

COVID-19 RESPONSE AND ECONOMIC RECOVERY OMNIBUS BILL 2020

Second Reading

Resumed from 19 August.

HON DR STEVE THOMAS (South West) [12.31 pm]: Thank you, Mr Acting President, for the opportunity to add briefly to my two-minute contribution yesterday evening.

Hon Stephen Dawson: A glorious two minutes!

Hon Dr STEVE THOMAS: It was a glorious two minutes, too. It brought down the house.

Yesterday, I said I was going to concentrate on part 2 of the COVID-19 Response and Economic Recovery Omnibus Bill 2020 for most of my contribution, and I will happily give the minister a heads-up on a few questions that I want answered. However, at the beginning, I wanted to take a few minutes to discuss the original proposed part 7 of the bill. Yesterday, I read in clause 105(3) of the consultation draft, which was about making orders, particularly in relation to modifying written laws et cetera. Clause 105(3) of that consultation draft states —

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.

These relate to the potential for the government to simply make changes, effectively, on its own cognisance. This relates to divisions 2, 3 and 4. Division 2 was going to relate to regulations that may modify written laws. Division 3 related to ministerial orders that may modify or grant exemptions from requirements. Division 4 related to official directions. These were immensely powerful instruments. Hon Tjorn Sibma has gone through his concerns about how they might be used and the potential lack of accountability in them. However, I want to make this point in relation to those three components that would allow the minister to make a recommendation. The first is that a COVID-19 state of emergency or public health emergency declaration is in force. It is in force and there is every likelihood that it will stay in force, so that is an automatic tick for the government. Secondly —

- (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 ...

Let me say, as someone who spent many years studying epidemiology, no health officer or no-one with medical training would suggest that there is not likely to be an outbreak of COVID-19 in this state at some point. It is immensely imminent. It is impossible to say that the circumstance would not be met consistently whilst COVID is around both in other states and in our near neighbours. There will be an outbreak of COVID-19 in Western Australia and at that point there will be finger-pointing at the government and probably a blame game. But the simple medical and scientific reality is that at some point there will be, hopefully, a small and, hopefully, contained outbreak of COVID-19 in Western Australia. Therefore, there is an automatic tick for paragraph (b). An outbreak of COVID-19 in this state is likely now, remains likely and will be likely well into the future.

Let me say this in relation to the state's hard borders, and, we could argue from an international perspective, the commonwealth's hard border, too—because a plethora of international tourists is not turning up in any Australian state at the moment—that, from a scientific and epidemiological position, the longer we keep a hard border in place, be it for the state of Western Australia or the nation of Australia, the harder it will be to remove. The longer we keep a population isolated and protected, the greater the risk that it will break down. This is purely scientific fact. I am reminded of when we debated the COVID-19 motion a few months ago and I made the comment that we can protect the economy or the people but we cannot protect both. Members disagreed with me at the time, but I believe that is an absolute truism and time has proven me to be correct. Let me say the same thing, which I think will be proven correct in time: the longer we keep a hard border—state or federal—in place, the more difficult it is to take down because there is a vulnerable population sometimes surrounded by states, and in some cases countries, in which this virus has spread significantly. The threat over time, by definition, must become greater not smaller. The only way that that will change is if a vaccine is developed that gives protection.

Members might know that I am generally somewhat cynical, and every good scientist has a degree of cynicism. Enthusiasm is for the masses, but science has to retain a rigour. There has not been much in the way of coronavirus vaccines developed over time. The only one I am aware of is one that works in the veterinary field and it is not the most effective of vaccines. This is not an easy process. I accept that nations around the world are throwing billions

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of dollars at this and that may hasten the process, but let us be realistic and suggest that perhaps by the end of next year, at best, in the most productive of nations around the world there might be a proven, effective and safe vaccine. That would mean that hard borders, both state and federal, are here for a fair bit of time to come. There will be outbreaks and the difficulty is that bringing down those hard borders will simply expose a very at-risk population. The longer it hangs on, the greater that risk. I am not advocating taking down the border; I think it has been a successful medical tool. But be warned, Legislative Council, that the risks here are significant.

In relation to paragraph (c), the minister is satisfied that it is expedient for certain powers to be exercisable. The minister, in presenting something, will always be satisfied that it is expedient. I do not know a minister who would do something that they did not think was expedient. It is interesting that it says it can be necessary or expedient. It might be expedient for a government but not necessary, and it still ticks the box of paragraph (c). Let us see: paragraph (a), or previously ticked in advance; paragraph (b), ticked by commonsense; and paragraph (c), ticked by expediency. It is absolutely the case that the initial proposal in the consultation draft was a rubber stamp for the potential to change laws, in particular without the parliamentary process and without an accountability mechanism.

