COVID-19 RESPONSE AND ECONOMIC RECOVERY OMNIBUS BILL 2020

Second Reading

Resumed from an earlier stage of the sitting.

HON TJORN SIBMA (North Metropolitan) [5.08 pm]: I potentially will be interrupted in my address on one more occasion. For the purposes of planning, and bearing in mind the temporary order that prescribes time limits, I probably will go for another hour, if not a little beyond. If that impacts on members' attendance in the chamber—that is, their desire to get up and speak after me; I am here to be helpful—that will assist in their planning.

I want to give an indication to those who are attentively following this second reading debate that I intend to deal with the substance of the issues in three parts. The first part relates to the version of the legislation as was briefed to the opposition at the beginning of this month. The second part relates to the substance of the bill itself, as well as some associated supplementary briefing material, which I thank the minister's office for providing, to shine a bit of light on the implications of the legislation. My general view is that a conflation of matters is going on and there is a lack of absolute precision about what we, as a chamber, are being asked to validate. That leads into the third and final stage of my address, which will give some indication about the amendments as they appear on issue 2 of the supplementary notice paper and the reasons for them, but not in a way that will go over ground that will be made available to us in Committee of the Whole.

The first issue, dealing with it in context, is that this bill seems to have matured, or reduced, in its ambition. I think that is a good thing insofar as what was previously proposed in part 7, "Powers that may be exercised during emergency periods" was concerned. I will also get to subdivision 2 under that provision shortly. Part 7 consumed about 75 per cent of the time made available to us in the briefing. As a consequence, the issues that are now reflected in the bill under contemplation were probably not given the kind of detailed consideration that they deserved. Although those issues are largely procedural and about conferring a legitimacy on the decisions and processes undertaken, they should not just be waived through and considered trivial. We need to get to the bottom of some important issues.

I will return to part 7. Frankly, it was extraordinary in its ambition and the conferral of executive power. This was the Henry VIII clause of all Henry VIII clauses. I do not think it has been surpassed in scale or scope, at least within the last few decades and certainly not in this place. At the outset, I will concede that different Australian jurisdictions, including the commonwealth, have responded to COVID-19 in a variety of ways that are unique to their own circumstances. If there is a thematic thread, for reasons of public safety and for the mission statement to flatten the curve to prevent community transition of this awful virus, it is that some individual liberties that we have taken for granted and took for granted until around the middle of March will have to be put on hold for some time to serve a greater public purpose.

I want to acknowledge the efforts of the entire Australian community, particularly the Western Australian community, for acting in a sensible and restrained manner overall. As much as the government has made some good decisions throughout this process and has been assisted in that process by not only the Liberal Party, but also other parties present, I think credit is due to the Western Australian public overall. I think we too easily confer legitimacy and gratitude on political leadership that is sometimes undeserved or not deserved to the degree that it is taken. I do not think that is an insignificant point. The other things obviously working in our favour are a comparatively smaller and less concentrated population, which is significantly geographically isolated from the rest of the continent. Those factors have inhibited the growth and transmission of this virus pretty significantly, but nevertheless are not credited, as is the leadership that has been shown by the commonwealth government and the operation of the national cabinet.

There has been a variety of responses and, frankly, draconian impingement on the civil liberties and freedoms at different levels of state jurisdiction that are ordinarily taken for granted. I am not here to comment on the merits of those individual pieces of legislation and the powers that have been conferred on state governments Australia-wide as their Parliaments have seen fit to confer on those governments as they deal with this crisis. It is absolutely important to focus on what is appropriate, essential and targeted within Western Australia. It is all very well to point to how other states might impinge liberties, at what stage they might move to certain phases of relief, or what travel bans they might impose but we are here to discuss the situation in Western Australia. Western Australia has seen nothing like the intended overreach that was proposed by the original part 7 of the bill. It was not justified in any substantial way. That issue was interrogated. I will refer to a quite informative brief—a draft explanatory memorandum—that attempted to outline why we might need to have extraordinary powers to effectively rule by regulation over the entire Western Australian statute book, with the exception of 17 acts. I will get to those 17 acts shortly because there were a couple of omissions that made sense to me only in retrospect after seeing what bill we prioritised in this place last week. The explanation for why we might need to tighten our emergency response was given along the lines of the risk of another COVID-19 outbreak and the escalation of the emergency response.

