The advice is that people

should still wear masks when they visit aged-care facilities or group homes for people with disability, to keep those people safe.

Hon TJORN SIBMA: We have been considering the intersection between the State Emergency Coordinator, the WA Police Force and, obviously, the Department of Health. On a more instrumental or mechanistic basis, which department provided the drafting instructions to the Parliamentary Counsel's Office for this bill?

Hon STEPHEN DAWSON: The Department of Fire and Emergency Services.

Hon TJORN SIBMA: Which internal agencies were consulted by DFES?

Hon STEPHEN DAWSON: I was checking whether I had said it already in the debate. The agencies consulted were the Department of Fire and Emergency Services, obviously; Health; Premier and Cabinet; Justice; Communities; Treasury; Finance; Local Government, Sport and Cultural Industries; and the WA Police Force. Obviously, the State Emergency Coordinator and the Chief Health Officer were consulted as well.

Hon TJORN SIBMA: Considering the obvious empowerment of the State Emergency Coordinator, who is the Commissioner of Police, and the capacity to harness the authority that will be delegated to him following the passage of this bill, I seek some advice on whether WAPOL has indicated its capacity to resource this kind of response over, potentially, the next two years. Not each agency consulted in the drafting of this bill will necessarily wear the operational impact of its implementation.

Hon STEPHEN DAWSON: I want to make a point. Obviously, COVID has been unpredictable; new strains could occur and certainly have occurred. We are providing powers that can be used; we are not saying that they must be used. Finances have been made available to the WA Police Force over the past two and a half years, whether for Operation Tide or whatever else. The intention is to make available whatever resources the WA Police Force and other agencies need for the roles they play in managing COVID-19 and for as long as it needs to be managed. To my knowledge, there is no budgeted figure. The WA Police Force has continued to perform duties throughout this emergency, as it does with all relevant emergencies, because that is its role.

Hon NICK GOIRAN: What has become apparent from our consideration and scrutiny of clause 1 of this bill is that emergency powers can currently be accessed in WA under only two scenarios. The first is when an emergency situation declaration has been made by an authorised public servant or agency, and the second is when a state of emergency declaration is made by a minister. They are the two types of declaration that enliven access to emergency powers. This bill will introduce a third scenario—a third statutory mechanism or statutory declaration, if we like—that will enliven access to emergency powers. As a result of the scrutiny and consideration of clause 1, we have established that this new declaration—the third scenario, being a COVID-19 declaration—will have the lowest threshold in comparison with the other two existing declarations. It is what I have described as the easier declaration to make when compared and contrasted with the other two, recognising, however, as the minister said yesterday, that there has been nothing easy about any of this. I acknowledge that. There is nothing easy about scrutinising bills like this either. Nevertheless, when we compare and contrast the three declarations, the threshold for the COVID-19 declaration will be lower. It is also apparent from our consideration of clause 1 that these emergency powers will initially be made available for a longer period than is currently the case under an emergency situation declaration or a state of emergency declaration, which are available for only three days. In this instance, they will be available for three months.

Hon Stephen Dawson: Sorry, the honourable member said three days for an emergency situation declaration, but a state of emergency declaration is not three days.

Hon NICK GOIRAN: Does the minister not think so?

Hon Stephen Dawson: A state of emergency declaration goes from fortnight to fortnight.

Hon NICK GOIRAN: I would like the minister to get some advice about that, because my understanding is that at the first instance, it is three days.

Hon Stephen Dawson: Sorry, the initial one.

Hon NICK GOIRAN: Is the initial one for three days or 14 days?

Hon Stephen Dawson: It is three days.

Hon NICK GOIRAN: As I said, at the first instance, these powers are available for three days, whether under an emergency situation declaration or a state of emergency declaration. But under this new regime, they will be available for three months. In addition, our scrutiny of clause 1 has revealed that, at present, these emergency powers can be extended for an extra seven days at a time under an emergency situation declaration or 14 days under a state of emergency declaration, hence the minister's reference to the fortnightly provisions. Under the new regime, it will be for another three months. In all these circumstances, a COVID-19 declaration will be an easier decision to make and an easier pathway to access these emergency powers. It will also be accessed for a longer period and extended for a longer period. Even if government members choose to disagree with us, they could understand why the

opposition might have some concerns about having easier access to emergency powers, access for a longer period of time and no ministerial oversight. It is no wonder we have all been bombarded with emails.

The minister helpfully explained that there will be a distinction between the powers available under this regime and the powers presently available under a state of emergency declaration. The minister outlined that all of the part 6 powers are available under a state of emergency declaration but that not all of those powers are available under an emergency situation declaration—the vast majority are, as set out in sections 67 through to 72A. The minister indicated that the new regime will have equivalent powers to those available under an emergency situation declaration, but not those under a state of emergency declaration. It would be of assistance if the minister could clarify what he means by “equivalent”. Again, I do not necessarily need us to get into any semantics here; I do not want to take us back to the discussion we started yesterday about “same” and “similar”. What I want to establish is whether, when the minister says that an equivalent set of powers will be available under a COVID-19 declaration to what is available under an emergency situation declaration, any extra powers will be available. They might be equivalent, but I want to establish whether there will be any extra powers. Remember, it is the same person who can make these declarations. If the State Emergency Coordinator is going to choose whether he wants to make an emergency situation declaration or a COVID-19 declaration, we know that the COVID-19 declaration will have the lower threshold of the two; that has already been established. But would there be any advantage in making one declaration over the other in terms of the scope of the powers that will be available? The minister said that they are equivalent. Will either of them have an extra power that the other one will not have?

Hon STEPHEN DAWSON: As the honourable member mentioned, a state of emergency can be declared initially for three days and subsequently for 14 days. An emergency situation declaration is for three days and seven days after that. A COVID-19 declaration, as the member pointed out, is for a longer period of three months. We have already ascertained that COVID-19 is real and it is here, and we have been dealing with it. In the case of a state of emergency, it is for a new thing that we have not experienced—a new situation. Although it has not been used before for a cyclone or a bushfire, it could be. It is for a new thing that we have not grasped before. That might likely be the case with an emergency situation declaration; it is a new situation or circumstance. The bill before us is for dealing with COVID-19, which we have been living with and dealing with for the last two and a half years, or 1 000 days, as the member put it.

The new COVID-19 part of the legislation was informed by elements of the emergency situation declaration but it is tailored and specific to COVID-19. In the case of part 6 division 1 powers during an emergency situation or a state of emergency, section 66, “Obtaining identifying particulars”, of the act states that a hazard management officer is an authorised officer prescribed for the purposes of the Criminal Investigation (Identifying People) Act 2002 who can exercise the powers.

Hon Nick Goiran interjected.

Hon STEPHEN DAWSON: I do not have something that I can hand over to the member

Hon Nick Goiran: That seems like a massive list of powers.

Hon STEPHEN DAWSON: I can tell the member what is different. The obtaining identifying particulars provision is essentially the same.

Hon Nick Goiran: Because it is in 77K.

Hon STEPHEN DAWSON: It is in section 66 of the act and proposed section 77K of the bill.

Hon Nick Goiran: Don’t worry about the semantics; they’re essentially the same.

Hon STEPHEN DAWSON: The powers under section 67, “Powers concerning movement and evacuation”, of the act are in proposed section 77L.

Hon Nick Goiran: Proposed section 77L is essentially the same.

Hon STEPHEN DAWSON: They are essentially the same, yes. Section 68, “Use of vehicles”, of the act is not in the bill before us so that provision has not been brought across.

Hon Nick Goiran: It’s not covered by proposed section 77M, “Powers to control and use property and related powers”?

Hon STEPHEN DAWSON: No, it is not. Section 69, “Powers of officer to control or use property”, in the current act is proposed section 77M in the bill before us, although there are limitations. It is an equivalent provision but it is not absolutely the same; there are some more limitations in place.

Hon Nick Goiran: There are more limitations in this bill?

Hon STEPHEN DAWSON: In the bill before us, yes.

Hon Nick Goiran: In a sense, there’s less power.

Hon STEPHEN DAWSON: It is limited, yes.

Proposed section 77N is equivalent to section 70, “Powers of officers in relation to persons exposed to hazardous substances”, in the current act, although proposed section 77N specifically relates to persons exposed to SARS-CoV-2. Section 70A, “Electronic monitoring of persons in quarantine”, of the current act does not transfer across and there is no equivalent provision in the bill. Proposed section 77O is equivalent to section 71, “Powers of police to direct closure of places and concerning movement and evacuation” of the act. Proposed section 77P of the bill before us is equivalent to section 72, “Exchange of information”, of the act. Proposed section 77P is essentially the same, albeit it specifically mentions COVID-19. Proposed section 77Q, “General powers during COVID-19 declaration”, is equivalent to section 72A, “General powers during emergency situation or state of emergency”, of the current act, although it is limited.

Proposed section 77R, “Powers under this Division cannot be exercised to effect interstate border closure”, is a new provision.

Hon Nick Goiran: Is that to make it beyond doubt?

Hon STEPHEN DAWSON: Absolutely. As we often realise in this place, it is good to make things beyond doubt.

There are additional powers available during a state of emergency, such as section 74, “Power to direct public authorities during state of emergency”, of the Emergency Management Act that are not included the bill. The provisions under section 75, “General powers during a state of emergency”, of the act are not in the bill before us. I think that is the extent of it.

Hon NICK GOIRAN: It was very helpful for the minister to itemise those provisions. It is acknowledged and appreciated. At the end of all that, there was reference to provisions after section 72A of the existing act. Of course, I would not expect those powers after section 72A—the minister might have mentioned section 74, for example—to be in this legislation because, as the minister identified earlier, with this bill we are looking at powers equivalent to emergency situation declaration powers, not state of emergency declaration powers. For example, I understand from the information the minister provided earlier that section 74 of the act is a state of emergency declaration power only and not an emergency situation declaration power.

In terms of the powers set out in the existing act from section 67 to section 72A, is an equivalent power represented in the bill?

Hon STEPHEN DAWSON: There are differences but, as I pointed out, there are not equivalent provisions for section 68, “Use of vehicles” and section 70A, “Electronic monitoring of persons in quarantine”. Obviously, the new provisions have been tailored to specifically relate to COVID-19, so the word “COVID-19” is included multiple times and the powers can be exercised by authorised COVID officers, whereas under the existing act it may well be a hazard management agency, hazard management officer or an authorised officer who can exercise the powers.

Hon NICK GOIRAN: Would the minister agree with me that it appears on that analysis that evidently fewer powers will be made available under a COVID-19 declaration than under a state of emergency declaration or an emergency situation declaration in two important respects? One is the use of vehicles under section 68 and the other is electronic monitoring under section 70A. Consequently, the powers, as a suite of powers under a COVID-19 declaration, will be less than those powers under an emergency declaration situation.

Hon STEPHEN DAWSON: Yes, on face value they are. The honourable member made the point earlier that there is a lower threshold for the use of COVID-19 declarations. Again, I contend that they are appropriate.

Hon NICK GOIRAN: The reason that I labour this point with the minister is that, as the minister knows, a lot of people in the community are concerned about this legislation, not the least of which is the opposition and every other political grouping in the Parliament. But at least to the extent that we can be somewhat satisfied with the information being provided under our scrutiny of clause 1, it appears that no extra emergency powers will be provided through this mechanism. Yes, they are being made more easily accessible and for a longer time and without ministerial oversight, and all three of those reasons are sufficient in and of themselves to oppose the bill. We do not agree with any of those elements, but I am labouring the point because I want to make sure that there is no shifty business going on and that no little powers are being inserted through sleight of hand. I want to be sure that we are being very clear that the scope and suite of the powers that are presently available—the emergency powers that the State Emergency Coordinator can access in an emergency situation declaration—are greater in that scenario than would be available under a COVID-19 declaration. I want to make sure that we are very clear that there has been no misleading of the Parliament, albeit unintentionally. I want to make sure that we are being very clear here because this is where the rubber hits the road. It is no small matter giving emergency powers. Emergency powers, as the name itself indicates, are to be used in an emergency. In other words, they should be rare and exceptional, and they should be subject to the greatest amount of oversight. Part of that is the process we are undertaking now as the house of review.

I can foreshadow for the sake of the advisers that I will ask questions on the external consultation and the extent to which there are differences in other jurisdictions. But to move past this point, I want to make sure that we are being

very clear here that no extra powers will be available under a COVID-19 declaration that would not be made available under an emergency situation declaration and, in fact, that there will be fewer powers.

Hon STEPHEN DAWSON: I thank the honourable member. Apologies; I jumped up before the member was ready to sit down.

I turn to section 69 of the current act, “Powers of officer to control or use property”. Currently, a hazard management officer or an authorised officer is authorised to do so, and that refers to the power exercised for the purposes of emergency management during an emergency situation or a state emergency situation. In the corresponding provision in the bill before us, the COVID-19 officer is the authorised person. The power can be exercised for the purposes of COVID-19 management while the COVID-19 declaration is in force. But proposed section 77M(3) is informed by existing section 75(1)(a), which is the power of an AO to enter or, if necessary, break into and enter, a place or vehicle in the emergency. But that is limited to the context of the control or use of property. Proposed subsection (4) is informed by existing section 75(1)(o), which is the power of an AO to exercise the powers during a state of emergency. That is limited to the context of the control or use of property.

Hon Nick Goiran: Is that in reference to 77M?

Hon STEPHEN DAWSON: Yes. That was existing section 75(1)(a) and existing section 75(1)(o) of the current legislation.

Hon NICK GOIRAN: The minister is drawing to our attention proposed section 77M. Again, to be clear, is there a power in proposed section 77M—there are six subsections to proposed section 77M—to control and use property and related powers that is greater than those that exist in the event of an emergency situation declaration?

Hon STEPHEN DAWSON: There is nothing other than what I have just said.

Hon NICK GOIRAN: That is not helpful. I will have to elaborate. I am genuinely not trying to be difficult.

Hon Stephen Dawson: And I’m not trying to be obtuse.

Hon NICK GOIRAN: Yes, I know the minister is not either. I just want to make sure that we are not working at cross-purposes because this is how people can get confused. I accept what the minister has said, which is that a suite of powers is available and accessible under an emergency situation declaration, and they are set out in sections 67 through to 72A of the act. I accept what the minister has said because he has helpfully itemised them. An equivalent of the majority of those powers is found in the bill before us in the event of a COVID-19 declaration, with two important exceptions: the use of vehicles under section 68 and electronic monitoring under section 70A. If we left it at that, we would conclude that there are fewer powers available in the event of a COVID-19 declaration than there are for an emergency situation declaration. I might add as a footnote that that would be a good thing, because, as the opposition has said repeatedly, we are not happy with the whole regime that allows easier access to these powers in the first place. If there were fewer emergency powers available, that would be a good thing. I simply want to know now, when the Minister for Emergency Services draws our attention to proposed section 77M, “Powers to control and use property and related powers”, whether an equivalent power is available in part 6 of the Emergency Management Act 2005. Does clause 7 of the bill, which introduces a number of new sections, including proposed section 77M, include any extra power that is not otherwise available in an emergency situation declaration?

Hon STEPHEN DAWSON: Can I just clarify whether the honourable member is talking about an emergency situation declaration?

Hon NICK GOIRAN: Yes. To further assist the minister, particularly noting the time, because it might be useful to get further advice on this over the dinner break, I am not asking who can exercise those powers. When we get back after the dinner adjournment, we will have a discussion about which people can use these powers as an authorised COVID-19 officer and whether there is a distinction and whether we are now giving these emergency powers to a greater group of people. We will have that discussion after the break. But that is not what I am presently asking. I want to know whether any extra emergency powers would be available by virtue of proposed section 77M than would be available in the event of an emergency situation declaration.

Hon STEPHEN DAWSON: It has now been brought to my attention that proposed section 77M(5) is informed by existing section 75(2), which states —

... enter a place or vehicle ... without a warrant or the consent ...

That power is currently available only under a state of emergency; it is not available currently under an emergency declaration situation.

Hon NICK GOIRAN: I thank the minister for that. We will have a further discussion about that and whether we think it is appropriate and so forth after the break. Can I clarify whether that is the only extra power that would be available? Are there no other, shall I say, proposed section 77M(5)s lurking?

Sitting suspended from 6.00 to 7.00 pm

Hon STEPHEN DAWSON: Honourable member, let us repackage everything and put us on the right path. Hon Nick Goiran asked a number of questions about which provisions exist within the state of emergency section of the Emergency Management Act, and what is being included or carried over into the bill that is before the house tonight.

Just confirming again, the additional powers that are not currently available in the event of an emergency situation declaration, but will be available under a COVID-19 temporary declaration, include proposed section 77M(3), the power to break into and enter any place or vehicle. This power is drawn from existing section 75(1)(a). It also includes proposed section 77M(4), which is the ability to direct the owner or occupier et cetera, to give reasonable assistance to exercise power. It is limited to the powers under proposed section 77M and is drawn from existing section 75(1)(o). Proposed section 77M(5), the ability to exercise powers without a warrant or the consent of the owner, is drawn from existing section 75(2).