I am pleased that Hon Tjorn Sibma has taken up this issue. I thought that the presentation in *The West Australian* today by journalist Peter Law was very good, outlining some of those concerns. I am pleased to see that part 7 of the bill has been significantly modified so that these great risks are no longer present. It behoves this house to be ever vigilant to ensure that the government does not overstep its bounds, even in a time of potential medical crisis, and that crisis should not be used as an excuse. I make those points about part 7, with which we are not proceeding.

I now move to part 2 of the bill before the house. That is the section that I have the greatest interest in. I am sure others will go into more detail in the not-too-distant future. Part 2 relates to the waiving or amending of fees and charges. Under clause 8, CEOs or chief employees will be given the power to reduce, waive or refund fees and charges over a range of legislation. The estimates that I have seen floating around are that this is initially expected to cost in the order of \$100 million. Under clause 9, CEOs may extend time frames for payments. This is particularly focused on the Environmental Protection Act. However, under clause 9(2)(a), the government leaves itself free to introduce further enactments. Clause 11, “Validation of reductions, waivers and refunds”, effectively backdates this legislation to 1 April. Anything that has been reduced, waived or refunded by presumably a government department is substantiated in this bill from 1 April this year and, as subclause (1)(b) states —

ending on the last day of the period of 6 months beginning on the day on which this section comes into operation.

Presumably, when it is rushed into operation, we will have just over six months to approve anything that has been done retrospectively. There are a range of issues. I say at the outset that the opposition is not opposed to the waiving of fees and charges if it delivers relief, particularly for businesses that are struggling to employ Western Australians. I get the intent of the bill and I support the intent of the bill. I am sure that the minister will go into more detail of how it might be applied.

My first concern is that, as I read the bill, I do not see a definition that prevents a CEO of a department from reducing, waiving or refunding fees that come under that list of legislation in clause 8(3) on an individual or reduced basis. That concerns me greatly because I was advised in the briefing that this is aimed at an entire cross-departmental fee-waiving process. All people who are expected to be charged a fee under one of the acts would therefore be granted exemptions. I get that process. For example, the government might decide that in order to keep exploration ticking over, it will waive mining fees under the Mining Act. Any of the fees imposed by the acts listed might be waived. I support the government’s intent; it has the freedom to do so. I think we need to enhance the accountability mechanisms to ensure that Parliament and the public are aware of when those fees are waived.

My question to the minister relates to the framing—the wording—of the legislation. How is the CEO prevented from providing a single individual or subgroup with a discount, waiver or refund of the fees that come under the regulations for the various acts? Let me give a prime example. I am concerned about accountability, and even the potential for corruption. I do not see in the bill as it is written where a CEO would not be able to individually waive a fee for an individual, whether it is in land development, mining or any of these other areas. What is in the bill to prevent a CEO providing an individual waiver that is not part of a group or universal waiver that is to be accountable? My concerns are further exacerbated because I do not think there is an adequate mechanism for public disclosure of where these fees have been waived. I would not be surprised if the government has in mind that when it waives a group of fees, it will put out a media statement saying, “We have waived a group of fees to this group of businesses or individuals. Aren’t we jolly good people?” That is fine. However, the legislation does not require any disclosure of those discounts and waivers; it says only that the government is able to proceed with them. I would like to know how that is prevented in the legislation.

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I would also like to know whether a minister who is substantively in charge of one of those pieces of legislation listed under clause 8(3) will have any authority or control over a CEO, head of department or chief employee to give direction in that process outside of the process of an official ministerial direction, which is of course a document that is noted and recorded. This is the part that concerns me. We may allow a CEO, who has been given the power in this bill to generally grant exemptions, to exempt one individual from a set of fees. As far as I read the legislation, that CEO is not required to even inform the minister of having done so. Down the track we might find that a CEO has waived a fee for an individual or a group of individuals and not informed the minister, and it becomes exposed at some point. Hon Tjorn Sibma may carry out an investigation and find out from parliamentary questions that this waiver is in place. The minister could ask, “What’s going on here?” As far as I read the legislation, the CEO is perfectly able to say, “You gave me the power to do this. You did not restrict that power and say that it has to be in a group of recipients and you did not even require me to tell you. In fact, I have done absolutely nothing wrong.” The government may have in mind a way to eliminate that particular risk, because I think that is an enormous risk to good governance and the potential risk of corruption. Although I am supportive of the intent of the government, I think it is absolutely the case that we need a solid explanation of precisely how those risks are to be mitigated. The government needs to tell us precisely how a CEO would be restricted from the type of example that I gave. It also needs to tell us precisely how the legislation will limit the power of CEOs and ministers to do this generally—that is, how it will be restricted to the groups that are identified.