Bear in mind where we are today; I think we have had a run of between 120 and 130 days during which there has been no community transmission of the virus. That is my understanding of the public health emergency situation

as it is today, and I am prepared to be corrected on that. Effectively, we have gone three to four months without community transmission. The great spikes we have seen in daily caseloads have been by virtue of cruise ships—which I do not intend to address here but we might reflect on at some other time—and families returning from overseas and in quarantine. They are effectively the two cohorts, but there has been no community spread. We have what is referred to colloquially as a "hard border". The hard border has seen more than 30 000 movements, despite that claim. There have been 30 000 movements into this state with a variety of exemptions granted for travel and exemptions to quarantine provisions. We also have a reasonably effective—insofar as we can have any insight into it—hotel quarantine system. Obviously, there have been some lapses, which have been reported on. I am not here to reflect on those individual cases. However, I am satisfied that the state government made the right decision to take our advice and avail itself of Defence Force supplementation to act as guards to ensure that we were not relying on the good graces and performance of private security personnel. That was always a risk in this system but we seem to have moved away from it, which is good.

Last night, the parliamentary secretary, in relation to some contribution she made in the course of consideration of the Public Health Amendment (COVID-19 Response) Bill, extolled the virtues and made some mention of the strengths of the current public health system and its responsiveness to managing COVID-19. I certainly do not wish to quote her out of context and I am not here to reflect on that. It may be true or it may not be true. To apply the principle of charity, if the government is managing the situation as well as it publicly claims to be doing, I could not comprehend the need for even more powers to be conferred on the basis that there might be a second-wave outbreak. What limitations have we imposed on the Premier or any member of the executive government that has impinged or impeded their responsiveness from the declaration of the state of emergency in the middle of March until this point?

Opposition members of both chambers have been collaborative, helpful and expedient. We have acted against our own instincts in facilitating the passage of legislation, but we have done so in order to act as responsible custodians of the public's welfare, with a view to fulfilling three criteria: to protect public health, to ensure public order and to drive economic responsiveness and regrowth out of this crunch. They are our three sort of unspoken mission statements, and we have looked at legislation through that lens. On occasion, we have found legislation to be particularly wanting and in need of improvement. I speak here of the two tenancy bills that were sent back to the other place with a significant number of amendments. I underscore that members of Parliament have been helpful, cooperative and collaborative, but we have not absolved ourselves of the need to provide scrutiny. We will scrutinise this bill and what it was intended to be initially because it presents the most extreme growth in unchecked executive power that this state has witnessed for some time.

The legislation was predicated on the basis that there might be another COVID-19 outbreak. I sought through the briefing, and on other occasions, a justification for why the government might do that. I am still talking about this issue despite the assurances the Minister for Planning has given me, in I think genuine terms, that at this stage the government does not intend to read in a bill that would be basically part 7 separated from this bill and presented for our contemplation, because it is very difficult to square that position with the advice that I have received from the minister's office or the ambiguous response that the Premier gave publicly yesterday that potentially we might need that. I am saying this only because it colours the way in which we look at the rest of the bill. Yesterday, the Premier tried to publicly disassociate himself from elements of part 7. I do not want to quote anybody out of context, certainly not the Premier, but to paraphrase the claim, he said, "We weren't embarking on introducing the Henry VIII clauses in part 7 deliberately." I think he mentioned that they were included in the bill on the basis of advice received from the Parliamentary Counsel's Office and the State Solicitor's Office. The government either owns the bill or it does not. I do not think the government can afford to be trivial or cavalier in its response to COVID-19 and it certainly cannot be cavalier about the separation of powers and the capacity for Parliament to scrutinise the growth of powers and to disallow legislation.

I do not want to bang on about this point but, for me, it absolutely anchors the appropriate way we go about viewing the entire bill. Apparently, safeguards were ready that were designed to modify concerns, but were obviously unequal to that task. This is where we get to the problems in the government's management style in response to this crisis. We started collaboratively but we are tending, not through the opposition's efforts, towards political hyperbole in the way we talk about COVID-19 and the way we justify our responsiveness to COVID-19. That is very telling, and not in a complimentary way. Apparently three conditions would be required to be met for the Governor to be satisfied that a minister should effectively give themselves the right to override, by regulation, the majority of Western Australian statutes. The first was that a COVID emergency declaration was in force. That has been the case since the middle of March. That is hardly a hoop that we had to get through or a hurdle we had to jump over. Secondly, was the minister satisfied on the basis of advice provided by the Chief Health Officer that there was or was likely to be an outbreak of COVID-19 in the state? That is very wide. That is very broad. No probabilistic analysis had to be attached to that advice and no justification made on the basis of the current status quo or provision of a risk profile. This is not to impugn the professionalism of the Chief Health Officer, but there would be a measure of subjectivity already written into that advice. Furthermore, there was no necessity for the Chief Health Officer or