Section 77N could be highlighted as a new section of the bill, as it does not really fall back onto the Emergency Management Act. Its genesis was from the 72A provisions; however, it has been more clearly highlighted under the bill before the house tonight. Proposed section 77N(1)(c), directing a person to submit to infection prevention and control, does not currently appear in existing section 70, which is very similar. To date, these measures have been implemented with reliance on section 72A which, for example, includes directions to wear masks. Section 72A can currently be used for both a state of emergency or emergency declaration. This bill modifies 72A so that the general powers will only be available for COVID state of emergencies.

Hon NICK GOIRAN: I thank the minister for that explanation. Prior to the break, it became clear that proposed section 77M(5) is not a power that exists in an emergency situation declaration. It states —

An authorised COVID-19 officer may exercise the powers under this section without a warrant or the consent of the owner or occupier, or the person apparently in charge, of the place, vehicle or other thing.

It is, however, a power that exists in a state of emergency declaration. That was identified, and that was significant. We will unpack that, for reasons that should be obvious, when we get to clause 7 of the bill. Proposed subsections 77M(3) and (4) state —

...an authorised COVID-19 officer may enter, or if necessary break into and enter, any place or vehicle.

And —

may direct the owner or occupier, or the person apparently in charge, of a place, vehicle or other thing to give the authorised COVID-19 officer reasonable assistance to exercise the officer's powers under this section.

As I understand it, they are powers that are available in a state of emergency declaration, but are they available in an emergency situation declaration?

Hon STEPHEN DAWSON: I have just clarified that those things cannot be done under emergency situation declarations.

Hon NICK GOIRAN: Looking at proposed section 77M as a whole, it appears that quite a few things cannot be done in an emergency situation declaration. In fact, is there anything under proposed section 77M that can be done in an emergency situation declaration, or is all of the proposed section what could be described as a state of emergency declaration power?

Hon STEPHEN DAWSON: Proposed section 77M(1) and (2) can be done.

Hon NICK GOIRAN: To clarify, proposed section 77M(3), (4) and (5) cannot be done in an emergency situation declaration, but can all three of them be done in a state of emergency declaration?

Hon STEPHEN DAWSON: Yes.

Hon NICK GOIRAN: I thank the minister for that clarification. As I said, we will unpack those three provisions and their significance at a later stage. Earlier this evening, the minister indicated that with a COVID-19 declaration, two of the equivalent part 6 powers—that suite of powers that is available in an emergency situation declaration—do not carry over: the electronic monitoring at section 70A and the use of vehicles at section 68. I do not want to take up electronic monitoring at this time, but can the minister clarify the use of vehicles? Proposed section 77M(1) indicates —

For the purposes of COVID-19 management while a COVID-19 declaration is in force, an authorised COVID-19 officer may take control of or make use of any place, vehicle or other thing.

That seems to be substantially similar to a power to use vehicles. Can the minister clarify the difference?

Hon STEPHEN DAWSON: There is no standalone provision for the use of vehicles, which is what section 68 is about. Section 68 is about the permit required to take a vehicle. On 20 May, the State Emergency Coordinator authorised fire and emergency services personnel to exercise the powers in section 68 for the purpose of undertaking relief ambulance services. This is about the permit as opposed to the use of a vehicle; that is the difference.

Hon NICK GOIRAN: I would suggest that the power here is greater than in section 68. Section 68 seems to suggest that a vehicle can be used in certain situations. The application of section 68 is quite narrow—I think the minister indicated the use of a vehicle for an ambulance and the like—whereas proposed section 77M is very broad. The officer will be able to take control of or make use of any place, vehicle or other thing. That seems to have far broader application than section 68.

Hon Stephen Dawson: It corresponds with section 69.

Hon NICK GOIRAN: Is the minister suggesting that the equivalent provision to proposed section 77M is section 69?

Hon Stephen Dawson: Yes.

Hon NICK GOIRAN: Section 69 allows for an authorised person to take control or make use of a vehicle.

Hon Stephen Dawson: Yes.

Hon NICK GOIRAN: But the distinction, or the extra power that is being given, is that they will also be able to enter or break into a vehicle, and direct a person to provide all reasonable assistance in that respect, and they will be able to do all that without a warrant. None of that is available under section 69.

Hon STEPHEN DAWSON: Correct.

Hon NICK GOIRAN: Thanks, minister.

I want to take us to a slightly different area, which I foreshadowed prior to the adjournment for the dinner break, and that is to clarify who will be able to access these powers. We have already determined that these powers will be available only if the State Emergency Coordinator makes a declaration. We have already determined that the threshold for making a declaration will be lower than that required by the minister if he wants to make a state of emergency declaration or by the State Emergency Coordinator if he wants to make an emergency situation declaration. We have also identified that the period of time in which these emergency powers will be available will be far longer than is presently available at first instance and also by way of extension. We have now uncovered that the powers that will be available because of a declaration made by the State Emergency Coordinator will, in my view at least—perhaps the minister will disagree with this—be materially different from those available under an emergency situation declaration. By way of explanation, when I say “materially different”, I acknowledge and concede the point made by the minister that there are substantial powers that are equivalent—I do not dispute the minister about that—but they will be materially different, particularly when we consider the powers to control and use property without a warrant. That additional power will be available, but if we are looking at it as a case of pluses and minuses, I also acknowledge and concede what the minister said earlier: that electronic monitoring powers will not be available. It will be materially different in that respect.

I want to get to the bottom of who will be able to access, use or enforce those powers. The bill before us speaks of an authorised COVID-19 officer. Under the Emergency Management Act 2005, a different phrase or term is used. I believe it is “authorised officer”, but the minister may want to correct me when he replies. The question is: to what extent is the definition of an “authorised COVID-19 officer” greater, or to what extent does it capture a larger group of people, than those authorised to use the powers in an emergency situation declaration?

Hon STEPHEN DAWSON: I will answer this way. Under the Emergency Management Act, section 55 states —

- (1) A hazard management agency may authorise officers or employees of the hazard management agency, or other persons, to act as hazard management officers during an emergency situation declared by that hazard management agency.
- (2) An authorisation under subsection (1) is to specify —
 - (a) whether it applies to any emergency situation declared by the hazard management agency or whether it is limited to a particular emergency situation declared by the hazard management agency; and
 - (b) the particular, or the particular class of, employee, officer or person to whom it applies; and
 - (c) the terms and conditions on which it is given.
- (3) An authorisation under subsection (1) may be given orally or in writing but if given orally is to be put in writing as soon as is practicable.

It goes on —

- (5) A hazard management officer may exercise a power under Part 6 only subject to the terms and conditions on which the person is authorised under this section.
- (6) A hazard management officer is to comply with the directions of the relevant hazard management agency when exercising a power under Part 6.

In relation to the Emergency Management Act and authorised officers under a state of emergency, section 61 states —

- (1) The State Emergency Coordinator may authorise persons to act as authorised officers during a state of emergency.
- (2) An authorisation under subsection (1) is to specify —
 - (a) whether it applies to any state of emergency or is limited to a particular state of emergency; and
 - (b) the particular, or a particular class of, person to whom it applies; and
 - (c) the terms and conditions on which it is given.

Again, an authorisation under subsection (1) can be given orally, but afterwards has to be put in writing as soon as practicable. There is also stuff about failures in subsection (4). Section 61 continues —

- (5) An authorised officer may exercise a power under Part 6 only subject to the terms and conditions on which the person is authorised under this section.
- (6) An authorised officer is to comply with directions of the State Emergency Coordinator when exercising a power under Part 6.

In relation to the new authorised COVID-19 officers, proposed section 77I states —

- (1) The State Emergency Coordinator may authorise persons to act as authorised COVID-19 officers while a COVID-19 declaration is in force.
- (2) An authorisation ... must specify —
 - (a) whether it applies to any COVID-19 declaration or is limited to 1 or more particular COVID-19 declarations; and
 - (b) the particular, or a particular class of, person to whom it applies; and
 - (c) the terms and conditions on which it is given.

Again, the authorisation may be given orally or in writing, but if given orally, must be put in writing as soon as possible. There is also stuff about failures. Proposed section 77I continues —

- (5) An authorised COVID-19 officer may exercise a power under this Part only subject to the terms and conditions on which the person is authorised under this section.
- (6) An authorised COVID-19 officer must comply with directions of the State Emergency Coordinator when exercising a power under this Part.

We can see that these authorisations will operate in the same way. They will first be made by the State Emergency Coordinator or the hazard management agency.

Hon NICK GOIRAN: What that is telling me is that any further questions on the different scope of persons who might be a hazard management officer, as compared and contrasted with an authorised COVID-19 officer, are perhaps best left to clause 7 and our consideration of proposed section 77I. Can the minister indicate to the chamber an answer to a question I asked during the second reading debate, which was about whether any experts outside of government were consulted on this bill? I acknowledge that the minister earlier provided to my colleague Hon Tjorn Sibma a list of what I would describe as internal government agencies. That is not what I am seeking at this time. I acknowledge that earlier answer, but I am looking for an indication of whether any external experts were consulted on this matter.

Hon STEPHEN DAWSON: There were not, honourable member. That is because over the last thousand days, the people who have been dealing with COVID-19 on behalf of the state government are essentially experts.

Hon TJORN SIBMA: I might just return very briefly to the discussion around proposed section 77M and the issues concerning some of the new powers that will be introduced by way of this bill, including under proposed subsections (3), (4) and (5), which, among other things, will provide a COVID-19 officer with the power to enter, or break into if required, a property or vehicle without a warrant. I will make this observation without going on: the discovery of the insertion of these new powers went a long way towards justifying the ill-fated motion from the opposition yesterday to refer this bill to the Standing Committee on Legislation. I am not here to debate that point now. I am trying to understand the practical public health outcome that these new measures, including the power to enter premises or commandeer a vehicle without warrant, are attempting to achieve in terms of defending or improving public health outcomes in the context of COVID-19.

Hon STEPHEN DAWSON: We will get the member some further information, but I will refer to proposed section 77M, which does not permit authorised officers to seize a vehicle or other thing. Taking control does not mean the ability to seize. The power to seize would need to be supported by a comprehensive scheme that deals with matters such as returning, forfeiting or destroying the seized item, which is not part of this bill or the Emergency Management Act. I said previously that other legislation such as the Fish Resources Management Act 1994, the Animal Welfare Act 2002 and the Exhibited Animal Protection Act 1986 include powers to seize.

These also contain specific powers to deal with seized items; this bill does not. In this bill, proposed section 77M provides for the ability to control and use property, as well as to break into and enter any place or vehicle; it must be for the purposes of COVID-19 management, which is to manage the adverse effects of COVID-19. It provides for the prevention, control and abatement of risks associated with COVID-19, including, without limitation, risks to economic and psychosocial wellbeing. The power is therefore restricted and does not provide an unfettered ability to break into and take over homes, vehicles or other things. Similar powers have been used during the state of emergency for COVID-19. For example, on New Year's Eve in 2021, which was during a particularly high-risk period before the complete rollout of Western Australia's vaccination booster program, Western Australian police officers utilised similar powers to those under existing part 6 of the Emergency Management Act to gain entry into the George Hotel in Perth where an unlawful gathering of up to 300 people was underway in breach of COVID restrictions in place at the time. On attending, police could not gain entry because the doors were locked and the windows had been covered with black curtains obscuring vision from outside. Officers had to climb walls to gain entry to the premises. The licensee was charged with two counts of breaching the Emergency Management Act directions in place at the time and received a suspended term of imprisonment. Another example was the use of Optus Stadium as accommodation for Operation Tiger. Again, these were reasonable provisions to deal with a very serious situation. I will clarify the issue of the vehicle.

Hon TJORN SIBMA: I appreciate that history, but the very obvious point is that we are in a different phase of COVID management. My question relates to powers outlined in proposed section 77M. What prospective scenario is contemplated that would necessitate these powers, particularly that which includes a COVID-19 officer exercising powers under this section without warrant or the consent of the owner or occupier or the person apparently in charge of the place, vehicle or other thing? I can appreciate the exercise of that power or a similar or equivalent power prior to rescinding the COVID directions—among those powers was propping up the hard border—but we are in a different phase. What future scenario is envisaged? Was this section requested by the Chief Health Officer or any other health official? On whose internal advice was this section included in the bill?

Hon STEPHEN DAWSON: I cannot say definitely who it came from but certainly these powers have been used during the state of emergency and it was deemed appropriate that they could be used under a COVID-19 declaration. I draw the honourable member's attention to the story in the media about the lady who came across the border hidden in a truck. That is certainly an example of a time this power may be used. We might need to take control of a car to remove someone who should be in quarantine.

Hon Tjorn Sibma: That is the scenario that was contemplated?

Hon STEPHEN DAWSON: Those are the types of things that are contemplated.

Hon TJORN SIBMA: I think we can return to some of these matters, as time permits, at clause 7 of the bill.

I think we might be approaching the end of discussion on clause 1, but I do not want to speak too soon. I want to clarify for the record—it was not clear but it was intimated in the minister's reply to the second reading debate—whether the government intends to accept or modify any of the amendments drafted by Hon Martin Aldridge in concert with the Parliamentary Counsel's Office that are listed on the supplementary notice paper, for administrative purposes, under my name. If it is not the government's intention, what is the basic justification for its position?

Hon STEPHEN DAWSON: I think the appropriate time to deal with the amendments is as we get to them at the particular clause. I am happy to indicate whether the government is supportive or not each time the honourable member has an amendment.

Hon Dr BRIAN WALKER: By way of background, we have listened to a lot of questions on clause 1 that have come from more of a legal or administrative background on how we will deal with the issues occasioned by appointing the Commissioner of Police rather than the Chief Health Officer. I would very much like to take a medical tack, as members would expect. My approach is that the use of the armed forces or police in times of medical emergency is absolutely necessary, but the question is: does this fit the purpose? It seems to me, from reading this bill, that the government is not anticipating a pandemic or, indeed, an epidemic; it is transitioning the COVID-19 emergency situation, which is being dealt with, into management of the state or society. Am I correct in that thinking?

Hon STEPHEN DAWSON: No, honourable member. We are trying to manage what is still a pandemic, albeit a pandemic for which we are hopefully starting to see a drop in case numbers and severity, and hospital and intensive care unit numbers.

While I am on my feet, if the honourable member has questions on health, I have a health adviser I can swap in. The member can tell me at the appropriate time and I will do that.

Hon Dr BRIAN WALKER: That is much appreciated. I have a quick question. At the moment, our case fatality rate is 0.17 per cent, which is about half that of influenza, which we would expect to have a 0.37 per cent case fatality rate. In those terms, the current state of emergency is less a given, but I can well appreciate the risks, as

Hon Dr Steve Thomas mentioned yesterday, as viruses are well known for their ability to mutate. They can mutate into a lesser form or indeed a more virulent, more dangerous form, which seems to be the case. I am concerned about the XBB variant going through Singapore. That being the case, it is possible—it may not be certain but it is not outside the bounds of likelihood—that we could see a COVID variant emerge that has a significantly higher case fatality rate. Would that be correct?

Hon STEPHEN DAWSON: I am not sure what is ahead of us. Certainly, I have seen new variants starting to take hold in a number of countries around the world—different variants in different places at the same time. Where that might end up I am not sure. Having lived through the last two and half years, as the rest of us have, I think it would take a brave person to bet on the outcome of the future.

Hon Dr BRIAN WALKER: Indeed, quite correct. As members heard yesterday, I have lived through an epidemic in Hong Kong in which the case fatality was 11 per cent. In major epidemics or pandemics, one of the first casualties is not the bodies piling up; it is actually panic in the population. Hence, I would quite agree with the need for a very firm approach and the use of the police to manage societal unrest. That is a major casualty. We could see that destroying the economy in Hong Kong. People working at the bank would refuse to go to work because they did not want to bring the illness back to their families, and so business suffered quite greatly.

I can well appreciate the good intent of the government in the provisions in this bill so far. What I am concerned about is how the lifesaving approaches proposed in this bill will be implemented. This is where I am at a bit of a loss. One of the things that would have to happen is that we would first of all have to recognise that a medical emergency was present. We are talking about an infection that is declared an emergency—an infectious disease extreme circumstance. I am looking at the Public Health Act 2016, which of course is always in operation. Section 202A(2) says —

The Minister may, in writing, make a declaration that an infectious disease extreme circumstance exists in the whole of the State or in any area or areas of the State.

I would suggest that a serious COVID variant transformation would merit this. Who would be making the declaration? Would it be the Chief Health Officer or the Commissioner of Police?