It is also critical that an accountability process is in place. This might be a completely honest process and the government might say that it will make public precisely how it will do this. That is fine, but it needs to be in the legislation or, at the very least, we need a ministerial guarantee that this is how it will operate and how these proposals will be made public. Failing that, I think we need to support the amendments of Hon Tjorn Sibma to make sure that there is public disclosure when fees are waived or reduced, or time for payment is extended. Otherwise, I think the threat of corruption is too strong. I ask the minister to come up with those responses. If necessary, we will deal with it during the committee stage, when we can progress those issues a little more. I think these are critical issues for our support of a bill that, in principle, the opposition supports. Hopefully, we will assist to make it better.

HON COLIN de GRUSSA (Agricultural) [12.51 pm]: Thank you, Mr Acting President.

The ACTING PRESIDENT (Hon Robin Chapple): Are you the lead speaker for the Nationals WA?

Hon COLIN de GRUSSA: I am the lead speaker, thank you, Mr Acting President. I was not expecting to be up here quite so soon. I thought Hon Dr Steve Thomas might —

Hon Dr Steve Thomas: I am trying to assist the government with its legislative program.

Hon COLIN de GRUSSA: As, indeed, am I. As I indicated, I rise as the lead speaker for the Nationals WA on the COVID-19 Response and Economic Recovery Omnibus Bill 2020. Despite the bill’s relatively small form, it has a very broad scope. As members would be well aware, this bill impacts some 75 acts across 11 agencies, so it is no small feat to get across the various provisions within the bill. I am very grateful for the briefing that was provided to me by the various agencies and advisers and for their very good explanation of the various provisions in the bill. The explanatory memorandum is a reasonably sized document of some 40-odd pages that sets out the various aspects of the bill. I will pose a few questions during my contribution to the second reading debate, to which the minister will hopefully be able to reply during either his response to the second reading debate or the committee stage of the bill.

The explanatory memorandum outlines the various aspects of this bill and foreshadows numerous provisions that provide time-limited application to various classes of problems that are common to the acts. It also describes specific time-limited provisions that modify obligations and authorisations under various acts. These include modifications relating to mental health or the administration of justice. Those are very important areas, and I am sure that other members will speak about them as well. I am particularly interested in understanding the necessity and effect of any modification of those acts.

We obviously find ourselves in quite extraordinary circumstances. We say that almost every day that we rise to speak in this place. As a consequence, it has been necessary to implement some temporary provisions to keep our state functioning as best we can. It is certainly testing the application of much of our legislation, as we had never really contemplated facing the challenges that we face now. Obviously, that is really testing our various agencies, legislators—that is, us—and the government. It is understood, of course, that there will be a need for the measures in this bill, the measures we have seen in other bills and temporary measures as well. It is less obvious why some of the more permanent measures in this bill are needed under the cover of COVID-19, if we want to call it that. It will be interesting to find out, as we go through some of those permanent measures, what precipitated the need for them to be contemplated in this bill. There are numerous permanent changes, and I look forward to the justification for those being made.

Members would also have heard the minister advise the house in his second reading speech that the government had —

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... asked all public sector bodies to review operations and identify any legislative impediments that could prevent agencies from carrying out certain roles and responsibilities in the COVID-19 environment.

The opening paragraph of the explanatory memorandum also refers to —

... measures that will facilitate business continuity in the COVID-19 environment, for both industry and Government ...

I have not been able to find in either the explanatory memorandum or the minister's second reading speech any indication of which industries or industry representative groups were consulted on those legislative impediments and the measures that would facilitate business continuity. If possible, I ask the minister to provide, for the benefit of the house, information on the process of consultation with industry and who, indeed, was consulted. I would also like outlined which provisions in the bill facilitate business continuity for industry, and how they do that.

As I said before, the bill proposes a number of temporary and permanent measures. Members of this place will always, as far as possible in a time-limited debate, attempt to scrutinise the various provisions in the bill and understand all the measures within it. I again thank all the advisers and departmental staff for the briefing provided to me and my colleagues in the National Party. Following consideration of that briefing, I will pose a few questions to the responsible minister on some matters that came up during that briefing. Mention was made in the briefing, and also the explanatory memorandum states, that provisions within the bill seek to validate actions taken before, during or after the declaration of the state of emergency. Understandably, in these extraordinary times, actions have had to be taken that may not align with legislation, which, as I said, had not really contemplated the circumstances in which we find ourselves. It would be useful to understand the quantum and nature of the actions taken, in particular before, during or after the declaration of that state of emergency, and the reason that actions taken before the declaration of the state of emergency need to be captured within this bill.