the government to oblige themselves to make that advice available to the rest of the Parliament. If the government wants us to be collaborative and cooperative, treat us like adults and provide the information. That has happened in a very limited way. Frankly, my personal view—please dismiss it if you think it is appropriate to do so—is that advice provided by the Chief Health Officer seems to have a veil over it to some degree and it is hard to penetrate. It is very easy to say, for example, "On the basis of health advice we should not do X. On the basis of health advice that I have received, we will not proceed with the Perth Royal Show." We can apply a measure of charity and say, "Okay; but can you please provide the advice on which that decision is grounded. Please walk us through it." I just want to specify that originally there was an attempt to mollify us with three safeguards that would prevent these powers being invoked unreasonably and unnecessarily. The third safeguard should be treated with a measure of absolute derision. It was that the minister, on the basis of the advice received, was satisfied that it was necessary or expedient for those powers to be exercisable. I could understand them being necessary, but on what basis? That was never explained. Was it necessary on the basis of ensuring an adequate public health response to ensure that our hospitals could cope with a surge so that people's health was not unduly compromised? The inclusion of the word "expedient" should, for all thinking members of this chamber, raise alarm bells. Expedient in what way? Expedient for public policy, public health or the maintenance of civil order? Expedient for the purpose of restoring our battered economy or expedient for some other purpose? I think members will know where I am going with that.

The other means by which the government attempted to mollify us was by saying, "Don't worry; these regulations will be disallowable." Yes, they would be. It was put: what would happen in the hypothetical scenario that the Parliament was prorogued or the writs had been issued in February? How would something that was inappropriate be disallowed in those circumstances? How would those new regulations be disallowed from having effect when, as I understand it—here I am to be disabused of my ignorance and wrongful assumption—there is absolutely no constitutional obligation to call a Parliament after the election and the results are declared? We could have, potentially, for a very long period, rule by regulation and power consolidated in the executive, with the capacity for checks and balances on that power exercised only theoretically but never practically, and the attendant risk that these regulations could be rolled over or extended on a six-monthly basis through a process of conferral between the minister and the Governor. It is not unhelpful for me to draw attention to these issues. It is not political grandstanding for me to draw attention to these issues. This is me doing my job as a member of Parliament. It is us doing our jobs to say that this is dangerous, particularly when the government cannot provide a range of scenarios by which we can all agree that the exercise of such extraordinary power would be necessary for the preservation of life. That has never been given.

It is not because I had nothing else to do that I sought clarification from the government about its intentions for part 7 of this bill, because, after last week, anything is possible now when it comes to the manner and form in which legislation is provided and the kind of legislation that we can live with passing. All bets are off. We are dealing with a completely changed landscape. Out of an abundance of caution, for the preservation of very basic principles such as the separation of powers and the extolling of the legislature's absolute requirement to keep the executive in check, I raise these issues. I sought from the government a clear, declarative answer: is the government intending to proceed upon this basis? I was compelled to do so. I will not name in *Hansard* the individual member of staff. He is a reputable person. He is a professional and experienced ministerial adviser. That person advised me—I have the email here—that prior to us meeting last week, the government was not intending to proceed with part 7, but it might turn that into another bill at some later stage. That, to me, was of great concern. Despite what I was hearing about the government being scared off this overreach by opposition stroppiness or oppositional opposition, there was clearly an indication that the government was holding this in reserve. After what I witnessed last week, I thought it would not be unforeseeable that the government would proceed along this course, and I think that is dangerous, because the need for it has never been explained.

Throughout the majority of this crisis, we, as a responsible opposition, have sought access to basic information—even during Committee of the Whole yesterday. I realise that it was outside the strict parameters of the bill, but it was certainly germane to the issue. I asked whether the government could give us data about how exemptions are granted and what criteria really apply. We were referred to the Commissioner of Police. This is fundamental information. There is a growing community perception that there is a lack of equity in the way particular individuals are treated—that certain people are obliged to conform with greater restrictions than others. One might be cheeky enough to assert that, by virtue of what we witnessed in this chamber last week, not all billionaires are created equal, or perhaps they are but some are more equal than others.

As responsible legislators, we have a mission statement to try to inquire into the consequences of legislation and to work out what the government is intending to do. I asked a very simple question without notice of the Minister for Planning yesterday. I did so on the basis of a quote that she gave to *The West Australian* on the back of a story about this matter. It was a very straightforward question. I asked —

> I seek some clarification on the government's intentions regarding the original part 7 of the COVID-19 Response and Economic Recovery Omnibus Bill 2020. Does the minister stand by her position, quoted

> in *The West Australian* today, that "There are no current plans for the State Government to introduce this clause in a separate Bill?"

On behalf of the Minister for Planning, Hon Stephen Dawson replied yes. The minister stood by that remark. No, there are no plans. I asked that question because at 8.22 am yesterday, I received an email from the minister's office, which said —

> I can advise that the Government will consider its position on a new second Bill, based on Part VII, in the future.