Hon STEPHEN DAWSON: We are not using the infectious diseases declaration within the Public Health Act.

Hon Dr BRIAN WALKER: Indeed, so. I am looking here at the comparability. The Public Health Act is seen in conjunction with the Emergency Management Amendment (Temporary COVID-19 Provisions) Bill 2022. They are being presented together with the changes there. I am wondering whether there are not some crossed purposes here, with some of the sections of the Public Health Act being translated into the Emergency Management Act to allow for a semi-pandemic approach.

Let me explain my concerns with this before I go on. In the event of an epidemic of major proportions, or a pandemic—they are both the same; it is just a question of the extent of the infection—and panic being the first victim of that state, we would then be faced with a quite awful situation. We had the same thing in a minor form with the first outbreaks of COVID. In Merredin, we found our IGA emptied by ravenous Perth citizens driving out to empty all the local towns of their produce, leaving the farmers without anything to eat or, indeed, toilet paper to clean their backsides with. That was a natural response for people who are panicking and unable to manage. Panic makes the mental health of the population suffer. People behave aberrantly, doing things that they would not normally do. If we were to face such a situation, I would be very concerned that this legislation would deal with a minor infectious disease, as COVID seems to have degenerated into, but would not cater for the issues of a more serious variant. Have those who are experienced in managing pandemics had any input on this bill?

Hon STEPHEN DAWSON: Yes, the Chief Health Officer had input into the bill.

Hon Dr BRIAN WALKER: I thank the minister. That being the case, another question I have is in reference to the *Western Australian government pandemic plan*, which I have looked through. It is an admirable plan but it cannot be put into action immediately. The problem being that should a variant come through that requires urgent pandemic management, we do not yet have in place a push button that when pushed, the pandemic legislation goes into place and action is taken without having to have meetings, discussions and coordinating groups and bringing together a great number of disparate professional groups that are all concerned, to some degree, with one aspect or other of the pandemic. Are we absolutely certain that the legislation that the government has crafted, with all good intent, would meet that requirement?

Hon STEPHEN DAWSON: The WA Department of Health and the WA health system routinely manage minor epidemic and disease outbreaks through its disease surveillance and reporting systems. Such epidemics and outbreaks are not considered emergencies. The legislation that would be used in the event of another pandemic or epidemic would depend on the nature of the situation and the response required. A range of powers is available under the Public Health Act 2016 and the Emergency Management Act 2005. Appropriate arrangements for a response would be determined with reference to the WA pandemic plan.

In addition, once the state of emergency ended, work would commence on examining the suitability of relevant legislative frameworks to deal with pandemics, and that work would, in turn, I think, provide clarity about how best to manage pandemics in the long term. New variants that sit outside COVID-19 can be dealt with, though, using existing provisions. The Public Health Act allows an infectious diseases extreme declaration to be made under part 12, but this would be an escalation of the EMA COVID-19 declaration. The infectious disease extreme declaration is a health response, and the EMA bill is about the cross-agency coordinated response. Essentially, that is about how we would work together collectively across government agencies to deal with issues broader than health.

Hon Dr BRIAN WALKER: I thank the minister. I am most reassured by that. I will ask no more questions. I am very pleased to note that the issue of future pandemic needs and having a plan in place right now that would be able to keep us safe in times of great emergency is being contemplated for the not-too-distant future, so I thank the minister for that.

Hon STEPHEN DAWSON: I thank the honourable member for his comments. I can assure him that no-one is resting on their laurels. People are continuing to work incredibly hard, as they have done over the last two and a half years, but they have moved into a different space now. Certainly, people are starting to think about life post the situation we find ourselves in. Of course, it is fair to say, having been through the last two and a half years, that there is a sense out there that it will not be another 100 years until the next pandemic of extreme proportions, so people are putting their minds to what the next plans are et cetera. Although planning had gone into pandemics previously, in hindsight, was it cursory? I am not sure. Perhaps some people recognised what we could find ourselves facing through a pandemic like COVID-19, but certainly work continues on life after that and on what is next.

Clause put and passed.

Clause 2: Commencement —

Hon TJORN SIBMA: I will paraphrase the minister from last evening rather than quote him directly. In response to the issue of the timing and the life of the bill, the minister expressed the view that some Australian jurisdictions had in their equivalent or counterpart measures sought periods of 12 months' or 18 months' duration. Effectively, I think the minister referred to a public statement given by the Chief Medical Officer around managing contingencies, potentially, over the next two years. What advantage does a two-year duration of this bill give the government in practical terms? Is the government minded to reduce the life of this bill by 12 months; and, if not, why not?

Hon STEPHEN DAWSON: I thank the member for the question. I note that the member has an amendment to clause 2 sitting on the supplementary notice paper. As the member correctly identified, I have previously mentioned commentary from the Chief Health Officer about the likelihood of needing to have a plan in place to deal with COVID-19 over the next couple of years. It is certainly the government's view that a two-year time frame is appropriate for this temporary framework. I have previously indicated that the states and territories have done different things in relation to their next step post their state of emergency; for example, the Australian Capital Territory's COVID-19 part has an 18-month duration while the Northern Territory's part has a two-year duration. We have gone with two years because we think it is appropriate. I am not in a position to support the member's amendment today. This decision has been made. It was canvassed across government and a decision was made that a two-year period was appropriate given the sentiment among the health sector that we will have to deal with this issue for at least the next two years.

Hon TJORN SIBMA: I thank the minister. I make the observation that the custom in this place, at least insofar as it has related to the previous COVID-19 expiring provisions bill—I forget the official title of the bill, but the minister knows the one I am talking about—has been that a bill comes back to this Parliament, usually on a six-monthly basis, and has at every iteration largely had its proposed life of type circumscribed a little so that members of the chamber could be satisfied that the legislative instrument was being used appropriately. I appreciate that this bill is particularly meaningful around clause 7, so I do not want to detain anybody here for a prolonged clause 2 debate other than to identify that the purpose in moving the amendment is being done for two reasons: first, as a safeguard, which I think is largely self-recommending. But in light of the fact that the proposal to refer this bill to the Standing Committee on Legislation was rebuffed and defeated comprehensively, but expectedly, yesterday and in light of the discussion that we have had about the uncertainty around the new facts that have emerged in the discussion of proposed new section 77M, it might be wise for a government to agree to a 12-month review. Limiting the sunset clause back from 24 months to 12 months—politics and chest beating aside—will provide the only opportunity this Parliament will have to scrutinise the effectiveness and appropriateness of the powers that will be enshrined in the bill. I know that I am no longer going to convince the minister of the merits. I think it still leaves open the very realistic opportunity for the government to resubmit a similar bill in 12 months' time and without any problem, but I do not think the minister will take me up on that offer.

I advise the chamber that the amendment I am about to move is a consequential amendment, so obviously there will be other amendments listed on the notice paper that will fall away. I do not want to foreshadow an impending defeat, but I know where I am going. That will happen and that will be made clear to the chamber. I move —

Page 2, line 11 — to delete “2 years” and insert —

1 year

Hon STEPHEN DAWSON: We have already indicated where the government stands on this. I thank the member for his contribution, and I understand where he is coming from. As I said, we think this is appropriate for a temporary framework. The time frame allows for a broader legislative review to be undertaken, but this process will take some time. Just because we have the framework available under this new COVID-19 declaration, it does not mean it will be used for that two-year period, but it can be. I note, of course, the member’s view that it should be a shorter period of time. However, I am not in a position to support his amendment.

Division

Amendment put and a division taken, the Deputy Chair (Hon Dr Sally Talbot) casting her vote with the noes, with the following result —

Ayes (9)

Hon Donna Faragher	Hon Steve Martin	Hon Neil Thomson
Hon Nick Goiran	Hon Tjorn Sibma	Hon Dr Brian Walker
Hon James Hayward	Hon Dr Steve Thomas	Hon Colin de Grussa (<i>Teller</i>)

Noes (18)

Hon Klara Andric	Hon Peter Foster	Hon Shelley Payne	Hon Dr Sally Talbot
Hon Dan Caddy	Hon Lorna Harper	Hon Stephen Pratt	Hon Darren West
Hon Sandra Carr	Hon Jackie Jarvis	Hon Martin Pritchard	Hon Pierre Yang (<i>Teller</i>)
Hon Stephen Dawson	Hon Alannah MacTiernan	Hon Samantha Rowe	
Hon Kate Doust	Hon Kyle McGinn	Hon Matthew Swinbourn	

Pair

Hon Martin Aldridge

Hon Rosie Sahanna

Amendment thus negatived.

Hon NICK GOIRAN: Why will part 2 of this act commence on a day fixed by proclamation and not when the act receives royal assent?

Hon STEPHEN DAWSON: Consequential amendments are being made to the regulations, and they will need to come into operation at the same time.

Hon NICK GOIRAN: When do we expect the consequential amendments to the regulations to be ready?

Hon STEPHEN DAWSON: I am advised that it will be very soon after royal assent. Unlike the normal practice, when Parliamentary Counsel’s Office requires a bill to pass before work can commence on the regulations, in this case work has commenced on the regulations. That happened previously with a bill a few weeks ago. In this case, we are trying to get the regulations done as quickly as possible.

Hon NICK GOIRAN: Is it not amazing what can happen from time to time? Ordinarily, when the opposition asks the government for even an advance copy of the regulations, or where we are up to with regard to the drafting, we are told that it is not possible to start that until such time as the government has confidence that the bill will pass through the Parliament. It has now been revealed that an advance draft has been prepared.

Hon Stephen Dawson: It is not finished yet.

Hon NICK GOIRAN: It is a work in progress.

Hon Stephen Dawson: It has started.

Hon NICK GOIRAN: Would the minister be able to table the current draft?

Hon STEPHEN DAWSON: It is not available, and it would be extraordinary to do that. I can give the member the information that drafting has started, but I do not have a copy that I can provide.

Hon NICK GOIRAN: Presumably this is continuing to occur under the minister’s stewardship. Earlier, Hon Tjorn Sibma asked who was leading this. Has the minister seen a first draft of the regulations?

Hon STEPHEN DAWSON: No, I have not.

Hon NICK GOIRAN: Does the minister have any indication about when he will see a first draft and when he expects that to be finalised?

Hon STEPHEN DAWSON: No. I am told it will be soon after royal assent. It could be as early as next week. I have not seen it yet.

Hon NICK GOIRAN: I just make this observation. I do not expect or require a response from the minister. I just draw to the minister's attention that despite the fact that this bill has been declared urgent, and despite the fact that the ordinary rules of Parliament are being dispensed with to ensure that this bill passes tonight—in fact, there is a mere two hours and 16 minutes, as the clock is continuing to run down, for us to consider the remaining clauses in this bill, such is the supposed level of urgency—this bill will commence neither on the day of royal assent nor on the day after royal assent. The best we have been told is that the bill will commence soon thereafter, because the government still needs to prepare the regulations.

As I say, I do not expect or need a response from the minister; of course, he is welcome to make one. I simply note that it makes a mockery of the notion that we must be here tonight until midnight or perhaps the early hours of the morning and that it is essential that we do it today, Wednesday, 19 October. It is critical that it be done tonight. It cannot be done tomorrow, members; it must be done tonight. A few moments after the clock strikes 12 tonight, I am sure that the minister will be rushing over to Parliamentary Counsel's Office and saying, "Come on! Let's get moving with these draft regulations and consequential amendments. The quicker we get this done, the quicker we can have this new regime in place." Give me a break! That is not going to be happening in the early hours of Thursday morning. There is no good reason this matter could not have been dealt with tomorrow. For that matter, we are now finding out that this is possibly going to roll into next week, and I note that next week is a sitting week.

Clause put and passed.

Clauses 3 to 5 put and passed.

Clause 6: Section 72A amended —

Hon NICK GOIRAN: Clause 6 will amend section 72A. It will insert proposed section 72(1A), which states —

Subject to any limitation in a declaration under section 58, this section applies if a state of emergency declaration is in force declaring that a state of emergency exists in relation to COVID-19.

In section 72A(2) and (3), it will delete "an emergency situation or state of emergency, a hazard management officer or" and insert "a state of emergency referred to in subsection (1A), an". After section 72A(5), it will insert new subsection (6), which states —

Nothing in this section limits the powers that may be exercised under Divisions 1 and 2 in relation to a state of emergency referred to in subsection (1A).

Besides a situation in which the State Emergency Coordinator considers it necessary to close or control the interstate border, would any other extraordinary measures be required that would necessitate the need to declare a state of emergency again, which would then enliven section 72A?

Hon STEPHEN DAWSON: I return to section 68, part 6, of the act, "Use of vehicles", which we are not using. That did not come across to the legislation before us; there is no equivalent in this bill. If we needed to use section 70A of the act, "Electronic monitoring of persons in quarantine", there may be another reason we would need to go into a state of emergency again or to have the power to direct public authorities in all cases during a state of emergency. We may have to go back into a state of emergency.

Hon NICK GOIRAN: What about the use of G2G PASSes?

Hon STEPHEN DAWSON: It is kind of hypothetical because G2Gs do not exist anymore. They were linked to border control. That would not be an example. We would need to be in a state of emergency again if we were to use those border controls.

Hon Nick Goiran: It is inherently linked.

Hon STEPHEN DAWSON: Under proposed section 77Q, the government would have the ability to limit intrastate borders so that people cannot leave the Kimberley or go into the Kimberley, for instance, because it would not want COVID getting in.

Hon Nick Goiran: The G2G PASSes are inherently linked with the border closures?

Hon STEPHEN DAWSON: Yes, the interstate border closures.

Hon NICK GOIRAN: Clause 6 amends section 72A of the Emergency Management Act 2005. Section 72A(1) of the Emergency Management Act 2005 defines "relevant information" for the purposes of the entire section 72A as —

(a) relevant information as defined in section 72(1); and

(b) information of a kind specified by the State Emergency Coordinator as relevant to the emergency.

Has any information been specified under section 72A(1)(b) for the current state of emergency?

Hon STEPHEN DAWSON: Yes. I am just waiting on examples. The advisers are going through the directions to try to find an example. Does the member want to park that issue for a moment? Does the member have other questions and we can come back to it? I am happy to be guided by the member and whether his next series of questioning lands on the answer.

Hon NICK GOIRAN: Perhaps the best way I can deal with it, with the minister's concurrence, is this. The next clause is clause 7 and I suspect we are going to spend a substantial period in debate on clause 7. If the minister is happy to take up this clause 6 issue within the context of clause 7, I am happy for us to move on.

Hon STEPHEN DAWSON: I am happy to deal with it like that. Let us do clauses 6 and 7 together while I wait for an example to give the honourable member.

Clause put and passed.

Clause 7: Part 6A inserted —

Hon TJORN SIBMA: I do not want to pre-empt anything but I seek the deputy chair's guidance on which amendments are linked in ways to impute a consequential relationship. The deputy chair will note that at 2/7, I have listed an amendment with the deletion of "2 years" and the insertion of "1 year". However, the advice I have received is that it is not a consequential amendment to the division that was had and lost before. I seek clarification that that is the case.

The DEPUTY CHAIR (Hon Peter Foster): That is my understanding, honourable member.

Hon TJORN SIBMA: Thank you kindly for the guidance. I might forecast that since the government's policy on this matter has been settled, I am unlikely to move the amendment now.

I want to reflect a bit more on ministerial oversight, or the lack of it, at clause 7 generally. Presently, the bill delegates—I do not know whether "delegates" is the right word because there does not appear to be a delegation, necessarily, but a direct empowerment of all authority for issuing COVID-19 declarations and the powers under a declaration to the State Emergency Coordinator, who is also the Commissioner of Police. As a consequence of that determination, I would be interested to know the process by which that decision was made. I will ask that question now. There has been an appeal to not only necessarily the individual, but also the role so named as possessing great corporate knowledge and know-how in dealing with COVID-19 up until at least this point, but at what point was a formal determination made by the government that from here on in a COVID-19 management line of authority would not end at the minister but at the State Emergency Coordinator?

Hon STEPHEN DAWSON: Obviously, there are still roles for ministers in dealing with COVID-19 and the pandemic. However, if we were to move to the temporary COVID-19 provisions, it was decided by government that it would be appropriate for the State Emergency Coordinator to be responsible for that. The COVID-19 declaration is informed by elements of the existing emergency situation declaration framework, which operates under a lower threshold and aligns with the move away from a state of emergency. The making of a COVID declaration by the State Emergency Coordinator is consistent with their current ability to make an emergency situation declaration for any hazard under the Emergency Management Act. The State Emergency Coordinator being responsible for making the declaration also recognises their experience and ability to coordinate and manage the state's response to COVID-19. The State Emergency Coordinator has the appropriate level of experience and authority to make decisions for the COVID-19 declaration. The State Emergency Coordinator also engages with ministers through the State Disaster Council, which ensures that whole-of-government input and liaison is occurring. If at some stage COVID got worse and there was a need to move into a state of emergency again, it is appropriate that the Minister for Emergency Services is the responsible authority for that.