In the briefing it was also noted that parts 2 to 4 of the bill largely encompass the temporary provisions, and that those temporary provisions generally apply until 31 December 2021. The explanatory memorandum references provisions applying for a limited time. I ask for some clarity about whether that limited time is consistent for all the temporary provisions throughout the bill and consistently expires on 31 December 2021, and whether all the temporary provisions are subject to the possibility of being extended beyond their proposed expiry date.

Many of the provisions that apply more permanent legislative changes regarding justice and environmental matters, as well as to other miscellaneous acts referred to in the explanatory memorandum, are designed to allow the ability for meetings and other functions to be carried out via electronic means. I was not able to get a clear picture in my mind from the briefing about any protocols to ensure the security of those systems and confidentiality and protection from external factors. I imagine that various agencies would develop those, but I wonder whether some guidance could be provided to the house on the protocols that are being developed or have been developed and are already in place.

Many speakers who contributed to the debate in the other place discussed the various individual aspects of the bill and its provisions. I am sure that we will get the opportunity to further scrutinise some of those individual aspects during the committee stage. I also note that there are amendments on the supplementary notice paper. I look forward to understanding the government's position on those amendments and hearing the arguments from the members who proposed them about why they are necessary. It is challenging, in a time-limited debate, to apply what might ordinarily be considered the appropriate level of scrutiny to the numerous aspects of this bill, especially given the number of acts that will be impacted by these changes and, of course, the relatively tight time frame between the introduction of the bill and the commencement of debate on it. In these cases, the Nationals, as we have done before in recent times, will have to rely, as do other members, to a large extent on the advice of ministers and the representatives of the various departments that these changes are warranted and necessary, and that, as far as possible, they do not create unintended consequences.

Sitting suspended from 1.00 to 2.00 pm

Hon COLIN de GRUSSA: Just before the interruption of proceedings, I was winding up and getting towards the end of my contribution. I want to reiterate a couple of points. It is obviously a very challenging time to get across the provisions in a bill that touches on so many acts and agencies when debating time is limited, as it is on this bill, notwithstanding that we are dealing with issues that the state has not faced before. In these cases, the Nationals WA and others on our side of the chamber rely to a very large extent on the advice of ministers and representatives of various agencies that these changes are warranted and necessary and, as far as possible, do not create unintended consequences. I look forward to the contribution from the minister during the Committee of the Whole House stage of the bill.

Throughout the COVID-19 crisis, members of the Nationals have of course at all times tried to work constructively with government to allow for the timely passage of necessary, emergency and urgent provisions, whilst trying to maintain at least a reasonable level of scrutiny and to maintain the safety of the people of Western Australia, keep our economy in a reasonable state and allow the business of government to continue as normally as possible

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under these conditions. It has not been easy. The time frames are tight and, as I said, the usual level of scrutiny has not always been possible. The Nationals are generally supportive of the measures in this bill, and we look forward to the contributions of other members. As we enter the committee stage, we look forward to understanding the various individual clauses and aspects of the bill, as well as considering the number of amendments proposed by other members.

HON ALISON XAMON (North Metropolitan) [2.02 pm]: I rise as the lead speaker for the Greens on the COVID-19 Response and Economic Recovery Omnibus Bill 2020. I want to make some general observations about the time frame we have had to consider this quite lengthy bill. We received a consultation draft of this bill on 3 August, on the basis that it was expected to be introduced and debated in both houses sometime between 11 and 13 August. I note that all those documents were embargoed until the bill was introduced in the other place. This of course meant that we were not in a position to consult with stakeholders about the impact of this legislation. The bill was introduced into Parliament late in the evening on Tuesday, 11 August, and the introduced version is substantially different from the draft version, because it omits the highly problematic original part 7, which was also highly controversial and would have resulted in the Greens voting 100 per cent against what was extraordinary overreach. I am glad to see it is not in this legislation.

Nevertheless, we were briefed on the truncated bill on Wednesday, 12 August. Although this was not an easy briefing, given the number of briefers required to deal with the omnibus nature of the bill, the quality of the briefing was very high, and I thank the briefers for the good work that they did. During the same sitting week, last week from Tuesday, 11 August to Thursday, 13 August, we were notified that we would also be debating the urgent Public Health Amendment (COVID-19 Response) Bill 2020, and the draft was provided on the Monday, with the briefing on the Tuesday and the final version introduced in the other place several hours later. We were also notified that we would be debating that same week the urgent Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020. That bill was introduced without notice after 5.00 pm on the Tuesday, and we were briefed on the Wednesday and debated the bill on the Thursday. In the same sitting week, the Workers' Compensation and Injury Management Amendment (COVID-19 Response) Bill 2020 was suddenly brought on for debate on the Tuesday and Wednesday, even though it had not even been listed on the weekly bulletin provided to us on the Friday before. The weekly bulletin also indicated that we would be debating eight other bills that week, and we commenced debate on two of them. That was all before the schedule was completely abandoned. Each day of that sitting week, this house had very little notice about which bills would be brought on for debate.