That completely contradicts what the minister was quoted as saying in the press and directly contradicts the answer that she provided yesterday through the Minister for Environment in this house. That is completely different. One might say that they are polar opposites, unless there is a creative interpretation or a caging or equivocation about what "current plans" mean: "Current—not right at the moment, but perhaps later this afternoon, I will change my mind." Frankly, that is not good enough. If the government intends to proceed along these lines, as was outlined in the previous part 7 of this bill, it should just say that it is going to do it. Do not play games; act like serious operators.

I asked again today a follow-up question of the minister on this line— I do not have a copy with me because, by virtue of our conventions now, I was obligated to be on urgent parliamentary business elsewhere at the time. I asked whether she could clarify that she still stands by her answer or whether she was aware of any divergent advice from the advice and the position that she provided to me yesterday, and whether she could further confirm whether this bill is being drafted at the moment. Reading between the lines, I think something is going on. I think a bill is being drafted, or might be drafted, and will be ready at some stage in the remaining sitting weeks. I received a longwinded, derisive, revisionist answer, making all kinds of character intimations and the like. I do not care, but just answer the question. Either the government is proceeding along this line or it is not, and cough up. If it is, tell everybody about it and tell us why it needs the power. They are simple questions. Answer them simply. I am not politicising an issue. Frankly, I find it somewhat risible that the opposition is being accused of politicising COVID-19 policy and responsiveness when I look at the way that the government has conducted itself, particularly over the last few weeks. I am not condemning the government overall. I think particular activity and hyperactivity have been condensed into the office of the Premier and I think we are going in a very strange direction at the moment.

I will make one final observation on that issue. The reason I was so alarmed related to the capacity to regulate over just about everything other than 17 acts. The first thing I noted that was absent from those acts—it only makes sense now in retrospect—is that no state agreement acts were exempted from those powers. I wondered whether something was going on here. If I take the Premier, the Treasurer or any senior minister at their word, they are alert to not creating sovereign risk issues for this jurisdiction. When the government had the best and brightest minds collected from 10 departments working on this bill, why did no-one think it might be problematic that we are building in here—I do not know why it would do it—the capacity to override state agreement acts? I thought something might be up. Now I realise potentially what that was all about.

There are also omissions relating to the Police Act. I do not know why the government would admit that, but there we go. There are a range of strange omissions. If the government intends to bring this bill forward, perhaps by tomorrow we can have a yes or no answer to that. If it is the case that the minister intends to bring forward a bill like that again for our consideration, it should explain why it rules some acts into over-regulation and excludes others. A justification for that could probably take all week. I hope we do not get to that point.

That was kind of the introduction and conclusion of part one. Part two deals with my concerns about this legislation as it is presented. I go here on the basis of advice provided by the minister in her second reading speech from 11 August. I will go through this. It is not an insubstantial piece of legislation, and I think anybody who takes their job as a legislator seriously will find this interesting. Comparatively, early on in her address, the minister talks about the bill in these terms —

> The COVID-19 Response and Economic Recovery Omnibus Bill 2020 has been drafted to ameliorate problems and impediments arising from the emergency response to the COVID-19 pandemic, facilitate aspects of the state's economic recovery, make related amendments to certain acts and validate actions taken before, during or after the declaration of the state of emergency.

It says "before … the declaration of the state of emergency". I start now with the obvious question: what actions were taken by the government before the declaration of the state of emergency that would require some amelioration of problems, the resolution of impediments or validation in any way? I understand that this legislation, second reading speech, explanatory memorandum and the like have been drafted with a measure of haste. I hope that is a drafting error, because if I am to interpret that sentence for what I take it to mean, decisions or processes were undertaken by government that were completely unnecessary because the state of emergency did not apply—therefore there should not have been any restrictions in place that would have necessitated some kind of expeditious treatment. At some stage I would like an answer about what was going on before the declaration of the state of emergency,

I think, around 15 or 16 March this year that would necessitate this post facto fix-up. That is an obvious question. I think that is leading with your chin.

I want to give this bill some credit. I have made some observations about the adequacy of the title of the bill. We could be unfair and uncharitable and call this "a cover your—insert word here—kind of bill", because this is about a tidying up of actions undertaken by a range of government agencies. This bill also presents itself as providing forward-looking options. I am not sure whether that is always necessarily true, but this bill intends to regularise or change a range of issues in some way. That includes the waiving, varying or refunding of fees, charges, dues and late penalties—extending the time frame in which those things can be paid—and providing options for meetings as well as for decisions to be made out of session. I think that out-of-session decision-making is problematic. It is one thing to have a Zoom or Microsoft Teams meeting; it is quite different to make decisions out of session—actually sans meeting—because that puts all the power and outcomes into the hand of the person who drafts the resolution of the meeting that was never had to begin with. It is just a danger. It might not be exercised, and it might not be as problematic as I read it to be, but it drew my eye. The bill has options to permit for possibly witnessing the signing of documents by video link, and a range of other options. They are issues that cover a vast expanse, and will particularly have an impact on the justice system as well. I make the assumption that my colleague Hon Michael Mischin might inquire into some of those things.