Hon TJORN SIBMA: I do not think there is any question that the Minister for Emergency Services and all his cabinet colleagues would not have regular liaison with the State Emergency Coordinator in that role or in his other role. I have absolutely no doubt about that. But liaison and communication does not impute necessarily any accountability or transparency or a level of oversight. I do not want to deal too much in hypotheticals, but the State Emergency Coordinator is going to be given the power to make a COVID-19 declaration. It follows that that person intends to make that declaration. What is the minister's expectation about advice prior to that declaration being made by the State Emergency Coordinator? For example, would the minister anticipate a written brief that is more or less for noting: "Dear Minister, I am about to exercise my power to make a COVID-19 declaration as per this legislation. Sign here just to let me know you have read it"? I do not want to be cute here, but what is the level of transparency and oversight that the government intends to exercise at the point of making a COVID-19 declaration? I want to try to satisfy myself, because it seems as though the government—I do not want to put words in anyone's mouth, but I will use this colloquialism—is attempting to wriggle off the hook of accountability and place the State Emergency Coordinator on it. In making that assessment, I am not making any negative assessment of the State Emergency Coordinator's integrity or capacity; far from it. I think that that particular role has had responsibilities put on it that are inappropriate and that whole-of-government multifaceted consequences will arise from making that declaration, which, frankly, a person can be qualified to have a view on only if they have been

elected by the people of Western Australia to exercise that kind of discretionary decision-making. I will round this out a little bit. What would be the minister's expectation about being advised that the State Emergency Coordinator was about to make a COVID-19 declaration, because it is absolutely clear as day that that is what is going to happen?

Hon STEPHEN DAWSON: Obviously, the State Emergency Coordinator must consult with the Chief Health Officer prior to making, extending or revoking a COVID-19 declaration. It is open to the State Emergency Coordinator to consult with other people, such as the director general of Health, for example. It is my view that I will be contacted by the State Emergency Coordinator to advise me of their intention to make a COVID-19 declaration. As COVID progresses, we still have State Disaster Council meetings at which we receive information from the Chief Health Officer about things such as the number of cases, the number of people in hospital, the severity of spread and the number of people in ICU, and that will continue as we go forward. The State Disaster Council comprises some ministers, the Premier and others, so there will be conversations about COVID-19 and where we are moving to, but certainly it is my view that I will be briefed before the declaration takes place.

Hon TJORN SIBMA: The capacity for the State Emergency Coordinator to make that declaration is encompassed by proposed section 77C. The minister just outlined an expectation or preference that the State Emergency Coordinator will advise him of either their impending decision or possibly after the fact. Is it the minister's expectation—this is not to be too obtuse—to receive that advice prior to the declaration being made or as soon as possible after the declaration is made?

Hon STEPHEN DAWSON: It would depend on the urgency of the situation, but certainly my preference is that I will be advised before the declaration is made. But with the world we live in at the moment, who knows? Certainly that is my preference, but it may well be immediately after the fact.

Hon TJORN SIBMA: What is the minister's expectation about the manner in which that advice will be conveyed to him? I will identify a scenario even though I do not like doing so. For example, will it be acceptable for the State Emergency Coordinator to advise the minister of this fact via text message, phone call or a formal written brief, which is kept and allocated a recordkeeping number under the TRIM system or whatever it is? What is the minister's preference?

Hon STEPHEN DAWSON: Again, it would depend on the situation and the urgency of it. I am aware of the view of opposition members—it has been made clear numerous times over the last two and a half years—about the briefings that I and other ministers have received from the State Emergency Coordinator. I would be happy for the State Emergency Coordinator to call me to advise me of the circumstance that will lead them to using the temporary COVID-19 provisions. Could it be a briefing note? Potentially. I have not received a text from the State Emergency Coordinator previously, and I do not think that would happen. Certainly, a phone call is appropriate, noting, of course, that the powers will be with the State Emergency Coordinator so it would be a courtesy phone call.

Hon TJORN SIBMA: That is exactly the point. What troubles me—I am at pains to reinforce that this is by no means a personal observation, because this is a policy that has been established by the government, which the minister has reiterated throughout. I find it extraordinary that any minister in the Westminster system would seek an opportunity, by way of a bill, to abrogate ministerial responsibility for the exercise of extraordinary powers. That is the most concise way in which I can express this, and in non-lawyerly terms. But what also disturbs me is that having abrogated—government members might dispute my use of that word—ministerial responsibility by writing it out of this bill, a very cavalier, loose approach is being taken to recording the formal advice that will provide executive government with notification that the State Emergency Coordinator is going to make this declaration. This is no vain, sanctimonious spiel on my behalf; my first formal job was as a commonwealth public servant and I cannot seriously countenance such a loose, cavalier approach to administration. Frankly, I do not think a call would suffice if I were the minister, and I will say why in a practical way. If the minister at least demanded—if I were the minister, I would—a written brief that provided forewarning of the State Emergency Coordinator's intention to make such a declaration, I would want it recorded in a file note, and I would expect that note to provide some justification for why that person deemed it necessary to make that declaration. The problem with the way the government is proposing to go about providing the State Emergency Coordinator with the power to make COVID-19 declarations is that it will give the minister and his cabinet colleagues absolutely no capacity to bring other judgements to bear. I believe in the concept of ministerial responsibility and accountability, and, with that, the capacity to make decisions. As the bill stands, the minister and the cabinet will not have the ability to override, adjust, amend or even question—that is the most troubling thing—the State Emergency Coordinator's intention to make that declaration. Could we please get on the record at least an expectation that this advice will be in writing? I think that might be useful in future years.

Hon STEPHEN DAWSON: The honourable member will get his piece of paper. If the State Emergency Coordinator makes a COVID-19 declaration, a notice of that declaration, along with the Chief Health Officer's advice, will be published on the wa.gov.au website, and the information in the declaration will also be published in the *Government Gazette*. Hon Tjorn Sibma will get his piece of paper; his comments are noted.

Hon NICK GOIRAN: The minister is referring to proposed section 77C, which in part requires that if the State Emergency Coordinator makes a declaration, it must be in writing. Proposed section 77C(1) states —

The State Emergency Coordinator may, in writing, make a declaration ...

Can we have confirmed that the discretion to make a declaration does not apply to the form of the declaration? The State Emergency Coordinator will not be obliged to make a declaration, but if he does make a declaration, will it have to be in writing?

Hon STEPHEN DAWSON: If the State Emergency Coordinator makes a declaration, it has to be in writing.

Hon NICK GOIRAN: I refer the minister to proposed section 77C(4), which reads —

The making of a COVID-19 declaration —

Which we now know will definitely be in writing —

does not prevent the making, extension or continuation of —

(a) any other COVID-19 declaration; ...

In what circumstance would it possibly be the case that the State Emergency Coordinator would need to make concurrent COVID-19 declarations?

Hon STEPHEN DAWSON: The State Emergency Coordinator could make a declaration in relation to whole or part of the state; for example, there could be one for the Kimberley, the Pilbara and another for the south west.

Hon NICK GOIRAN: My colleague earlier referred to the two-year time frame in proposed section 77A, recognising that the Committee of the Whole House has already made a decision on the sunset provisions in clause 2 of the bill. The Committee of the Whole House has already defeated the idea that the sunset clause should kick in after 12 months and has said, “No, we agree with the government, let us see all of this scheme fall away and be deleted out of the Emergency Management Act in two years’ time.” Nevertheless, part 6A provides for a temporary scheme to be in operation for a period of two years.

The supplementary notice paper contains an amendment foreshadowed in the name of Hon Tjorn Sibma and, as has previously recognised, authored by Hon Martin Aldridge, who is away on urgent parliamentary business. If that amendment were to pass and we inserted one year rather than two years, I take it that although the sunset provisions would still not occur until the end of the two-year period expired, in effect, the scheme would be inoperable after 12 months.

Hon STEPHEN DAWSON: If that were to change, the temporary COVID provisions would need to come out of the act after 12 months.

Hon NICK GOIRAN: What I am trying to get clear for myself and every other member here is that if proposed section 77A at line 22 were to read one year rather than two years, this part will provide for a temporary scheme to be in operation for a period of one year, and some might say this will create an inconsistency in the act.

Hon STEPHEN DAWSON: I am told it would create difficulty for general interpretation but because of the earlier decision of the Committee of the Whole House, that two-year period will apply.

Hon NICK GOIRAN: I agree with the minister. Obviously, the minister knows my view on the legislation as a whole. I also supported the idea that if this ever took place, it should cease after 12 months. That being the case, I accept that the last thing we need is any more confusion or possible inconsistencies. Is it the case that any of the other jurisdictions have one of these schemes applying for a period of 24 months?

Hon STEPHEN DAWSON: Not to my knowledge, honourable member. Actually, I beg your pardon, the Northern Territory’s scheme has a two-year duration and the Australian Capital Territory’s scheme has an 18-month duration, but the others have different time frames.

Hon NICK GOIRAN: Is the minister aware whether any of those other jurisdictions allow for taking control of, breaking into and entering a place or a vehicle without a warrant?

Hon STEPHEN DAWSON: Different jurisdictions use different acts, and the various acts have different powers. For example, under the Victorian act, the minister may make any pandemic order that the minister believes is reasonably necessary to protect public health. The act lists examples, but arguably it could, if it were decided it was appropriate, allow someone to break into a car. I am not aware that any specific words are used; I do not have the acts with me.

Hon NICK GOIRAN: This is a comment, minister, not a question. I just make the observation that, for example, in Victoria that potential power is still retained by the minister and it is the minister who has the ability to make one of those orders. Therein lies the distinction, but I acknowledge that the minister does not have any further information at this time.

Hon STEPHEN DAWSON: Honourable member, on that earlier question on clause 6 and section 72.

Hon Nick Goiran: Section 72A is being amended.

Hon STEPHEN DAWSON: Yes. An example is the direction “Controlled Borders for Western Australia Directions”. I refer to my notes, clause 48 of that direction says —

For the purposes of the definition of “relevant information” in section 72A(1) of the act, I specify the information required to be provided in the G2G PASS declaration and an updated G2G PASS declaration.

This is one example that we are aware of. We would have to analyse all 700 directions to find other examples. Certainly, the advisers have been going through them.

Hon Nick Goiran: There may be other examples.

Hon STEPHEN DAWSON: Potentially, there could be others but that is an example of where it has been used.

Hon NEIL THOMSON: I refer to proposed sections 77B and 77J. The term “COVID-19 management” is defined in proposed section 77B —

- (a) means the management of the adverse effects of COVID-19; and
- (b) includes the prevention, control and abatement of risks associated with COVID-19 (including, without limitation, risks to economic and psychosocial wellbeing);

Proposed section 77J, “Matters that may be taken into account and consultation”, states —

- (1) In exercising a power under this Division, the State Emergency Coordinator may, without limitation, take into account public health, social and economic considerations.

We know the economic impacts of COVID-19 and particularly COVID-19 management have been substantial. At the last count, Perth had the highest inflation rate in Australia and economists say that the impact of COVID-19 on supply chains throughout the world has been a major factor in the outlook for the world inflation rate being around eight per cent. I saw in a recent article that it is now 10 per cent in the United Kingdom.

Clearly, the economic impacts are significant. My question is: what expertise will the State Emergency Coordinator have to consider economic matters?

Hon STEPHEN DAWSON: We heard different things at the table, so we have gone on different tangents. The member’s question related to vulnerable people. Could the member repeat it for me? I know it is proposed sections 77B and 77J; I have that bit. What was the nub of the question?

Hon NEIL THOMSON: What economic expertise will the State Emergency Coordinator have to take into consideration—acknowledging that it says “without limitation”—public health, social and economic considerations?

Hon STEPHEN DAWSON: I thank the member for repeating the question. My advisers and I had heard different things, so we went different places.

The State Emergency Coordinator may not have any economic credentials—I am not sure whether that was the word the member used—but certainly the State Emergency Coordinator will be able to consult with whomever he thinks is appropriate in making his decision. Although the State Emergency Coordinator will consult the Chief Health Officer, he could also consult other appropriate agencies or individuals to help him come to a decision about whether a temporary COVID-19 provision is needed. He will not have to rely on himself. He might be an economist with a degree or whatever else, but I imagine he would consult with the proper people before making his decision about the impacts.

Hon NEIL THOMSON: Proposed section 77J(2) says —

Before exercising a power under this Division, an authorised COVID-19 officer may consult with any of the following —

It then goes through a pretty much unlimited category of persons who may be consulted. Does that authorised COVID-19 officer include the State Emergency Coordinator?

Hon STEPHEN DAWSON: Yes, it does.

Hon NEIL THOMSON: As I said earlier in my preliminary remarks to the questioning, this is a big issue for business. We had the debate earlier about the role of the executive in making decisions. I would have thought the Premier, who is also the Treasurer, would have been involved in some of the major decisions about what restrictions would apply under the COVID state of emergency. Clearly, the Treasurer would have had a very strong incentive to consider the impact on the economy. It would appear that the State Emergency Coordinator will not have the same imperative, other than the stipulation that the State Emergency Coordinator may, without limitation, take those factors into consideration.

The issue is the prospect of economic harm to persons in the community. I am particularly thinking of the business sector. If a decision was made by the State Emergency Coordinator without consideration of economic matters, what recourse would persons or groups of persons have to take action against the State Emergency Coordinator through a judicial or quasi-judicial process if that person or group of persons believed that the economic harm was excessive, unwarranted or imposed without any appropriate administrative consideration?

Hon STEPHEN DAWSON: They could go to the State Emergency Coordinator and, if that did not resolve the matter, they could go to the Supreme Court and seek a ruling on whether the use of the powers was excessive in the first place. What we are trying to do in this bill is the opposite of what the member suggested. We are putting safeguards in place to enable the SEC to consult with people other than the Chief Health Officer to take on board all the effects. It may well be that the Chief Health Officer is very strong in saying to those five people in the community that a business must be closed down for whatever reason. However, the SEC might argue that those five people work in a mine or a power station that needs to keep going because everyone else in the town is reliant on it and that the risk of those five people leaving the town and spreading COVID-19 is small; therefore, the SEC might err on the side of caution. He might take advice from others and decide that he will not follow the advice of the Chief Health Officer. That is just one example of what could happen. What is in the bill before us is consistent with Victoria and the Northern Territory, which have built into their recent legislative amendments the ability to take into consideration social and economic considerations in addition to the public health considerations when making certain types of directions. Hopefully, this will help with what the member is suggesting and what he is concerned about.

Hon NEIL THOMSON: As the minister knows, ministers can have enormous powers under their respective acts and could have significant powers to make decisions. Every minister knows that those decisions must be made with appropriate deliberation and administrative consideration because to fail to do so, notwithstanding any powers that a minister may have conferred upon them by the head of power, will always be bound by administrative law in that sense. What bothers me is the concentration of power. As a minister, the minister would understand, as I do, that a minister has obligations to always deliberate on any decisions they make. Notwithstanding some of the open-endedness of this legislation, would not abrogating the words of Hon Tjorn Sibma and those that I used during the second reading debate and conferring on the State Emergency Coordinator all this power to make a decision that may include the consideration of all these other aspects without limitation, which we know will have a massive impact, impose some risk on the State Emergency Coordinator becoming a target for any kind of legal action that might occur if the SEC has not appropriately deliberated a consideration?

Hon STEPHEN DAWSON: The SEC is used to making decisions in the context of a legal framework. I do not think the SEC will suddenly get giddy and go wild. The decisions of the SEC are subject to the same administrative law principles as that of a minister.

Hon NEIL THOMSON: If the minister can indulge me a little more on this issue, the concern I have is that because we will take the very narrow control away from the executive, we may have a situation in which the Premier, Treasurer or other members of cabinet—the Minister for Commerce, for example—might believe that those powers are being exercised in a way that is not appropriate. What could the Premier or any other executive arm of the government do if those powers were being exercised in a way that was seen to cause excessive economic harm and not be proportionate to the public health response?

Hon STEPHEN DAWSON: I think if the government became concerned, it would be open to government to come back to Parliament and revoke the powers.

Hon Nick Goiran: Really?

Hon STEPHEN DAWSON: Absolutely.

Hon Nick Goiran: It wouldn't be possible.

Hon STEPHEN DAWSON: It absolutely would. I mean, for goodness' sake. I am not sure whether members are suggesting that the State Emergency Coordinator is going to suddenly get giddy and go wild and try to close down the Western Australian economy. That is not what I think is going to happen as a result of the bill that is before us. As I said previously, the SEC can now take into consideration social and economic issues.

Hon Neil Thomson: May.