I remind members that all parliamentarians hold responsibility in our democracy for lawmaking, not just government, but our ability to scrutinise bills and consult with stakeholders who will be impacted by them is becoming increasingly constrained by the government's scheduling of debates. I think members of the Western Australian community are getting less time than ever to ensure that bills that appear in front of us are being considered appropriately and to contact parliamentary representatives about their concerns. I for one am getting a little bit tired of people realising the full impact of legislation only long after it has been passed because their voices have been completely absent from our debates; for example, with this bill alone, we have not heard from defence lawyers about the reforms that this bill makes to our criminal justice system. The bill makes changes that we know will affect defendants in remote areas, yet we still have not heard from, for example, the Aboriginal Legal Service or Legal Aid, which work in those places. That causes me a great deal of disquiet.

I have to say that there is absolutely no argument that the COVID-19 bills the government is introducing are priority bills—of course they are a high priority—but they are not all such urgent bills that there is justification for depriving Parliament and the community of a proper opportunity to consider them before they are debated. Our community deserves better and it deserves us ensuring that our lawmaking is as high quality as it can be and that we do not engage in over-hasty debate, because that does not make for good, well-informed laws. The Parliament has done a good job in addressing COVID-19 so far, and we need to keep doing that, but we need to avoid continually speeding up debate so much that we risk tripping up and our communities suffering the consequences. I urge the government to be mindful of that in scheduling future debates on important legislation. I do not want a repeat of what happened last week. Remember that there is a difference between priority and urgency.

This bill addresses issues that have already arisen as a result of COVID-19, and it anticipates further issues that may arise if there is a significant outbreak in Western Australia. It is definitely a priority bill that merits being debated properly, but it is not so urgent as to merit being brought on in the way that it has, with the lack of scrutiny that I believe has been applied as a result.

Turning to the contents of the bill, part 1 introduces three key concepts. The first key concept is the bill's primary purposes. They are referred to in several clauses, and there are three primary purposes that start out specific and get progressively broader. The first is to ameliorate problems in complying with statutory requirements and government processes because of the emergency response to COVID-19, the second is to ameliorate problems arising from either the emergency response to COVID-19 or the risk of an outbreak in Western Australia, and the

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third is to facilitate economic recovery from the emergency response to COVID-19. These are the three primary purposes of the COVID-19 Response and Economic Recovery Omnibus Bill 2020, but they are not the only purposes. For example, another important purpose is to retrospectively validate actions that have already been taken in response to the COVID-19 pandemic.

The other key concept in part 1 is that the bill has effect despite any other written law, and that its provisions have precedence over any safeguards that may have been very carefully included in any other act or regulation in Western Australia's entire statute book. The third key concept—this is contained in a variety of clauses in the bill—is to do with the duration of the bill's reforms. This concept gets quite complicated, noting that some of the proposed reforms are intended to be permanent. Some have a sunset clause, but exactly when the sunset falls varies depending upon the particular reform, and some of them are extendable. The process for how long the sunset can be extended again depends on the particular reform.

During the course of the briefing, I was given a series of undertakings, and I seek to put them on the public record. There has been a suggestion that, despite the extendable sunset, the general regulation-making power in part 7 of this bill allows regulations to be made to postpone the cessation of a division. Since the briefing, however, I have been given to understand that the general regulation-making power in part 7 cannot change any of the sunsets in the bill, which provided me with some degree of comfort. I ask the minister to confirm, for the record, that that is, indeed, the case.

I have another question for the minister. Upon a sunset occurring and a provision ceasing to have effect, it is provided in various places in the bill that section 37 of the Interpretation Act will apply if the provision has been repealed. It is my understanding that this means that things that were valid before the sunset will remain valid after the sunset, but that otherwise the previous version of the relevant legislation will effectively spring back into operation after the temporary changes made by this bill are gone. I ask the minister to please confirm, for the record, that that is the case as well.

The first bundle of reforms in the bill facilitate the reduction, waiver or refund of fees and charges. Notwithstanding concerns that have been raised by previous speakers, the Greens do not deem this to be particularly controversial. The bill gives agency CEOs the discretion to do two things: they can make an order that reduces, waives or refunds a fee or charge under any of a list of acts specified in the bill, plus any enactment that is prescribed subsequently; and they can make an order that extends the deadline for payment under the Environmental Protection Act—which already gives them this power anyway—or any enactment that is prescribed subsequently. An order is subsidiary legislation, which means, amongst other things, that it has to be published in the *Government Gazette*. It is not disallowable, however, because it is not a regulation, as defined. An order must also be published on a website, which will generally be the website of the relevant agency, and I note that, as with previous bills, failure to do so will not invalidate the order.