My view is that that explanation, the preamble, buries the lead around validating things done. I make this observation now. We can be very pragmatic and helpful in our interpretation of the problem that seems to be intimated here that the peculiarities, the restrictions imposed by COVID-19, necessitated the continuance of government operations by other means, by more flexible measures, so that the government could keep its lights on and the economy would keep ticking over so a measure of confidence could be restored in the community and the business community that in spite of the circumstances, things were still proceeding and we could be flexible about that. We can be generous in our interpretation that, strictly speaking, some of the processes by which decisions might be arrived or determinations made do not find explicit black-letter law reference, substantiation or justification. Members can understand that. The world has moved on and our means of doing business have changed and evolved in ways that the drafters of the original acts could never have foreseen—and that is reasonable. The validation of those kinds of things is completely understandable, and is to be facilitated by just about every sensible person in this chamber.

When we start talking about other issues such as waiving fees, I think we start to get in slightly more difficult territory, but at a broad level we can understand and support the need for the regularisation or validation of processes that government has had to undertake because there was no alternative, and agencies, or governments more broadly, want to ensure that they are not exposed to liabilities that might arise from somebody appealing or questioning the validity of a process embarked upon to make a particular decision or that particular decision itself. We understand that. There is this distinction, though, between that and for statutes to be disregarded with some intent—this is not an accusation, but in the course of human experience there is potential for this kind of thing to happen—and to knowingly avoid the obligations presented by statutory instruments—to work around the law, if you like. We would not be the only jurisdiction in this commonwealth under which public servants have done that and have done so for a variety of reasons, but there is an absolute distinction that needs to be made between validating processes that are fair and reasonable—that should be the way the government does business from here to the end of time—and legitimising things that were illegitimate. That is a distinction. That is a real and important distinction that we have to make, and we might come to that in the process.

I might just concentrate on a couple of core issues and reflect on some of the useful information I have been provided as a follow-up to try to get a bit more information from the minister, if he is able to do so. Prima facie, I think as a chamber we would want to concur with and support the waiving or refunding of fees. I think we would want to do that from the position of restoring faith in the economy, understanding that there has been considerable economic impact experienced by a range of enterprises and individuals throughout this crisis and, indeed, that was the case before this hit, but that is another point. I have laboured it previously. I do not need to go back over it. We would want to see a measure of transparency over the particular fees that are being waived. I am talking here by volume and by quantum. We would want to be reassured, in so far as is possible retrospectively, that appropriate steps had been taken in the exercise of those waivers. We would want to be reassured that a person who had the financial means to pay a licence fee, whatever that might be, had been dis-obligated from that fee, and that was tied to some sort of personal association or some other connection, or that this power had been delegated downwards at an inappropriate level through the organisation, with limited oversight. We can be fair and reasonable about this. We have done this. Other Australian jurisdictions have done this. We have been calling for fee relief in a variety of domains and applications of the Parliamentary Liberal Party, so philosophically we support it. However, we would need some clarification and information that appropriate steps have been taken and that, to the contrary, inappropriate steps have not been taken.

I did seek post the briefing some further information from the minister's office on the issue of fees. It was a generic question. I could not get to the heart of everything. It is useful for the chamber to know that the minister's office

has been somewhat obliging in providing the detail. However, there is a need to press for a bit more information. My question was: could the minister provide a more detailed overview of the number and kinds of decisions that have been made by agencies operating under COVID-19 protocols in relation to fees? The briefing note that was prepared for me said that on 31 March, the McGowan government announced a $1 billion economic relief package to support Western Australians in response to the COVID-19 pandemic. It said also that an amount of $100.4 million has been allocated to waive a range of fees for small and medium-sized businesses impacted by COVID-19 and that the provisions in this section—I presume of the bill—will assist in meeting this commitment. My question is: is this the full quantum of fee relief that we are being asked to validate; if that quantum of around $100 million holds, what portion of that has already been written off; and were the processes at the agency level followed consistently?

I should say also that the focus of this bill is pretty squarely on public sector agencies, and particularly public sector leadership, whether it be a chief executive officer or director general or whatever the appropriate designation might be considering the structure of the agency. As an aside, I would be interested to know what ministerial oversight or awareness there was of these practices, and whether a CEO or DG felt obliged to inform the minister or to seek ministerial approval for acting in a way that we are now led to believe is not strictly permissible under the reading of a number of acts. That is not an inconsequential issue. I can go into the details, but, for the purposes of this process, I do not want to take up all the time—although I know members like listening to me! That kind of issue is tied directly to an amendment that I have placed on the supplementary notice paper. I am seeking gazettal of a range of issues, and this is one of them. I will speak in more detail about that at the appropriate time.