Hon STEPHEN DAWSON: The SEC may take into account social and economic considerations in addition to public health considerations when making certain types of directions. But certainly, if it got extreme enough that small business people or whoever sought judicial review, and if it was thought that the actions were not proportionate, we could come back to the Parliament and seek to change things.

Hon TJORN SIBMA: Right. Minister, I think that scenario is the one we are attempting to avoid, quite frankly. Seriously, that gets things absolutely in reverse order, as far as I am concerned. The whole point of our proposal was that we knew that we were going to lose the vote on the bill, but while we had the capacity to amend it in a way

that was constructive, we thought we would take that position as an opposition. There are a range of amendments on the supplementary notice paper, as the minister is aware, that are consequential, but they are also directly linked to this theme of re-establishing the concept of ministerial responsibility and accountability for these decisions. Frankly, I think it is in the minister's and the government's own interest that we amend this, and I will reflect upon that particular example. At proposed section 77C, which we have already canvassed—the power to make a declaration—proposed section 77D, which deals with the duration of a declaration; proposed section 77E, which is the extension of a declaration; or, indeed, proposed section 77F, which deals with its revocation, where is the capacity for the minister to question, amend, adjust or even refuse a decision? The minister, as an elected representative and a member of the government, is in a better position to make these different judgements around psychosocial outcomes, economic outcomes, investment outcomes and, dare I say, community outcomes than is necessarily the State Emergency Coordinator. Again, I want to reinforce that this is absolutely no reflection on the professionalism and integrity of that person, but I realise that a sworn Commissioner of Police, serving as the State Emergency Coordinator, answers to a different level of accountability than does an elected representative, and particularly a cabinet minister. How would the minister go about amending a declaration of the kind outlined at proposed sections 77B, 77C, 77D, 77E and 77F if it was the government's policy view that the State Emergency Coordinator, for whatever reason, got the call wrong?

Hon STEPHEN DAWSON: I cannot currently amend a direction issued by the State Emergency Coordinator; I do not have that power. What I could do now is revoke the state of emergency, but if we are using these powers, then we are in an emergency situation. There is not the opportunity that the member suggested, but we would be in an emergency situation. I can give an example: we do not want ministers or politicians using base politics and saying, "Well, this might impact on my electoral prospects because you've made a decision to keep us in a temporary COVID situation." I think —

Hon Tjorn Sibma: May I interject in a constructive way, minister?

Hon STEPHEN DAWSON: Of course.

Hon Tjorn Sibma: I wouldn't put that contemplation on it. What I would put on it—I think this is a view that we would all hold individually, regardless of our political allegiances—is that we are best placed to judge public sentiment, in the broadest possible sense, by virtue of the fact that the people of Western Australia have entrusted us to make precisely those decisions.

Hon STEPHEN DAWSON: Yes, but there are politicians who make decisions from time to time in what they believe might be their best interests, as opposed to anything else. That could happen in this situation. I understand that the member has a different view; this is where we have landed as a government. It is an extraordinary situation. It is dealing with COVID-19. They are temporary provisions for up to two years. Let us hope they do not need to be used; they probably will, but let us hope they do not need to be used for anywhere near that time. If a decision was made that we did not like or think was proportionate, it would be open to us to seek a judicial review, or if things were really bad, to come back to this place and sit facing Hon Nick Goiran and be tortured for days on end! Let me assure the member that I have considered all of this as part of bringing this bill before the chamber now.

Hon Tjorn Sibma: So you do like us!

Hon STEPHEN DAWSON: Of course!

Hon NICK GOIRAN: There is one big distinction, though, and that is that these powers could exist for up to three months. At the moment, when the minister makes his fortnightly declarations or extensions, those special or emergency powers exist for only 14 days at a time. We had an interaction earlier, I think at clause 1—perhaps it was yesterday—in which the minister acknowledged that he has the power to revoke a state of emergency declaration. He would do so, obviously, within that 14-day period, so if at any time within the 14 days the minister says, "This is no longer necessary," he can go along and revoke it. But in this situation, we are talking about three months. Some of these things will be a matter of judgement. At some point in time it is inevitable that the minister is going to have to make a decision to no longer extend the state of emergency declaration. It will happen sometime in his lifetime, for as long as he is Minister for Emergency Services, and hopefully that time will come sooner rather than later. At that time, it will be a judgement call. It is not as though something will have materially happened within the stroke of a minute or an hour. If the minister were to revoke the state of emergency declaration tomorrow, the reality is that the situation tomorrow would be no different from the situation right now. It is a matter of judgement. That judgement takes place within a 14-day time frame. Under this legislation, it will be within a three-month period. What if the State Emergency Coordinator says that he thinks a declaration should continue for the full three months, and the minister says to him, "With all due respect, I don't think this is necessary anymore"? Suboptimal would be a very charitable way to describe this. It is then suggested that the only recourse available to the government of the day—incidentally, because this is happening over the course of the next two years, this will be a problem for only this minister and this government—would be to rush back to Parliament and change the law. That is obviously not good lawmaking. If we are going to identify risks and problems and weigh all those up and make decisions now,

and if there is an acknowledgement that there could be a scenario whereby the minister would need to intervene and revoke a declaration, the minister should not have to come back to Parliament to do that; he should be able to do that.

I know that we are going to be moving an amendment momentarily. Before we do so, I ask the minister to turn to proposed section 77F, which is titled “Revocation of COVID-19 declaration”. To be clear, the Minister for Emergency Services, who is superior to the State Emergency Coordinator, will not have the power to revoke a COVID-19 declaration under section 77F, or, indeed, any other power that he will have.

Hon STEPHEN DAWSON: As the member will see, proposed section 77F states that the State Emergency Coordinator may revoke the COVID-19 declaration at any time. It also states that the State Emergency Coordinator must revoke a COVID-19 declaration as soon as the State Emergency Coordinator is satisfied that it is no longer necessary for the powers under division 4 to be exercised for COVID-19 management in the declaration area.

I know that people are not questioning the individual person holding the role of State Emergency Coordinator, but the Emergency Management Act obviously identifies the Commissioner of Police as the State Emergency Coordinator. That is appropriate, because the Commissioner of Police has sworn an oath to protect the community. There is significant oversight of this position. The Commissioner of Police abides by a code of conduct that applies to all police officers in Western Australia. Amongst other principles, the code of conduct sets out the expectations for ethical decision-making. Decisions must be able to withstand the scrutiny of the community, the Western Australia Police Force, the judiciary, the Corruption and Crime Commission, the Auditor General and the government. The guiding principles set out in the code of conduct require all officers to perform their duties in the public interest and without favour or affection, malice or ill will.

As the most senior police officer in the WA Police Force, the Commissioner of Police has been entrusted by the Governor of Western Australia as a fit and proper person to lead the police force. In his roles as both the Commissioner of Police and the State Emergency Coordinator, he is entrusted to make many and varied critical decisions in the best interests of the community of Western Australia. If he fails, the government can remove him.

Hon TJORN SIBMA: To extend the compliment, I consider the Minister for Emergency Services to be a fit and proper person to hold the ministerial role, but we have been unsuccessful thus far in the debate in appealing to the Westminster principle of the concept of ministerial accountability. The cold hand of reason is not enough to compel the government to agree to our proposals here, so I might just launch, in desperation, an appeal out of love. Minister, I trust you. I have faith in you. I have faith in the minister’s —

Hon Stephen Dawson: Just don’t use the l-word; thanks, mate!

Hon TJORN SIBMA: Don’t worry; we are far enough away from preselection to keep us both safe! The issue is this.

Hon Nick Goiran: Where are we going with this?

Hon TJORN SIBMA: I will let you know.

Hon Dan Caddy: You’re getting objections from your own side!

Hon TJORN SIBMA: No, it is all good stuff. I just want to outline this to the house, and this is a lead-up to the inevitable. We have found within this bill a principal deficiency that we have sought to rectify by effectively re-establishing the concept of ministerial responsibility, by proposing to swap out every appearance of “State Emergency Coordinator” in clause 7 with “minister”. That would not mean that the minister would not be obligated to listen to the advice of the State Emergency Coordinator; in fact, quite the opposite. Nevertheless, I will use that as a very brief preamble to my amendment, you will be pleased to know, Deputy Chair. I move —

Page 4, line 23 — To delete “State Emergency Coordinator” and insert —

Minister

As guidance to members in the chamber, a range of consequential amendments flow from this.

Hon STEPHEN DAWSON: Again, I appreciate how the honourable member is participating in this debate, and I note his comments. As I think I indicated previously, the government will not support this amendment or the amendments on the supplementary notice paper in which the member seeks to delete “State Emergency Coordinator” and insert “Minister”.

I have said previously that the making of the COVID-19 declaration by the State Emergency Coordinator is consistent with the current ability of the State Emergency Coordinator to make an emergency situation declaration for any hazard under the Emergency Management Act. I have also said that the COVID-19 declaration will be informed by elements of the existing emergency situation declaration framework, which operates under a lower threshold and aligns with the move away from the state of emergency. The State Emergency Coordinator will be responsible for making a declaration. This also recognises the SEC’s experience and ability to coordinate and manage the state’s

response to COVID-19. I have also said that the person in that position has the appropriate level of experience and authority to make decisions for a COVID-19 declaration and that, further, the position engages with ministers through the State Disaster Council, which will ensure that whole-of-government input and liaison will occur. I have noted the comments of Hon Tjorn Sibma and Hon Nick Goiran, but the government will not be supporting this amendment.

Hon NICK GOIRAN: I will be supporting this amendment. Although the notes that the minister referred to continue to say that this situation is consistent with the emergency situation declaration, it is now apparent that it is not consistent. The threshold to make the decision is less. The period in which the powers can be used will be longer. When an extension is made, it will also be for a far longer period and not a trivial period. Under an emergency situation declaration, the use of the powers in the first instance exist for only three days. Under this regime, it will be three months. To suggest that it is consistent is simply not correct. The threshold for the decision is less; it is an easier decision to make. To top it all off, we have a situation in which powers will now be exercised that are not available under an emergency situation declaration.

I draw to members' attention proposed section 77N, which the minister outlined for us. That relates to something that can presently be exercised only in a state of emergency. Who gets to declare a state of emergency under the laws of Western Australia? Is it the State Emergency Coordinator? It is not; it is the minister. For precisely that reason, the amendment should be supported. The minister should make this decision. We are going to give the police or some other authorised person in Western Australia the ability to break into somebody's home or control their vehicle without a warrant. At the moment in Western Australia, that can be done only under the authority of a declaration from the minister. It cannot be done in any other situation. It is a nonsense to suggest that this is consistent. It is manifestly not consistent. This would have been picked up by the Standing Committee on Legislation, irrespective of the composition of the committee. History tells us that. It would have been brought to our attention and there would have been a recommendation for us to deal with this. It is in these circumstances that I ask members to strongly consider supporting this amendment by Hon Tjorn Sibma. It simply seeks to retain the status quo and ensure that whoever is in the seat of the Minister for Emergency Services, whether it is Hon Stephen Dawson or somebody else, will make this decision, and they will be responsible to the people of Western Australia through this Parliament—a situation that will be completely avoided if the amendment is defeated.

Hon STEPHEN DAWSON: We could do he-said, she-said all night, honourable member, but it is consistent in that the State Emergency Coordinator will be making the declaration. That is where the consistency is. I also went on to say that it was albeit at a lower threshold. I was clear. I made the point, so my consistency comment stands. I went back and had a look at the uncorrected *Hansard* from last night, in which the member said I used the word "same". I did not use the word "same". You used the word "same". I said "consistent" last night. I want to place that on the record. There is consistency in my argument, albeit —

Hon Nick Goiran: It is as to who will make the decision, yes.

Hon STEPHEN DAWSON: Absolutely.

Hon Nick Goiran: But they will be making different kinds of decisions with greater powers.

Hon STEPHEN DAWSON: It is as to who will be making the decision, but there is consistency there and I think the member can agree with that. We are not going to agree to the substance of the amendment, so my opposition still stands.

Hon NICK GOIRAN: At the moment, is there consistency in who makes a declaration that invokes the type of powers that are set out in proposed section 77M(3), (4) and (5)?

Hon STEPHEN DAWSON: What we have before us now is different from the current act.

Division

Amendment put and a division taken, the Deputy Chair (Hon Jackie Jarvis) casting her vote with the noes, with the following result —

Ayes (9)

Hon Donna Faragher
Hon Nick Goiran
Hon James Hayward

Hon Steve Martin
Hon Tjorn Sibma
Hon Dr Steve Thomas

Hon Wilson Tucker
Hon Dr Brian Walker
Hon Colin de Grussa (*Teller*)

Noes (18)

Hon Klara Andric
Hon Dan Caddy
Hon Sandra Carr
Hon Stephen Dawson
Hon Kate Doust

Hon Peter Foster
Hon Lorna Harper
Hon Jackie Jarvis
Hon Alannah MacTiernan
Hon Shelley Payne

Hon Stephen Pratt
Hon Martin Pritchard
Hon Samantha Rowe
Hon Rosie Sahanna
Hon Matthew Swinbourn

Hon Dr Sally Talbot
Hon Darren West
Hon Pierre Yang (*Teller*)

Pairs

Hon Peter Collier
Hon Martin Aldridge
Hon Neil Thomson

Hon Kyle McGinn
Hon Ayor Makur Chuot
Hon Sue Ellery

Amendment thus negated.

Hon NICK GOIRAN: Proposed section 77B refers to the term “declaration area”. It says —

... in relation to a COVID-19 declaration, means the area to which the declaration applies.

Is there any limitation on how large the area can be? For example, could it include the entire state?

Hon STEPHEN DAWSON: Yes, it could include the whole state. Proposed section 77C(1) says —

The State Emergency Coordinator may, in writing, make a declaration (a **COVID-19 declaration**) in relation to the whole or any area or areas of the State.

Hon NICK GOIRAN: Could it, on the other side of the spectrum, be as small as the size of someone’s home?

Hon STEPHEN DAWSON: I am told that, yes, technically any area, so it could.

Hon NICK GOIRAN: Is that consistent with the scope of powers that are available under a state of emergency declaration?

Hon STEPHEN DAWSON: Under a state of emergency, the minister may in writing declare that a state of emergency exists in the whole, or in any area or areas, of the state, so yes, it is consistent.

Hon NICK GOIRAN: To finish the comparison, is it consistent with the scope available under an emergency situation declaration?

Hon STEPHEN DAWSON: Yes.

Hon NICK GOIRAN: When extending an emergency situation declaration under proposed section 77E, and I compare and contrast that with extending an emergency situation declaration or, indeed, a state of emergency declaration under the existing act —

Hon Stephen Dawson: I think you just said extending an emergency situation declaration under proposed section 77E.

Hon NICK GOIRAN: Yes, under proposed section 77E, we will be able to extend a COVID-19 declaration. What I am really seeking to do at this point is compare and contrast that with the extension of an emergency situation declaration or the extension of a state of emergency declaration. For those types of declarations—an emergency situation declaration or a state of emergency declaration—provisions in the existing legislation state that the declaration may limit the powers that may be exercised during the period by which the duration is extended. Why has no similar provision been included in proposed section 77E?

Hon STEPHEN DAWSON: It is different, honourable member. Under a state of emergency, it is the minister who declares or limits the powers that may be exercised during the period in which the duration is extended. Under a temporary COVID-19 provision, it will be the State Emergency Coordinator who will make the decision to declare in the first place. The SEC will be able to decide the period of time. We did not see the need for another limitation around it. The SEC will be able to revoke that at any stage during the three-month period. It is different, granted, from a state of emergency declaration.

Hon NICK GOIRAN: Is this an omission or it has been done on purpose?

Hon Stephen Dawson: On purpose.

Hon NICK GOIRAN: It has been done on purpose. Under an emergency situation declaration, there is a specific provision that says, “If you’re going to exercise these powers, you could declare that they be limited in some kind of fashion.” I am paraphrasing. It is the same with a state of emergency declaration, but not for a COVID-19 declaration. This has been done on purpose, but it is not readily apparent why the government would do that on purpose. Why have that provision for the other matters? I can concede that the other matters may require more frequent extensions because the powers are available for a shorter period; these ones will be available for a longer period. It has become apparent, minister, that one thing with COVID-19 management is that things change. I recall that at one stage, people

needed to isolate for 14 days. Suddenly it changed to 10 days, then five days and, in more recent times—in fact, at the moment—it changed to nil days. That indicates that things can change and progress. It may well be the case that it is not necessary to use all these emergency powers and that there should be some form of limitation.

It is peculiar that it exists with the other type of declarations but not this one, yet the minister indicated that it has been done on purpose, not by way of omission. If the opposition were to move an amendment to make it consistent so that all three types of declarations, if they are extended, will have this provision, what would be the objection of government?