The sunset for this reform is 31 December 2021, but this is extendable by proclamation of the Governor for up to 12 months at a time, on the recommendation of the minister, if the minister considers it necessary or expedient for any of the three primary purposes that I mentioned earlier. The proclamation is disallowable. Consecutive proclamations can be made, but there is an absolute sunset of 30 June 2025, beyond which the reform cannot be extended. That is to say, if this bill is passed, consecutive proclamations can be made for the entire next term of government—the entire forty-first Parliament.

Since 1 April, the government has reduced, waived or refunded some fees and charges pursuant to the promise made by the Premier in late March. Reductions, waivers and refunds made under any of the acts specified in this bill will be retrospectively validated, together with any action taken in reliance upon them. In addition to those reforms, the bill also amends the Interpretation Act to make section 45 of that act applicable to subsidiary legislation made under any act—not only those enacted after the Interpretation Act was enacted in 1984. Section 45 provides that in circumstances in which an act allows regulations to be made in respect of fees and charges, it can include specific fees or charges; maximum or minimum fees or charges; maximum and minimum fees or charges; the payment of fees and charges, either generally or under specified conditions, or in specified circumstances; and, relevant to the bill before us, the reduction, waiver or refund, in whole or in part, of such fees and charges. I ask the minister to please confirm that this provision will not provide any extra power to impose fees or charges, but gives only the power to reduce, waive or refund them.

A large bundle of reforms in the bill facilitates the transition from doing things in person to doing them remotely, and from handling paper to using electronic communication. This is obviously deemed necessary in this strange new world of COVID-19 social distancing, isolation and quarantine. For the most part, the Greens are of the view that these are not particularly controversial reforms. Meetings of boards, committees or other bodies held pursuant to the list of acts specified in the bill, or any prescribed enactment, can now be held in whole or part by phone, audiovisual communication or any other means of instantaneous communication. Those who vote in such meetings

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will be taken to have voted in person. So, instead of having a meeting, decisions can be made by a prescribed board, committee or other body via a round robin wherein a written resolution is signed or assented to by members. I do not believe this to be controversial in or of itself.

However, clause 14 also provides that assent to a resolution by a majority of members of a prescribed board, committee or other body has the same effect as if it had been passed at a meeting of the prescribed body, and not all resolutions can be passed by majority. Under some legislation, a resolution can be passed only by absolute majority or unanimously or by some other specified proportion that is more than a majority. I understand from the briefing that this provision will not be prescribed to apply to any situation in which a majority would otherwise be insufficient to pass a resolution. The provision will be used only to provide for a round robin, not a different majority. I think that is really important, so I ask the minister to confirm for the record that that is the case.

A requirement under the Planning and Development Act or any prescribed enactment for a public meeting is satisfied if the public can observe it using audiovisual communication. The Greens are keen to ensure that this provision does not remove any right the public may have to participate in meetings and does not relegate the public to simply observing meetings. I received that assurance in the briefing. The provision makes no changes to anyone's rights; I am assured that it simply provides an equivalent process, and I again ask the minister to confirm for the record that that is correct.

A requirement under the Planning and Development Act or any prescribed enactment to provide the location of a meeting is satisfied for public meetings by advising how a person can observe the meeting using audiovisual communication, and for other meetings by advising how participants can participate by phone or audiovisual communication, or other instantaneous communication. I received at the briefing a similar assurance about public meetings that no-one will lose any right they have to participate in the meeting, and that the provision simply provides an electronic equivalent for doing exactly the same thing. As with my previous question, I ask the minister to please confirm for the record that that is the case.

A requirement under the Planning and Development Act or any prescribed enactment to provide the venue of a meeting of a board, committee or other body is satisfied by making arrangements to hold the meeting by audiovisual communication. I note that since 16 March, some meetings have already purportedly been held and some decisions purportedly made. Decisions that were made under any of the acts specified in the bill are retrospectively validated, should this bill be passed, together with any action that was taken in reliance on them. I received an assurance at the briefing that, apart from being held by electronic means rather than in person, every other requirement for every one of those validated meetings and decisions has been met, including quorums, voting requirements and public participation. This is meant to be just about validating an e-equivalent. The provision is not intended to do anything more than that, so I ask the minister to please confirm for the record that that is indeed the case and that that is what has happened.