One issue is the complications that pertain to decision-making meetings. I want to clarify what we are being asked to do by way of this bill. I am concerned that there is a potential conflation between the validation of processes utilised to arrive at a decision and the validation of the actual decision that eventuated from that process. I have received some advice about the quantum of meetings that we are talking about as it relates to my planning portfolio responsibilities. I refer in particular to the meetings of development assessment panels. Apparently, there have been 80 meetings of development assessment panels. All members of this place know that sometimes decisions and determinations made by virtue of DAPs can be somewhat controversial, at least at the local community level. I would like to get a clearer indication of the financial quantum of the decisions that were made at those 80 meetings and that have now been regularised. By way of an aside, the capacity to hear and participate in DAP meetings has been evolving and improving over time, but there is still some way to go. The point is that we do not want to legitimise wrong outcomes just because we are compelled to keep the wheels of government turning. There is a distinction. We need to have a clearer insight into what has transpired and what might transpire as we proceed.

There is also an issue about making some permanent changes. That is dealt with in parts 5 and 6 of this bill, and that merits closer examination. The point I would make is that obviously our response to this in enterprise or in whole-of-government terms has shown particular vulnerabilities or anachronisms in the processes by which government interacts. Government interacts in a way that I think generally speaking is 20 years behind the rest of the community, particularly the private sector. That shows that we have been a bit slack as a jurisdiction, not as a government. This is not a criticism of this government; it is a criticism of all governments. I do not think agencies have been very adept, particularly in the last three or four years, in changing their business practices and looking for opportunities for continual improvement. If this bill does that or forces that along a bit, so much for the better.

Another issue that is as serious as fee variations, waivers or extensions is licence variations. Again, the discretion for the conditions of licences to not be held to the degree to which they have been held previously is of some concern to me. I say that for the same reasons that I talked about earlier. We do not want these kinds of considerations, because even though when we step back and look at them objectively, they are well and good holistically, on an individual basis they may cause some grievance around governance. These are not inconsequential changes. Therefore, I seek some clarification about who knew what and who was involved in the loop of making that decision.

Hon Stephen Dawson: What was that?

Hon TJORN SIBMA: Sorry. I am talking about the variation of licence conditions, whether it be an extension or not being as strict. I have a direct reference here. If I cannot find it now, I can return to it later, and I probably will. If significant changes were made to licence conditions, or to material conditions that related to someone holding a licence, and those changes were either not mandated or not enforced, I am interested to know how the decisions were made to step back and provide a measure of relief, and whether these decisions were made by directors general, chief executive officers or people lower down the chain.

Hon Stephen Dawson: Sorry, by way of interjection, hopefully to give you an answer to that: are you asking about particular portfolio areas?

Hon TJORN SIBMA: Across all portfolios, but I think it would be particularly germane to the minister's portfolio. In fact, if we used that as a case study, that would be interesting to know. It might be Minister Kelly as well, if there were variations to water licences and the like, who made those determinations, because we are asking members to hold in their minds that these are not strictly speaking legitimised by statute as they exist. Therefore,

I would expect there to have been some escalation of the decision-making chain around these particular matters. If one is dealing with thousands of licences, presumably there are low-risk licences that are just sort of rollover licences, but there are probably licences that deal with far more sensitive operations or have a greater financial impact.

Hon Stephen Dawson: I will get you an answer to that.

Hon TJORN SIBMA: That would be great.

Hon Stephen Dawson: That licensing is the statutory responsibility of the agency.

Hon TJORN SIBMA: Yes. I also make some observations that I think are actually very positive on providing for documents to be made available for public inspection online. Again, I return to my earlier point. I think we have collectively been caught napping about being more friendly in our public interface, considering that there are unlimited opportunities for people to attend meetings at the best of times, quite aside from the restrictions placed by COVID-19, for example, making deputations to the Western Australian Planning Commission or attending a development assessment panel hearing. Online documents are hard to get into, and accessing the appropriate documents is not necessarily an easy thing to do, so a process to move towards greater online accessibility is to be applauded, and hopefully we will use the opportunity of this bill to settle that for some time.