Hon STEPHEN DAWSON: The government made a conscious decision to draft the bill as it has been drafted so we would not support it. I made the point earlier tonight about situations that might relate to an emergency situation declaration—a cyclone or a bushfire—and that such a declaration would exist for three or five days, with that being the extent of their duration. I probably should not say that, having seen some of the floods over east where, potentially, they have had weeks of an emergency situation declaration or whatever the equivalent is over there. Generally, over here, in terms of extreme weather events such as bushfires, they have been for three or five days. The SEC may limit the exercise of powers through directions and authorisations of COVID officers. At the moment, as we said earlier, three directions exist under a state of emergency. That could change. We could have none or we could have five next week; who knows? An emergency situation is very different. We are obviously in a state of emergency and we are hoping to move to the COVID-19 temporary provisions. Having lived through COVID for the last two and a half years, or a thousand days, we essentially know what we are dealing with and the limitations. Although we do not know what strains are ahead of us, we know how to deal with them and the types of things we will need to do to respond, whether with masks, through isolation or by closing off various parts of the state. All those things will be taken into consideration. The government has decided that it is appropriate to have a three-month time frame and to not have the limitations that exist elsewhere.

Hon NICK GOIRAN: Before I move on, I find it unacceptable for the government to say, when an obvious deficiency and inconsistency has been identified as part of the scrutiny process and when it is apparent that to fix that deficiency and inconsistency would do no harm to the bill that is before us, that it has made a conscious decision and that that is its decision. There needs to be a substantial explanation of why it would do that. What is different about a COVID-19 declaration when compared and contrasted with a state of emergency declaration or an emergency situation declaration that would warrant not giving the person who declares the extension the opportunity to limit the powers that may be exercised during the extension period?

If it is good enough for an emergency situation declaration or a state of emergency declaration, evidently, it must be good enough for a COVID-19 declaration, because, if members remember, the threshold will be lower. It will be easier to exercise these powers. In fact, certain types of powers would not normally be available upon a declaration by the State Emergency Coordinator, so there would be very good policy reasons to include a provision like this. The fact that the government cannot provide a reason, other than to say that this was its decision, which is no response at all, is most unsatisfactory. The record reflects that. It is apparent that there are not going to be any changes to that, least of all in the next 48 minutes as the clock continues to wind down under these brutal lawmaking circumstances in which we find ourselves.

I note that proposed section 77G talks about consultation with and advice from the Chief Health Officer. This must have been quite an awkward proposed section for the government to draft and insert! I do not know whose idea it was to insert proposed section 77G and whether they have a sense of humour, but proposed section 77G has my support. Of course there should be consultation with the Chief Health Officer, of course the Chief Health Officer should have to provide written advice to the decision-maker, and of course the decision-maker should have to consider that advice. I just find it rather ironic that at this point in time, this is not the practice of the McGowan government when it comes to a state of emergency. I know that we had this discussion during budget estimates, when it was revealed that the minister had made quite a substantial number of extensions in his own capacity, and earlier as an acting minister. At any time since then has the minister called for the advice of the Chief Health Officer prior to making an extension? I note that the most recent one was made by the acting minister, Mr Punch, and I do not expect the Minister for Emergency Services to answer for him, but the one prior to that was extended by the minister. Was the Chief Health Officer's advice provided at that time?

Hon STEPHEN DAWSON: No. As I have indicated previously, there has been no requirement for the Chief Health Officer's advice to be presented to me in written format. However, when I have met the State Emergency Coordinator to discuss the extension of the emergency declaration, he has always let me know what the Chief Health Officer has said to him. The State Emergency Coordinator makes a recommendation to me based on the recommendation of the CHO. That has happened since I have been minister and it certainly happened when I acted previously in this portfolio as minister.

Hon NICK GOIRAN: As I say, I find it ironic that the government is now saying that if the State Emergency Coordinator wants to make one of these decisions, he will need to make sure that he sees the written advice from the

Chief Health Officer, but the McGowan government and its ministry does not need to see it. It says, “We’ll be fine without it, but you will have to see it.” I agree with that standard, so I agree with proposed section 77G, but if that is then the gold standard, I do not understand why the McGowan government finds itself immune to that type of good governance.

I also note proposed section 77G states that the Chief Health Officer must provide detailed reasons. Again, I have no objection to that, but why will the Chief Health Officer be asked to provide detailed reasons while the State Emergency Coordinator will not be required to do so?

Hon STEPHEN DAWSON: A policy decision was made by government that when the Chief Health Officer provides advice, it should be provided in writing. That will allow, I guess, insight into what has informed the declaration in the first place. This is consistent with what happens in the Australian Capital Territory, where the Chief Health Officer’s advice is published. It is different in different states. As I said, there is no standard across the country for how COVID has been dealt with—the various provisions, what is tabled and not tabled, and what is published and not published. A decision was made by the government to publish the Chief Health Officer’s advice and then, obviously, the decision of the SEC will be published after the decision is made.

Hon NICK GOIRAN: I acknowledge that, minister. I acknowledge that the Chief Health Officer will be required to provide detailed reasons for his advice and, as I said, that has my support. My question was: why is the Chief Health Officer being required to provide detailed reasons for the advice, but the State Emergency Coordinator is not required to provide any reasons for his decision?

Hon Stephen Dawson: As I said, a policy decision was made.

Hon NICK GOIRAN: Again, this is not the first time during this debate that the response provided by government is it is a policy decision. Why was the policy decision made? Why is the Chief Health Officer required to provide detailed reasons for the decision, yet the State Emergency Coordinator is not required to provide any detailed reasons? The response that it is because a policy decision was made is inadequate.

Hon Stephen Dawson: It is the truth, honourable member. You might think it is inadequate but the decision was made by government that it is appropriate.

Hon NICK GOIRAN: Yes, but why?

Hon Stephen Dawson: Because that is what they decided. They decided we should provide the Chief Health Officer’s advice, so people could know what that is. At the end of the day, when the SEC makes a decision, the decision is made public.

Hon NICK GOIRAN: It is the equivalent of the government telling the Parliament, when it asks why it should pass the Emergency Management Amendment (Temporary COVID-19 Provisions) Bill 2022, and the Parliament is told, “Because the McGowan government says so!”

The government did not provide an explanation, it simply said that it made a decision and that is why we should pass the legislation. That is evidently not satisfactory. If the minister were sitting on this side of the chamber, he and his colleagues would be going ballistic about a response like that. My reaction to that most inadequate response is very calm, but it does require some level of self-discipline on my part, I might add. We simply cannot have a response like that. This is responsible government in the twenty-first century under the McGowan government in Western Australia. If we question why the government is doing something, the answer is, “Because we said so.” The government has made a decision and that is good enough; it does not need to provide further explanation. Again, does the minister know what is ironic about that?

Hon Stephen Dawson: I think when you’ve asked that question, whether in briefings or otherwise, you’ve probably had a consistent answer.

Hon NICK GOIRAN: Yes. I have had consistently bad answers from the McGowan government for the duration of the forty-first Parliament.

Hon Stephen Dawson: Would you agree it’s consistent?

Hon NICK GOIRAN: But it is hopelessly consistent.

Hon Stephen Dawson: Finally, we have agreement on what is consistent.

Hon NICK GOIRAN: It is like asking whether the McGowan government has adhered to a gold standard of transparency. Well, consistently, the answer is no. But do not be proud of it. It is not something to be proud of.

If we require the Chief Health Officer to provide detailed reasons for his advice, obviously there is a reason the government has decided that that is necessary. For my part, I have said that I agree with that because a person making a decision that will be published demonstrates a level of accountability. Why has the minister decided the advice will be published? Presumably, that is a demonstration of some level of transparency. Why is the government

being accountable and transparent with regard to the Chief Health Officer but not the State Emergency Coordinator? That it is because the government made a policy decision is a grossly unsatisfactory answer.

There is a requirement for the State Emergency Coordinator to publish a COVID-19 declaration and any subsequent extensions or revocations, and the Chief Health Officer's advice on that declaration and any further statement of reasons. What are the consequences for failing to publish any of these documents?

Hon STEPHEN DAWSON: The honourable member will see that proposed section 77H(5) states —

A failure to publish a document in accordance with this section does not affect the validity of the declaration.

There is no penalty. Having lived through a state of emergency for however long, when a decision on a direction is made by the State Emergency Coordinator, that direction is always published and made available. It is the intention that that will continue to happen. That practice will carry over from the state of emergency to the temporary COVID-19 provisions. The short answer is that there is no penalty.

Hon NICK GOIRAN: I note that the same scenario, most unsatisfactorily, will apply under proposed section 77G(5). If the decision-maker fails to consult with the Chief Health Officer, it will not really matter. We are saying that they have to do this and the Chief Health Officer has to provide written reasons, but in the next breath we are saying that if they do not do it, do not worry about it. It is the same thing with proposed section 77H: "We require you to publish it, but if you don't do it, don't worry about it."

At the end of the day, this bill, as amended, will still be under this minister's portfolio. The Western Australian Legislation website will list it as an amended act under this minister's portfolio. He will be responsible for it. Has the minister planned out the steps he will take to ensure that there is not a failure to adhere to proposed sections 77G or 77H?

Hon STEPHEN DAWSON: It is always my intention, as minister, to ensure that the various acts that fall under my responsibility are adhered to. Certainly, I will continue to have conversations with the State Emergency Coordinator. I will most definitely have a conversation with the State Emergency Coordinator following the passage of this bill, and I will bring to his attention the debate in the chamber and my expectations. It is certainly my expectation that the information will be published.

Hon TJORN SIBMA: That being the case, will anything within the purpose of the bill be compromised by a slightly more robust requirement—I think it is generous—concerning the publication of the notice of declaration and related documents, as appears on the supplementary notice paper at 19/7? It is at least a little more prescriptive about where that information can be found and the timeliness with which it must be presented. I am interested to know whether the government is open minded about accepting the amendment at 19/7 as it relates to proposed section 77H, which I think is a very basic transparency and accountability measure.

Hon STEPHEN DAWSON: The member's amendment is certainly a lot more prescriptive than what exists in the bill before us.

Hon TJORN SIBMA: I will move amendments a bit more selectively from here on, in light of the time, and not necessarily divide on them—not to telegraph all my intentions here. For reasonableness' sake, in the absence of a role for the minister and in light of the fact that we have failed to agree to limit to 12 months the period in which this bill will apply and the fact that we were unsuccessful in getting the government to agree to refer the bill to the Standing Committee on Legislation, I move —

Page 9, line 22 to page 10, line 19 — To delete the lines and insert —

77H. Publication of notice of declaration and related documents

- (1) Notice of a COVID-19 declaration, or a declaration made under section 77E or 77F, must be —
 - (a) published for general information on a website maintained by, or on behalf of, the Government as soon as practicable, but in any case no later than 7 days, after the declaration is made; and
 - (b) published in the *Gazette* as soon as practicable, but in any case no later than 14 days, after the declaration is made.
- (2) The following documents relating to a declaration referred to in subsection (1) must also be published on a website maintained by, or on behalf of, the Government —
 - (a) a written statement setting out detailed reasons for making the declaration;
 - (b) the advice provided under section 77G(1)(b);
 - (c) any further statement of reasons you provided under section 77G(4).

Hon Tjorn Sibma; Hon Stephen Dawson; Hon Nick Goiran; Hon Dr Brian Walker; Hon Neil Thomson

- (3) The documents referred to in subsection (2)(a) and (b) must be published as soon as practicable, but in any case no later than 7 days, after the declaration is made.
- (4) Any document referred to in subsection (2)(c) must be published as soon as practicable, but in any case no later than 7 days, after it is provided under section 77G(4).
- (5) A failure to publish a document in accordance with this section does not affect the validity of the declaration.

Division

Amendment put and a division taken, the Deputy Chair (Hon Jackie Jarvis) casting her vote with the noes, with the following result —

Ayes (9)

Hon Donna Faragher
Hon Nick Goiran
Hon James Hayward

Hon Steve Martin
Hon Tjorn Sibma
Hon Dr Steve Thomas

Hon Wilson Tucker
Hon Dr Brian Walker
Hon Colin de Grussa (*Teller*)

Noes (18)

Hon Klara Andric
Hon Dan Caddy
Hon Sandra Carr
Hon Stephen Dawson
Hon Kate Doust

Hon Peter Foster
Hon Lorna Harper
Hon Jackie Jarvis
Hon Alannah MacTiernan
Hon Kyle McGinn

Hon Stephen Pratt
Hon Martin Pritchard
Hon Samantha Rowe
Hon Rosie Sahanna
Hon Matthew Swinbourn

Hon Dr Sally Talbot
Hon Darren West
Hon Pierre Yang (*Teller*)

Pairs

Hon Neil Thomson
Hon Peter Collier
Hon Martin Aldridge

Hon Shelley Payne
Hon Sue Ellery
Hon Ayor Makur Chuot

Amendment thus negated.

Several members interjected.

Hon NICK GOIRAN: It is good to see the Minister for Regional Development finally seeing sense! As much as it would be entertaining to continue engaging on that point, we have precious limited time, Minister for Regional Development.

Hon Alannah MacTiernan interjected.

Hon NICK GOIRAN: Deputy chair, through you to the minister —

The DEPUTY CHAIR (Hon Jackie Jarvis): Members, it is quite late and I, for one, would like to go home sometime this evening.

Hon NICK GOIRAN: The opposition would have no problem if the government chose to adjourn the consideration of this matter until tomorrow, but I do not get the impression that the government has any appetite for that, so we will just press on.

With respect to the powers that are set out, we started a discussion earlier in clause 1 about who will be authorised to use those powers, and the minister commenced a comparison for us with hazard management officers. As I understand it, if there is an emergency situation declaration, there is a group of Western Australians who are classified as “hazard management officers” and they are authorised, by force of law, to use part of the emergency powers set out in part 6 of the act. Under this bill, it will be “authorised COVID-19 officers”. Is it the case that in either scenario, whether it is a COVID-19 officer or a hazard management officer, the appointment of that person who is then classified or designated as an authorised COVID-19 officer or hazard management officer is simply at the discretion of the State Emergency Coordinator in the case of the COVID-19 officer or the hazard management agency in the case of the former?

Hon STEPHEN DAWSON: Yes, that is correct, honourable member.

Hon NICK GOIRAN: Are there any guidelines that set out the way in which that discretion is presently used by hazard management agencies to determine who should be a hazard management officer—for example, a set of qualifications or training? Are there certain expectations that a person must have achieved certain things before they are made a hazard management officer?

Hon STEPHEN DAWSON: I am not aware of any recent policy, but I am aware that for hazard management officers—as it pertains to, say, a bushfire or a flood and as it relates to the Department of Fire and Emergency Services—it is an appropriately qualified officer with the relevant experience in the hazard. In the case of a bushfire, it would be somebody with bushfire experience in DFES. In relation to flooding, it may well be an officer from the Department of Water and Environmental Regulation—a hydrologist, for example. It is on a case-by-case basis.

Hon NICK GOIRAN: In this instance, who do we expect will be authorised to be an authorised COVID-19 officer?

Hon STEPHEN DAWSON: All police officers will be authorised for the purposes of the state of emergency and would need to be authorised in the Emergency Management Act to enforce any directions given under a COVID-19 declaration. In terms of who else it might be, it is open to others being appointed as COVID-19 authorised officers by the State Emergency Coordinator, depending on what they are actually dealing with.

Hon NICK GOIRAN: Have there been any discussions with the State Emergency Coordinator to confirm whether he intends to authorise any Western Australian other than a police officer to be an authorised COVID-19 officer?

Hon STEPHEN DAWSON: A conversation has not been had with the State Emergency Coordinator about who might be an authorised COVID-19 officer, but during the state of emergency, the State Emergency Coordinator authorised a number of individuals or classes of person other than police officers to perform limited functions. For example, Department of Fire and Emergency Services station officers and environmental health officers were authorised to inspect the COVID safety plans required by businesses when gathering restrictions were in place. The ability to provide a limited scope of authorisation means that a bespoke class of person with direct responsibility for a function may exercise limited powers appropriate to their role. For example, a bus driver could have been authorised to require a person to wear a face covering. Other than police officers, the number of other authorised COVID-19 officers will depend on the nature and scope of the health, social and safety measures that are put in place. I have the example of the public transportation one again.

Hon NICK GOIRAN: How is it possible that there has been no conversation with the State Emergency Coordinator? I thought the minister indicated earlier that he had been consulted about the bill.

Hon STEPHEN DAWSON: The member asked whether the conversation had happened with him about whom he might declare or might appoint an authorised —

Hon Nick Goiran: I assumed that was part of the consultation process.

Hon STEPHEN DAWSON: I have not spoken to him about whom he might declare. I thought that was the question. I have not spoken to him about whom he might make an authorised person, but I am sure that, given that he has operated under a state of emergency for the last two and a half years, and agencies have worked together on this stuff, the intention is that people similar to those who were authorised under the state of emergency would be authorised under the COVID-19 declaration, noting that the situations they will be dealing with will, I guess, require particular kinds of people to do particular kinds of jobs.