A requirement in the acts listed in the bill or any prescribed enactment to make documents available for public inspection at a physical location is satisfied by making them available for free on a website. Again, since 16 March, things that have been done despite noncompliance with the public availability requirements would be retrospectively validated. I received assurance at the briefing that what has been validated is merely the e-equivalency and that all the documents to which this provision relates have indeed been made available for public inspection in the way that is prescribed. Again, I ask the minister to please confirm that for the record.

A requirement in the acts listed in the bill or any prescribed enactment to do something in front of a witness like signing a document is satisfied if it is done by audiovisual communication. The sunset for this bundle of changes is the same as for the fees and charges reforms that I talked about earlier—that is, 31 December 2021, extendable in 12-month bursts until an absolute sunset of 30 June 2025.

The Bail Act will be modified in two ways. First, when it is impractical to go surety in person for any reason, it can be done electronically. Like the other reforms I have mentioned, this modification has a sunset of 31 December 2021 until, potentially, 30 June 2025. The second change to the Bail Act is permanent and provides that when the accused's time and place for a court appearance is changed, the accused and the surety can be notified electronically.

Currently, electronic notification can happen only in urgent cases or with the accused's consent. The bill will remove these conditions. It is my understanding—I want it confirmed that this is the case—that electronic notification will happen only if the accused or the surety is not present in court at the time and has provided an email address or textable phone number for communication on those matters. If no electronic address is provided, notification can be done only by a hard copy in the same way that it occurs now. The accused and the surety will have a choice about whether to use electronic communication. Again, I was assured at the briefing that this provision will most certainly not result in the accused or the surety not being notified at all, because that would be truly horrifying. I ask the minister to confirm that that is indeed the case.

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There are some changes to the Mental Health Act. It will be modified so that mental health assessments and examinations can be done by audiovisual communication if the practitioner is satisfied that it is necessary or expedient to do so to comply with the “Mental Health Infection Control Directions” or their replacement. The “Mental Health Infection Control Directions” were made in April, and noncompliance, of course, is punishable by a fine of up to \$20 000. They apply if the patient has COVID or within the last 14 days has arrived in WA, disembarked from a cruise ship or had contact with a person who has COVID or has a temperature of 38 degrees or more or has symptoms of acute respiratory infection or has been directed to self-isolate. In any of those circumstances, the practitioner needs to address issues of wearing personal protective equipment, appropriate social distancing, physical barriers and using various audiovisual communications. If the practitioner has been directed to self-isolate, they then have to use audiovisual communication. Assessments and examinations that have already happened by audiovisual communications since those directions came into effect and any referrals or orders made as a result of the assessments or examination will be retrospectively validated. The bill adds an extra method for performing examinations that is the same as that which already exists for assessments—that is, if it is not practicable for the patient and the practitioner to be in each other’s physical presence, the examination can be performed in a way that they can hear each other without using a communication device such as through a door. The sunset for all these modifications is for as long as the “Mental Health Infection Control Directions” or any replacement directions have effect. The availability of the provision to be used is extendable, again, in 12-month bursts, potentially until 30 June 2025.

The use of audiovisual communication examinations is not entirely new. It is contemplated and is in use under the Mental Health Act. However, it is recognised that that type of mechanism is not optimal. Those provisions are specifically within the Mental Health Act because we were facing unacceptable time frames for people waiting to get an assessment. The history of this was very bad until we had the new Mental Health Act. It potentially compromised assessment being undertaken because it was being done audiovisually; it has to be recognised that face to face will always be the optimal way to undertake these assessments.

My concern about this reform is the lack of an oversight mechanism. I was grappling with the various ways in which this potentially could be addressed that would be consistent with the way in which records are kept within the Department of Health in order to meet the provisions of the act. Although I recognise the necessity for such a process, we have to agree that it is not optimal. There should, therefore, be more transparency about when it has been used for a patient. I accept that there are very sound reasons why, for the protection of both clinicians and patients themselves, we may want to undertake these assessments in the way that has been prescribed. I think records should be kept of how many and which patients’ examinations and assessments have been conducted this way, and on each occasion, which method was used and why that method was chosen. I raised this concern at the briefing. I think that keeping that data is particularly important.

I am disappointed that the current “Mental Health Infection Control Directions” do not include any of those recording requirements, and I am unhappy that there is no statutory requirement that they do so. Having thought about the various ways that this could be resolved, I suspect that the defect can be cured relatively easily by issuing replacement directions that include those recording requirements. I ask the minister whether, and if so, how, the government will rectify that defect. This information also will be, I think, particularly helpful for the Mental Health Tribunal. In any event, to see how this has taken effect, it is quite important that we look at how we can record the number of times people have been subject to provisions under the Mental Health Act through this new process.