I find the clause dealing with Executive Council to be a strange inclusion in this bill. That is dealt with at clause 85. That clause deals with arrangements around the conduct of Executive Council, or Exco. It is my understanding—it is only my understanding, not my direct experience—that Exco meetings involve four key individuals. They are obviously the Governor or the Governor's deputy—it could be the Chief Justice depending on the Governor's availability—the Governor's official secretary and two ministers of the Crown. That is my understanding of the human composition of an Executive Council meeting. I do not know how long those meetings go for, but I presume they would last about an hour, depending on the subject matter they are dealing with, and they would hold the meeting at Government House. I think there is an advantage in providing for and having face-to-face interaction where people can, particularly when dealing with only a limited number of individuals and when dealing with matters that would probably benefit from closer examination and interrogation. Obviously, I have not had this experience before; I can only defer to the advice that I have solicited from the more experienced members of my team—just about everyone on my team is more experienced than me—who have been ministers about the way that particular acts have actually been interrogated by previous Governors, for example, whether management orders are attended to as a regulatory instrument. There is some value in a Governor taking an interest in the acts that they are being asked to ascribe royal assent to. There is value; it is the final check, if you like.

My personal experience as a human being would be that that process of instructive dialogue and informed debate is better facilitated even in a chamber like this, where we are distanced by some metres, than it is over any audiovisual hook-up that one can devise. I think we all speak here in this chamber as members of committees that have met via Zoom or undertaken briefings via Microsoft Teams. Frankly, it is an awful experience. I think it undermines the quality of the briefing. At the start, the experience was positive; it was novel and people just wanted to get on with it. I think it is now deteriorating quite a bit. That is my personal observation. But I think there is a value in maintaining the convention that demands a face-to-face interaction, and I think there is appropriate scope within the confines of Government House to maintain the appropriate social distancing. I just find that a very unusual inclusion in this bill. I think it goes beyond the scope and intent of the bill. As it has been changed over time, and things that should never have been in the bill and should never have been contemplated have been taken out, I still think it is an odd inclusion.

That measure has drawn my attention. It was referred to throughout the course of debate and discussion in the other place, and the minister spoke to this in her second reading reply speech. This was on 13 August. The debate was resumed around eight o'clock that night. The minister said —

> I will address some of the issues raised. The provision for Executive Council meetings to be held by remote communications protects the Governor from exposure to COVID-19 while ensuring that the critical role of the operation of government can continue. As we know, particularly on nights like this, a healthy Governor is very important to be able to receive our bills and give them royal assent.

I quite like the Governor. I actually quite respect his decades of public service, and as a person who is sort of outside the domain of this jurisdiction but is, generally speaking, a defence hawk, I value his service to this country, particularly through the defence portfolio and through his service to the alliance relationship with the United States. But he is still a human being, and I do not necessarily know why he requires special treatment or special protections for his health through the passage of this bill. I hope he is well and I wish him the best of health, but—if I might finish this line, minister—I think that was possibly a glib justification provided by the minister in the other place. It was one, if I might be so bold, that was undermined by the next justification the minister provided, which was that we need to keep him healthy for nights like this so that he can sign our bills. We know what bill was signed nearing midnight last Thursday. I have seen the photographic evidence of the Governor signing the bill. Presumably, that was handed to him by a person. Presumably, there were other human beings in attendance, potentially ministers of the Crown. I expect the Premier was in attendance. It is my understanding that the Premier drove to Government House,

presented the Governor with the bill, and quite unusually in this state's jurisdiction, I might say, the vice-regal obliged the picture opportunity for the executive government. I have not seen that done in this jurisdiction before. I found that an interesting development, nevertheless. The particular justification for the special protections that we must give to the Governor were undermined by the very argument that the minister responsible for the bill gave. I can only assume that there are some bills that are more important than others.

I find it very difficult to follow the logic. I have some amendments on the supplementary notice paper that will have the effect of preserving the current meeting arrangements for Executive Council because, in this jurisdiction at least, the public will be served by one-on-one interaction between ministers of the Crown and that person who fulfils the role of that vice-regal position. It might seem trivial to most people outside this chamber, or even trivial to people inside this chamber, but I do not believe that the Governor has been compromised in this way. I would be interested to know whether any Executive Council meetings have been conducted this way. The bill is silent on this issue, and I seek some clarification. It is clear to me from the events of last Thursday night that it is not always the case that the Governor needs to be kept at arm's length from the minister presenting him with the bill that that minister seeks his royal assent for. It is a serious question.