Hon NICK GOIRAN: What will be the outcome in the event that the State Emergency Coordinator does not make one of these authorisations in writing?

Hon STEPHEN DAWSON: The Emergency Management Amendment (Temporary COVID-19 Provisions) Bill 2022 states, in part, at proposed section 77I —

- (3) An authorisation under subsection (1) may be given orally or in writing but if given orally must be put in writing as soon as is practicable.
- (4) A failure to put an authorisation in writing under subsection (3) does not invalidate the authorisation or anything done under the authorisation.

I should make the point that these provisions are consistent with provisions in other parts of the legislation. There is a similar provision under the act relating to authorised officers. What recourse is there? Could he be fined? No. Certainly, a judicial review could be sought, and if the proper process had not been followed, that could well be cause for somebody to have a win in court.

Hon NICK GOIRAN: But there is a big difference, is there not, because with a state of emergency declaration, the minister can revoke the state of emergency and pull the pin on the whole shebang. He cannot do that with this declaration. This is yet another section under which we are saying that as a matter of law, we expect the State Emergency Coordinator to do something, but if he does not do it, “Don’t worry about it”, says the McGowan government.

Hon Stephen Dawson: If this were any kind of Joe Shmoe, maybe the honourable member would have a point, but this is the police commissioner.

Hon NICK GOIRAN: I know, and the Commissioner of Police makes mistakes sometimes.

Hon Stephen Dawson: He follows the law.

Hon NICK GOIRAN: Sometimes the police commissioner does not even abide by the directions of the McGowan government. Look at what happened with the SafeWA app data. We had Mr McGowan and Mr Cook around the same table as the then police commissioner, Mr Dawson. They all said to the people of Western Australia, “Don’t worry about it, we’re not going to use your SafeWA app data other than for contact tracing purposes.” Five seconds later, metaphorically speaking, we had the police running around using the information anyway. Sometimes the police and the government do not always see eye to eye. That is why we need to have enhanced oversight, not less oversight. What is happening here is a complete dereliction of duty by the ministers of the McGowan government. They are saying, “This is all too hard for us, this is all too hot; we’re getting far too many questions about this state of emergency, so we’re going to shift this all to become a problem for the police commissioner.” We say—we make no apology for it—that situation is unacceptable.

As the minister identified earlier, he will still have the opportunity to meet with the State Emergency Coordinator from time to time. At the moment, evidently, the minister is meeting him at least every 14 days. Is it the minister’s intention to continue to meet with him at least every 14 days in the event that one of these declarations is made, which will have a life span of three months?

Hon STEPHEN DAWSON: No decision has been made on how frequently I will meet the State Emergency Coordinator moving forward, but there will still be frequent meetings with me, as there will still be frequent meetings of the State Disaster Council, which the State Emergency Coordinator will attend.

Hon NICK GOIRAN: I find it remarkable that we are at this late stage of the development and passing of an emergency bill, an urgent bill, and, yet again, there is something else that the government has not done. No-one has bothered to decide how frequently we should provide some oversight of this legislation. We have not decided that yet, apparently.

The very important point about the powers during a COVID-19 declaration are set out in the bill from page 11. They begin with “Matters that may be taken into account and consultation” at proposed section 77J, and then some very significant emergency powers emerge at proposed sections 77K, “Obtaining identifying particulars”; 77L, “Powers concerning movement and evacuation”; 77M, “Powers to control and use property and related powers”; 77N, “Powers of officers in relation to persons exposed to SARS-CoV-2 virus”; 77O, “Powers of police to direct closure of places and concerning movement and evacuation”; 77P, “Exchange of information”; and 77Q, “General powers during COVID-19 declaration”. These are special statutory powers that will be enlivened in the event there is a COVID-19 declaration. We are just getting to that now at page 11 of this 38-page bill. I note that there is a mere 12 minutes left for the house of review to consider all those powers. We probably have, on average, about one minute to consider each power; that is the situation we find ourselves in. That is before we even get to the rest of the bill. I make that observation to demonstrate that the method of review being utilised here is woefully inadequate. Nevertheless, in the few minutes that we have, one of the crucial powers is set out at proposed section 77M, the power to control and use property and related powers. We have already identified earlier, quite extraordinarily, that this is a certain type of power, certainly with regard to breaking in and entering, that is only presently available if a minister of the Crown makes a state of emergency declaration. Are there other circumstances in which police officers in Western Australia are able to break into and enter any place or vehicle without a warrant?

Hon STEPHEN DAWSON: I am going to change advisers at this moment if I can. I ask the attendants to enable that for me, please.

The Coroners Act 1996 contains provisions relating to powers of entry, inspection and possession. There are powers of entry and search, place of arrest or place where subject held under the Criminal Investigation Act 2006. There are powers of entry to effect arrest and powers of entry to search and effect arrest under the Criminal Investigation Act. There are also powers to undertake these activities under the Fish Resources Management Act 1994.

Hon NICK GOIRAN: All those examples that the minister gave involve circumstances without a warrant, as per the question that was asked. What type of oversight is available with respect to the use of those special powers?

Hon STEPHEN DAWSON: The oversight includes codes of conduct for the Commissioner of Police, police officers and public servants. They must comply with their codes of conduct. That includes performing their duty in the public interest without favour, malice or ill will. In some cases, a senior officer will need to authorise the use of these powers; in other cases, they will not. There are internal investigations, judicial review and the Corruption and Crime Commission.

Hon NICK GOIRAN: The minister has described a series of disciplinary matters that might be available with respect to police officers and, indeed, the oversight of the CCC, which performs a statutory function.

Hon Stephen Dawson: And the judiciary.

Hon NICK GOIRAN: Yes, and the judiciary. What happens in this particular instance if an authorised COVID-19 officer is not a police officer?

Hon STEPHEN DAWSON: We still have the judiciary and we still have the Corruption and Crime Commission, honourable member.

Hon NICK GOIRAN: With the Corruption and Crime Commission, a special level of oversight is provided to police officers under the CCC act. All police misconduct is subject to a referral to the CCC. Not all misconduct by public servants is subject to oversight by the CCC. The minister would be aware that minor misconduct is dealt with by the Public Sector Commissioner and serious misconduct is sent to the CCC. What will happen in the situation of an authorised COVID-19 officer?

Hon STEPHEN DAWSON: The member mentioned the Public Sector Management Act earlier on. If they were a public sector worker other than a police officer, they would be captured by the provisions under the Public Sector Management Act. It would really depend on who it is and what they have done. If they are not —

Hon Nick Goiran: What they would have done is break in without a warrant.

Hon STEPHEN DAWSON: If they are not a public sector worker or an official and they have not acted in good faith then they can be found liable under the Civil Liability Act.

Hon TJORN SIBMA: We have not yet had the time to address another serious dimension of this bill. In the time available, I will cite proposed section 77P, which deals with the exchange of information. For the benefit of members, I want to give a sense of the range of expansive information being identified, which will be collected as a consequence of this bill. The explanatory memorandum reads —

Section 77P makes provision for the following.

- Identifies the type of information that may be exchanged, referred to as the ‘relevant information’, which is defined to mean the personal details of a person, information about the whereabouts of a person, the state of health of a person, any recent travel undertaken by a person, persons with whom a person has been a close contact, and information of a kind prescribed by the regulations.

On that issue, although just a bit of ahead of that, it goes on to say —

- The State Emergency Management Committee must establish procedures for the disclosure of information by authorised COVID-19 officers to emergency management agencies.

It also notes that proposed section 77P —

- Includes a regulation-making power, so that regulations may make provision for the circumstances that information may be disclosed, the agencies, persons and entities to whom information may be disclosed ...

Needless to say, through the effluxion of time over the last two years, legitimate concerns have been raised by the public about WA police accessing personal data. It was provided for compliance with COVID-19 regulations. People needed to have a G2G access pass approved if they wanted to come back to or move out of this state. For a long time, we were also obliged to check-in using the SafeWA app. With respect to the latter, we had to deal with the legislation to tidy up a loophole that should never have been there. The justification was made for it. I will not necessarily get to that justification but the point was clearly made by the government at the time that data collected by virtue of using the SafeWA app, which people were obliged to use, would not be used for any purpose other than COVID-19 management. That was obviously proven to be not the case. My question is: how is it that the kinds of unauthorised disclosures or misuse of information that we have experienced in this jurisdiction will not be encountered again?

Hon STEPHEN DAWSON: SafeWA data has not been accessed by WA police since the Protection of Information (Entry Registration Information Relating to COVID-19 and Other Infectious Diseases) Act 2021 came into effect. Information collected using the SafeWA app has been used for the purposes permitted by that act, including contact tracing and other COVID-19 purposes such as maintaining the SafeWA app or if required by commonwealth law that overrides the act or by WA Health’s other service providers for the purpose of assisting WA Health to operate, manage and use the SafeWA app. We certainly intend to make sure that the information that is collected for this purpose is used for this purpose.

The DEPUTY CHAIR (Hon Dr Brian Walker): Members, time having elapsed, I am required to put to the vote all questions as are necessary to dispose of the motion and all clauses. The first question is amendment 20/7 standing in the name of Hon Tjorn Sibma —

Page 19, after line 25 — To insert —

Division 4A — Parliamentary scrutiny

77RA. Term used: class direction

In this Division —

class direction means a direction given under section 77L, 77N, 77O or 77Q(2) in relation to a class of person, place or thing.

77RB. Laying documents before Houses of Parliament

- (1) If a COVID-19 declaration, or a declaration under section 77E or 77F, is made, the Minister must cause the following documents to be laid before each House of Parliament, or dealt with under section 77RC, within the period specified in subsection (2) —
 - (a) a copy of the declaration;
 - (b) a copy of the statement of reasons for making the declaration required to be published under section 77H(2)(a);
 - (c) a copy of the advice provided under section 77G(1)(b) in relation to the declaration;
 - (d) a copy of any statement of reasons provided under section 77G(4) in relation to the declaration.
- (2) For the purposes of subsection (1), the period is —
 - (a) for a document referred to in subsection (1)(a), (b) or (c) — 7 days after the declaration is made; or
 - (b) for a document referred to in subsection (1)(d) — 7 days after the document is provided under section 77G(4).
- (3) If a class direction is given, the Minister must cause the following documents to be laid before each House of Parliament, or dealt with under section 77RC, within 7 days after the document is provided under section 77T(3A) —
 - (a) a copy of the direction;
 - (b) a copy of the statement of reasons for giving the direction.
- (4) If a report is provided under section 77U(5A)(c), the Minister must cause a copy of the report to be laid before each House of Parliament, or dealt with under section 77RC, within 7 days after the report is provided.

77RC. Laying documents before House of Parliament not sitting

- (1) This section applies if —
 - (a) a provision of this Act requires the Minister to cause a document to be laid before each House of Parliament, or dealt with under this section, within a period; and
 - (b) at the beginning of the period, a House of Parliament is not sitting; and
 - (c) in the Minister's opinion, the House will not sit before the end of the period.
- (2) The Minister must send the document to the Clerk of the House before the end of the period.
- (3) When the document is sent to the Clerk of the House it is taken to have been laid before the House.
- (4) The laying of the document that is taken to have occurred under subsection (3) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk receives the document.

77RD. Class directions subject to disallowance

- (1) The *Interpretation Act 1984* section 42(2) to (8) apply to a class direction as if —
 - (a) the direction were a regulation; and
 - (b) a reference to subsection (1) of that section were a reference to section 77RB(3).
- (2) For the purposes of subsection (1), the *Interpretation Act 1984* section 42(2) to (8) apply to a class direction that is taken to be laid before a House of Parliament under section 77RC as if it were laid before that House on the day referred to in section 77RC(4).

77RE. Standing committee of Houses of Parliament

- (1) The Houses of Parliament must establish a joint standing committee comprising an equal number of members appointed by each House.
- (2) The standing committee may —

- (a) review COVID-19 declarations, declarations made under section 77E or 77F and class directions; and
- (b) report to each House the results of its review.
- (3) A report under subsection (2)(b) may include a recommendation that a class direction be disallowed in whole or in part or amended as suggested in the report.
- (4) The functions and powers of the standing committee are otherwise determined by agreement between the Houses and are not justiciable.

Division

Amendment put and a division taken, the Deputy Chair (Hon Dr Brian Walker) casting his vote with the ayes, with the following result —

Ayes (9)

Hon Donna Faragher
Hon Nick Goiran
Hon James Hayward

Hon Steve Martin
Hon Tjorn Sibma
Hon Dr Steve Thomas

Hon Wilson Tucker
Hon Dr Brian Walker
Hon Colin de Grussa (*Teller*)

Noes (18)

Hon Klara Andric
Hon Dan Caddy
Hon Sandra Carr
Hon Stephen Dawson
Hon Kate Doust

Hon Peter Foster
Hon Lorna Harper
Hon Jackie Jarvis
Hon Alannah MacTiernan
Hon Kyle McGinn

Hon Stephen Pratt
Hon Martin Pritchard
Hon Samantha Rowe
Hon Rosie Sahanna
Hon Matthew Swinbourn

Hon Dr Sally Talbot
Hon Darren West
Hon Pierre Yang (*Teller*)

Pairs

Hon Neil Thomson
Hon Peter Collier
Hon Martin Aldridge

Hon Sue Ellery
Hon Ayor Makur Chuot
Hon Shelley Payne

Amendment thus negated.

The DEPUTY CHAIR: Members, the next amendment moved by Hon Tjorn Sibma is 21/7 —

Page 20, lines 26 to 28 — To delete the lines and insert —

- (c) must be published on a website maintained by, or on behalf of, the Government as soon as practicable, but in any case no later than 7 days, after the direction is given.

Amendment put and negated.

The DEPUTY CHAIR: The next amendment moved by Hon Tjorn Sibma is 22/7 —

Page 20, after line 28 — To insert —

- (3A) A copy of a direction referred to in subsection (3), and a written statement setting out detailed reasons for giving the direction, must be provided to the Minister within 7 days after the direction is given.

Amendment put and negated.

The DEPUTY CHAIR: Amendment 23/7 falls away. The next amendment moved by Hon Tjorn Sibma is 24/7 —

Page 21, line 4 — To delete “may” and insert —

must

Division

Amendment put and a division taken, the Deputy Chair (Hon Dr Brian Walker) casting his vote with the ayes, with the following result —

Hon Tjorn Sibma; Hon Stephen Dawson; Hon Nick Goiran; Hon Dr Brian Walker; Hon Neil Thomson

Ayes (9)

Hon Donna Faragher
Hon Nick Goiran
Hon James Hayward

Hon Steve Martin
Hon Tjorn Sibma
Hon Dr Steve Thomas

Hon Wilson Tucker
Hon Dr Brian Walker
Hon Colin de Grussa (*Teller*)

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Hon Klara Andric
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Hon Kyle McGinn

Hon Stephen Pratt
Hon Martin Pritchard
Hon Samantha Rowe
Hon Rosie Sahanna
Hon Matthew Swinbourn

Hon Dr Sally Talbot
Hon Darren West
Hon Pierre Yang (*Teller*)

Pairs

Hon Neil Thomson
Hon Peter Collier
Hon Martin Aldridge

Hon Sue Ellery
Hon Ayor Makur Chuot
Hon Shelley Payne

Amendment thus negatived.

The DEPUTY CHAIR: Members, we are almost there. The next amendment on the motion of Hon Tjorn Sibma is amendment 26/7. I move —

Page 26, after line 9 — To insert —

77Y. Protection of information

- (1) In this section —

relevant information has the meaning given in section 77Q(1).

- (2) Relevant information acquired in the exercise of a power under this Part must not be used or disclosed except —

- (a) for the purpose of COVID-19 management while a COVID-19 declaration is in force; or
- (b) for the purpose of, or in connection with, performing functions under this Act; or
- (c) as required or allowed under this Act; or
- (d) subject to section 77Q(5), for the purpose of investigating or prosecuting an offence relating to compliance with an obligation under this Act.

- (3) A person who uses or discloses relevant information contrary to subsection (2) commits a crime.

Penalty for this subsection:

- (a) for an individual, imprisonment for 3 years;
- (b) for a body corporate, a fine of \$250 000.

Summary conviction penalty for this subsection:

- (a) for an individual, imprisonment for 12 months and a fine of \$20 000;
- (b) for a body corporate, a fine of \$100 000.

- (4) Section 95 does not apply to relevant information acquired in the exercise of a power under this Part.

- (5) To the extent that there is an inconsistency between this section and a provision of the *Criminal Investigation Act 2006* or any other written law, this section prevails.

Division

Amendment put and a division taken, the Deputy Chair (Hon Dr Brian Walker) casting his vote with the ayes, with the following result —

Hon Tjorn Sibma; Hon Stephen Dawson; Hon Nick Goiran; Hon Dr Brian Walker; Hon Neil Thomson

Ayes (9)

Hon Donna Faragher
Hon Nick Goiran
Hon James Hayward

Hon Steve Martin
Hon Tjorn Sibma
Hon Dr Steve Thomas

Hon Wilson Tucker
Hon Dr Brian Walker
Hon Colin de Grussa (*Teller*)

Noes (18)

Hon Klara Andric
Hon Dan Caddy
Hon Sandra Carr
Hon Stephen Dawson
Hon Kate Doust

Hon Peter Foster
Hon Lorna Harper
Hon Jackie Jarvis
Hon Alannah MacTiernan
Hon Kyle McGinn

Hon Stephen Pratt
Hon Martin Pritchard
Hon Samantha Rowe
Hon Rosie Sahanna
Hon Matthew Swinbourn

Hon Dr Sally Talbot
Hon Darren West
Hon Pierre Yang (*Teller*)

Pairs

Hon Neil Thomson
Hon Peter Collier
Hon Martin Aldridge

Hon Sue Ellery
Hon Ayor Makur Chuot
Hon Shelley Payne

Amendment thus negatived.

Clause put and passed.

The DEPUTY CHAIR (Hon Dr Brian Walker): The remaining amendments on the supplementary notice paper have fallen away as a result of previous votes.

Hon STEPHEN DAWSON: I seek leave to move the clauses en bloc.

[Leave granted for clauses 8 to 46 to be considered en bloc.]

Clauses 8 to 46 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Emergency Services) [10.33 pm]: I move —
That the bill be now read a third time.

The ACTING PRESIDENT (Hon Jackie Jarvis): The question is that the bill be now read a third time.

Point of Order

Hon NICK GOIRAN: Ordinarily and customarily, you would receive some information from the committee before we read the matter for a third time.

The ACTING PRESIDENT (Hon Jackie Jarvis): Noted. I have received from the Deputy Chair of Committees a true copy of the bill as agreed to in the Committee of the Whole House and the question is that the bill be now read a third time.

Debate Resumed

HON NICK GOIRAN (South Metropolitan) [10.33 pm]: I rise as we consider the third reading of the Emergency Management Amendment (Temporary COVID-19 Provisions) Bill 2022. At the outset, let me say I am not the lead speaker for the opposition as we consider this bill and whether it should be read for a third time. The bill that is about to be considered and no doubt passed is in precisely the same form as it was when the bill was second read. Members will recall that consideration of this bill by the house of review first commenced yesterday and that we are currently operating in unusual circumstances.

The bill presently before us will materially change the emergency management scheme in Western Australia. At the present time, there are two types of declarations that can be made under our emergency management scheme. They are an emergency situation declaration under part 4 of the act and a state of emergency declaration under part 5 of the act. We are now introducing a third type of declaration, which is to be known as a COVID-19 declaration under proposed new part 6A of the act.

It is important that members of this place and members of the Western Australian community do not forget that the Emergency Management Act 2005, which will be amended by this bill, authorises the use of emergency powers.

It is the primary act, the primary piece of law, in Western Australia that directs when and in what circumstances emergency powers can be used. At the present time, there are two scenarios in which that can take place—that is, an emergency situation declaration or a state of emergency declaration. Very significantly, the latter of those two, a state of emergency declaration, can be made only by the Minister for Emergency Services. It cannot be made by any other person. It certainly cannot be made by an unelected public official. It must be made by the Minister for Emergency Services, who is a minister of the Crown.

Why is that? If a state of emergency declaration is made under part 5 of the existing regime, all the exceptional emergency powers under the act are enlivened. If a minister decides that there is a genuine state of emergency, all those special powers are invoked. The other scenario is an emergency situation declaration in which these types of powers are only partially available—not all of them; some of them. They are specifically set out at sections 67 through to 72A of the act.

If the minister or the State Emergency Coordinator decides to make one of those two declarations, those powers will exist for a mere three days. In the case of an emergency situation declaration, it is possible for the State Emergency Coordinator or a hazard management agency to extend those powers for a further seven days. The minister can extend those three days of emergency to 14 days. That is about to be radically changed. For the first time, the State Emergency Coordinator—that is, an unelected public servant—will be able to make that type of declaration, enlivening those powers for up to three months.

The situation will be made even worse—as was revealed during Committee of the Whole House—because the threshold for making these decisions will be lower than for either of the other two declarations. It will be easier for the State Emergency Coordinator to make one of these declarations than it is presently for the Minister for Emergency Services to make a declaration. The McGowan government has provided no reason for that significant policy change other than to simply say that it is what the government has decided.

Access to these emergency powers, as I said, will be for a longer period initially—that is, three months rather than three days—and any extension will be for a further three months, rather than a period of either seven days or 14 days. This situation is particularly concerning because, as I said in my contribution to the second reading debate and now maintain having been further satisfied that this is the case as a result of the work done in Committee of the Whole House, the McGowan Labor government has misled the people of Western Australia on this legislation, and it has done so repeatedly. Even during the Committee of the Whole House stage, I can tell you, Acting President, the committee was being told there was a level of consistency with regard to these matters, yet on further interrogation, it is plainly the case that there is an inconsistency. The only consistency that could be brought forward was trivial—who will be the decision-maker? In an emergency situation declaration, it will be the State Emergency Coordinator, and under a COVID-19 declaration, it will be the same person.

That is about as far as the consistency goes. When it comes to the types of powers, there are extra powers that will be enlivened as a result of this bill—powers that are not currently available to the State Emergency Coordinator to use if he so chooses. He simply cannot do it, even if there is an emergency situation. To understand what those powers include, I encourage members of this place and members of the community to get their head around proposed section 77M, which is about to be inserted into the Emergency Management Act. Proposed section 77M states —

- (1) For the purposes of COVID-19 management while a COVID-19 declaration is in force, an authorised COVID-19 officer may take control of or make use of any place, vehicle or other thing.
- (2) The place, vehicle or other thing may be in, or outside, the declaration area.

I note that the Committee of the Whole House was able to obtain a concession from the Minister for Emergency Services that the declaration area can be as small as a person's house but as large as the whole state. Proposed section 77M goes on to say —

- (3) For the purposes of exercising a power under subsection (1), an authorised COVID-19 officer may enter, or if necessary break into and enter, any place or vehicle.
- (4) An authorised COVID-19 officer may direct the owner or occupier, or the person apparently in charge, of a place, vehicle or other thing to give the authorised COVID-19 officer reasonable assistance to exercise the officer's powers under this section.

Therefore, this bill will not only give the power of entry without warrant, but also enable—we are told—the police officer to direct the owner or occupier to assist in the breaking and entering. It is bad enough that these special emergency powers will be enlivened without any ministerial oversight, but they will also include the ability to enter without a warrant and an expectation that anyone on the scene who is the owner or occupier or considered to be reasonably in charge will be required to assist the police officer.

It was quite revealing that during consideration of clause 1 of the bill, the Minister for Emergency Services refused to tell the chamber whether he intends to extend the state of emergency declaration when it next expires, on 21 October. This bill has been rushed through both houses of Parliament, demonstrated, I might note, by the fact that the Committee of the Whole House got through only one-third of the bill. Such is the importance of the work of the house of review that we had to stop at page 13 of the bill. This is a 38-page bill, and we were forced to stop under the regime that we are operating under.

I hope that the Standing Committee on Procedure and Privileges takes up this matter when it considers, under its terms of reference, whether our standing orders are fit for purpose. I would encourage that committee to give serious consideration to this example. The house was able to do only one-third of its job because the government of the day had a minister jump up and simply declare, as if it was some kind of edict, that this is an urgent bill. There was no debate about whether it is an urgent bill; it was simply declared. As a result of that, we have done only one-third of the job. Acting President, I regret to report that the Committee of the Whole House made its best endeavours and now returns to you a bill, having done one-third of the job. The McGowan government seems to find that whole situation acceptable.

One of the key questions I would have thought the government would be able to answer is, “Do you intend to continue to make these state of emergency declarations?” Thousands of Western Australians have asked the McGowan government to cease and desist from making these state of emergency declarations. They are no longer needed. Evidently, we are no longer in a state of emergency. Even the Premier seems to concede that point and merely wants to retreat from this language of being in a state of emergency and shift the problem to the Commissioner of Police. The Premier wants to say to him, “You now deal with it. I wash my hands of any responsibility on this matter for the next two years.” During the Committee of the Whole House, the opposition tried to constrain that to a period of one year, but the government said no. It was not willing to support that. As a result, every three months for the next two years, we will have this regime in place whereby an unelected public servant will be able to decide whether these emergency powers will be used.

Clause 7 was the major clause in the bill. I note in passing that we did not even get to finish our scrutiny of the main clause in the bill. What was particularly interesting when we stopped and considered certain elements of it was that not even the Minister for Emergency Services will be able to stop this. He will have no power under this new regime to revoke one of these declarations. If he is provided information that this type of declaration is no longer necessary, keeping in mind that it enlivens these special powers for three months, he will not be able to do anything about it other than rush a bill back to Parliament to deal with the whole situation. That was the solution provided by the Minister for Emergency Services. If it all goes wrong, do not worry about it, the government can rush another bill through Parliament instead of the minister taking responsibility for his own portfolio—the emergency services portfolio—and saying, “I’m the minister. I’ll take responsibility for this, and if I need to revoke this declaration because evidence is provided to me that it is no longer necessary for these emergency powers to exist in Western Australia, I will revoke this declaration.”

The minister was not interested in that. He was not interested in having a new standing committee of the Parliament overseeing these powers. He was not interested in any amendments. Apparently, it is a flawless piece of art—this legislation that we managed to get one-third of the way through. It is a massive shift in the way in which emergencies are managed in Western Australia. It is no small matter that these powers will be able to be exercised across any geographical area across the whole state.

I also regret to inform the Acting President that the Committee of the Whole House uncovered that there will be no requirement for this decision-maker to provide any reasons and no redress will be available if multiple provisions are simply ignored or not complied with. They include the publication of information and getting information from the Chief Health Officer in writing. It was truly remarkable to uncover that the McGowan government is now determined that the decision-maker must actually seek the Chief Health Officer’s advice, despite the fact that it was conceded that the Minister for Emergency Services still continues not to do that. It was truly remarkable during the budget estimates when it was revealed that was the case. Members would think that the minister would immediately take steps to remedy the situation, having been exposed as the minister who makes emergency declarations in Western Australia without seeking the advice of the Chief Health Officer or seeing the material that purportedly justifies the emergency. He just continues to go along with the existing poor practice, but this legislation demands the State Emergency Coordinator take a different approach.

This bill does not have my support. I think that a member indicated during the second reading debate that the bill has no redeeming features. At the time, I thought perhaps that was a little harsh. If I had an opportunity to consider in detail, and interrogate the government on, the remaining 39 clauses, we might have found something redeeming in this bill, but, regrettably, we have not had that opportunity. The Committee of the Whole House of the house of review, the Legislative Council of Western Australia, has been prevented from considering all the provisions of this bill, and, of course, it is a matter of public record that the decision was made that it not be considered by the

specialist Standing Committee on Legislation. In all those circumstances, I distance myself entirely from this bill. It does not have my support and, indeed, I oppose it.

HON TJORN SIBMA (North Metropolitan) [10.50 pm]: Rare, indeed, is it that I feel the need to rise to give a speech in the third reading debate. But I do so, and I will not utilise the full envelope of time provided to me. It is important sometimes to take a broader view of the passage of legislation to put it into context. There are twin troubling features of the debate that we have had in this chamber over the course of the last 24 hours. The first feature involves the content of the Emergency Management Amendment (Temporary COVID-19 Provisions) Bill 2022 itself. The second feature is the troubling dimension of the way that the bill has been sold to the public and then bulldozed through this Parliament. I genuinely believe that this represents a low-water mark in the legislative history of Western Australia.

We have also gathered some important insights here. One insight is that we have a style of government that is, frankly, reckless, belligerent and bullying—one that is incapable of restraining itself and seems to demonstrate a lack of any influence that is devoted towards tempering or moderating its political impulses. Another dimension was revealed during the extensive—insofar as the time constraint allowed—discussion on new section 77M. Remember, members of the chamber, that this bill was presented to us and to the public of Western Australia as signalling the end of the state of emergency. The bill proposed that the government would continue only the sensible measures that we had grown accustomed to, like mask wearing and isolation requirements. But do not worry; we will not reintroduce the nasty border closures or anything like that. There is nothing to worry about. The Premier and the government know best. There is nothing to see here.

What did we discover? We discovered new section 77M, which will provide new powers, presently unavailable, to the State Emergency Coordinator. These are powers to break and enter, and to take control of, a vehicle or property without warrant. If only for the existence and the discovery of that part of the legislation, that in itself justified a referral to the Standing Committee on Legislation. We put to the chamber the option of considering a brief referral of about 28 days; we got 24 hours.

For those members of the public who have taken an interest—I know there are many—in this debate, there is one thing that is important to understand: an opposition can do only so much with the time made available to it.

There was absolutely no genuine opportunity provided to non-government members, and that is a point that bears repeating. This is about not only the views of the Liberal Party, the Nationals WA or the alliance, but also dissenting voices from the whole crossbench. That is a signal to the government that it has overstepped. I think the government has misread or ignored that signal, and I think it continues to do this kind of thing at its peril.

To call it an abbreviated discussion would be to do it a level of credit it does not deserve. There is a concerning dimension to this bill with regard to the obtaining, management and transfer of personal information. As far as this bill is concerned, there is no restraint. There is no protection afforded to the use and distribution of private identifying information. After all we have learnt over the last two years, if there was one thing to get right in this bill, it would have been that, but amendments that would have introduced protections were not taken up by government.

There is one thing I will identify. There were four themes to the amendments we attempted to introduce. We attempted to introduce them because although we knew, on the weight of numbers, that the bill would pass, we still had a responsibility to make something that is very dangerous less dangerous. That is in accord with our responsibilities as legislators. If there was one principle that we attempted to uphold and remind the government of, it was the concept of ministerial responsibility. Never have I seen a government attempt to write itself out of decision-making to such a degree.

When it does that, it begs the question: why? I think it is because the government wants to distance itself from the state of emergency and state of emergency-like decisions and restrictions entirely, and just pass it off and explain these decisions away as having been made by the State Emergency Coordinator. That is an abrogation of ministerial responsibility, and it stands in stark contrast with the powers that ministers have given themselves throughout the COVID pandemic, particularly with regard to the Planning and Development Act.

There is just an odd degree of government inconsistency here. The issue is that we will have no elected person to hold accountable for decisions made after the passing of this bill. In politics, as in life, we get what we pay for. The last 24 hours have revealed that we also get what we vote for. We now have an enormous government full of silent, nameless people who cannot even exercise restraint on, or apply their own political principles to, executive excess and legislative bullying.

This is a day of shame in legislation, and the passage of this legislation will go absolutely nowhere near to transitioning us to a sensible public health management scenario, which is where we need to be. The government never made a case, to us or to anyone else, that this legislation would protect a single life or keep anyone out of harm's way. It has conducted COVID mitigation efforts as a police operation, and that was acceptable up until the point that the border came down. That is when it should have transitioned more to a public health-managed exercise.

Extract from *Hansard*
[COUNCIL — Wednesday, 19 October 2022]
p4658c-4695a

Hon Tjorn Sibma; Hon Stephen Dawson; Hon Nick Goiran; Hon Dr Brian Walker; Hon Neil Thomson

We are now beyond the peak of COVID infections, and it is even more important that clinicians provide the advice, not the State Emergency Coordinator.

I also distance myself entirely from the passage of this legislation.

Division

Question put and a division taken, the Acting President (Hon Steve Martin) casting his vote with the noes, with the following result —

Ayes (18)

Hon Klara Andric
Hon Dan Caddy
Hon Sandra Carr
Hon Stephen Dawson
Hon Kate Doust

Hon Peter Foster
Hon Lorna Harper
Hon Jackie Jarvis
Hon Alannah MacTiernan
Hon Kyle McGinn

Hon Stephen Pratt
Hon Martin Pritchard
Hon Samantha Rowe
Hon Rosie Sahanna
Hon Matthew Swinbourn

Hon Dr Sally Talbot
Hon Darren West
Hon Pierre Yang (*Teller*)

Noes (9)

Hon Donna Faragher
Hon Nick Goiran
Hon James Hayward

Hon Steve Martin
Hon Tjorn Sibma
Hon Dr Steve Thomas

Hon Wilson Tucker
Hon Dr Brian Walker
Hon Colin de Grussa (*Teller*)

Pairs

Hon Sue Ellery
Hon Ayor Makur Chuot
Hon Shelley Payne

Hon Neil Thomson
Hon Peter Collier
Hon Martin Aldridge

Question thus passed.

Bill read a third time and passed.

House adjourned at 11.03 pm