We have talked about part 7 that was to go into this bill. We did not design the moniker. Somebody else in another party deemed them the "Putin provisions", which I think was not completely unwarranted. I do not think they are "Putin provisions" in part 7; I think they are "diminutive Medvedev provisions"! There is still some expectation of "rule by regulation"—Henry VIII clauses—which we customarily call out. We are actually obliged to do that. Those clauses effectively seek the deletion of lines as they appear in clauses 104 and 106. Members may ask: am I making a point? Yes, of course I am; and it is a serious point. Bearing in mind where we are in this political cycle, Parliament will be prorogued, at least on our current understanding, on 26 November. Even if there were an attempt to mollify us to the degree: "Don't worry; all this stuff will be disallowable", frankly I do not think we will get the opportunity to exercise that right in a timely fashion, if it is required. I would also say that I do not know why the government would require that. I do not know how the provisions included in those clauses, in an operational sense, assist in the ex post facto validation that we are being effectively asked to wave through, but we are attempting to scrutinise the legislation to the best of our ability. If an argument can be posed—not that I will agree with it, but I just want to hear the argument for it—I do not think that additional regulatory power is needed. We will potentially go through this ritual exchange of asking for more than we need; we do not really need it, but if it is not picked up, shame on you! I want to call these things out. I would like to hear the justification for the clauses, please. If there is an operational justification—I do not think there is—please put that argument. If not, I expect the government to concur with the amendment to withdraw.

Bearing in mind where we are in the course of this evening's business and the commitments that I have given to my leader in this place and, through him, to the government, about the amount of time I would take to contribute to the second reading debate, I am going to draw my speech to its conclusion. I will return to a theme. The Liberal Party has conducted itself as a responsible, helpful, constructive opposition party, which has taken seriously its obligations to the constituents —

A member interjected.

Hon TJORN SIBMA: I hear something up the back! No doubt it will get its chance.

The Liberal Party has taken its role seriously. We are approaching this bill with a spirit of pragmatism and cooperation, with a recognition that agencies have had to conduct their affairs differently. We are reasonable people; we understand how the world works. We are a party out of government, but hope to be in government. We understand the demands of government, but that does not disoblige us from improving bills, from seeking clarity, and demanding data and information, and not just accepting at face value some of the glib justifications that are included in this bill.

I think this bears repeating; I will end where I started: the majority of this bill is retrospective. There are some forward-looking dimensions and that is to be understood. There are issues around the criminal justice system relating to the way that sentencing occurs and the way that witnesses might operate by audiovisual link, which I think are not trivial. That is not my subject matter domain. Nevertheless, I want to emphasise this point: we are here to be helpful but we are here to scrutinise. Frankly, I cannot understand the urgency driving this bill. It has knocked out more meaningful pieces of legislation. That is no slight on the minister responsible for the bill and it is no slight on the people who have worked hard to put this bill together under very difficult, extenuating circumstances. It is a monolithic omnibus. The efforts have been Herculean. The capacity to get all these agencies and acts together in a sensible way has been done quite well. I actually want to pay the appropriate compliments to the people who have worked hard on this probably thankless task. I also want to underscore this point, minister: we could have dealt with this bill in September or October—possibly not in October, but certainly before the budget is handed down and consumes the next three sitting weeks. I had hoped that by the end of these August sittings we would have sent the environmental protection bills back to the other house and secured their passage. I am disappointed, particularly as a new person to the environment portfolio, that that has not been achieved and now cannot be achieved until September. I look forward to the government's response. I look forward to—as we always get from this minister—

meaningful, thoughtful responses from the minister. He does not always agree with us and it is not his job to agree with us; just as it is not our job to agree with him. I look forward to some constructive dialogue. I hope that we are in a position to extract maximum value out of the Committee of the Whole process because I think that will drive the outcome in a not insubstantial way. With that, I conclude my remarks.

HON DR STEVE THOMAS (South West) [6.18 pm]: Madam President, this might be my shortest contribution ever!

The PRESIDENT: It might just be your warm-up!

Several members interjected.

Hon Dr STEVE THOMAS: And immediately the crowd goes wild, Madam President!

In the very small amount of time available to me before we go to other business, I want to thank Hon Tjorn Sibma for his strong contribution to the COVID-19 Response and Economic Recovery Omnibus Bill 2020 and for his proposed amendments to the original bill, which mostly refer to changes in part 7. In the substance of my contribution, I want to deal almost exclusively with part 2 of the bill—the fees and charges. I will come back to that in more detail; I have some questions for the minister. I want to pick up on one of the issues raised by Hon Tjorn Sibma in what was the "consultation draft" presented to the opposition some time ago, in part 7. Hon Tjorn Sibma mentioned that part 7 proposed to make significant changes and empower the state of Western Australia to make almost unprecedented change. It is an era in which we face unprecedented legislation. Those changes were to be restrained by a part in the original clause 105 of part 7. It stated —

> The Minister cannot not make a recommendation for the purposes of subsection (1) unless —
>
> (a) a COVID emergency declaration is in force in relation to the whole or a part of the State; and
>
> (b) the Minister is satisfied, based on the advice of the Chief Health Officer, that there is, or is likely to be, an outbreak of COVID-19 in the State; and
>
> (c) the Minister is satisfied that it is necessary or expedient for the purpose in section 3(b) for the powers under the Division to be exercisable.

Debate adjourned, pursuant to standing orders.