The Sentencing Act will be modified so that offenders can attend court for sentencing by phone—that is, by audio link. The act already provides for attendance by video link in certain circumstances—that is, provided the application has been made by the offender, the offender has been convicted following a guilty plea and the sentence is non-custodial, and the court is satisfied that an audio link is actually available or can be reasonably made available and that no video link is available or can be reasonably made available.

Again, the sunset for this reform is 31 December 2021 until, potentially, 30 June 2025. The Constitution Acts Amendment Act will be amended permanently to expand the ways in which the Executive Council can meet. Currently, it has to meet in person, and the bill adds an option of using remote communication or a mix of in-person and remote communication. Remote communication means any technology that enables all participants to communicate with each other at the same time in a reasonably continuous way. I have to say that I do not have the same sorts of problems with this as other members do. I note that even within our own parliamentary committees we are regularly using a mixture of either online committees or some members being online and some members being face to face in the room, or we are regularly holding face-to-face meetings. Of course, it will always be optimal in meetings that people are able to gather face to face. However, if the choice is between people not meeting at all, or people not meeting face to face, it is better that people have an opportunity to at least be able to meet. I also do not accept that electronic ways of communicating will always be poorer. This provision will allow for flexibility.

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The Greens are quite comfortable with that, although I listened carefully to the contribution from other members who I recognise have a different view.

The Evidence Act is proposed to be modified permanently with regard to the manner of taking evidence from children. I would have liked to have had the opportunity to speak more widely with stakeholders about this provision. Currently, when a child gives evidence in a criminal case, the accused must not be in the same room, but must be able to watch by CCTV and at all times be able to communicate with their lawyer. The bill provides a further option of listening by audio link or watching by CCTV if the judge considers that it is not desirable for the accused to attend court due to the health of the accused, or for any other reason that the judge might think fit. If audio link is used, the accused must also be given a reasonable opportunity to view the visually recorded evidence before it is presented to the court. I note the proposed offences around copying, playing or supplying the audio link material.

There are a number of policy considerations here. Of course, one of the core factors is to ensure that we minimise trauma to child witnesses. It is also important to not delay justice unnecessarily, both for the accused, and because the quality of the witness's recall may reduce with time. It is obviously essential for the proper administration of justice that both sides can properly present their case, including being able to contest the evidence of the other side in an appropriate manner. I note that this might not happen if the accused and their counsel could not match the witness's words with their facial expressions and gestures. I was assured at the briefing I received that the accused's lawyer would be able to be present with the accused, and that both the accused and their lawyer would have the opportunity to also see and hear the evidence of the witness simultaneously so that their words can be aligned with their facial expressions and gestures. I was also assured that there would be no change to the usual objection processes; they would be the same as when CCTV is used. I ask the minister to please confirm these things.

The bill also introduces a bundle of permanent amendments to facilitate the use of electronic processes as an alternative to paperwork. The application of the Courts and Tribunals (Electronic Processes Facilitation) Act will be extended to the Administration Act, the Coroners Act, the Criminal Investigation Act, the Criminal Investigation (Extra-territorial Offences) Act, the Criminal Investigation (Identifying People) Act, the Family Court Act, the Juries Act, and the Sentence Administration Act. The Criminal Procedure Act is also proposed to be amended to remove the requirement for verification and the signing of some prosecution notices by a second person, and to specify that prosecution commences when a correctly signed prosecution notice is lodged at court. This will remove the need for in-person signing by authorised investigators of other jurisdictions, including the commonwealth, which I note has been an impediment to electronic lodgement. A further bundle of acts will be amended so that their legislated methods for giving, sending and serving documents and the like will be able to be performed by electronic communication.

I do, of course, want to point out the bleeding obvious. That is that not everyone in this state has easily accessible, reliable and secure internet. This is the case even in the metropolitan area. As someone who lived in Bayswater for 18 years, I can confirm that. I ask the minister to please confirm that these provisions will merely provide an additional communication method and do not preclude existing communication methods, always subject, of course, to any pandemic-related directions that might need to be temporarily incorporated and that would preclude in-person communication methods.

Another reform is that the bill will allow regulations to be made to expand the list of people who can witness affidavits. I understand from the briefing that no final decision has yet been made, but the government is considering the Victorian version of this legislation, which includes high-level public servants and officers of various kinds. This is also one of those provisions that is sunsetted in the same way as a number of the other provisions.

A more controversial part of the bill than most of those that I have mentioned so far is part 3, "Provisions affecting obligations or authorisations under Acts". The first bit of part 3 states that the expiry date for as yet unexpired authorisations, like permits and licences, of the kinds listed in the bill, or any further kind that is prescribed, can be ordered to be extended for up to 12 months if the decision-maker, who is generally the chief executive officer of the relevant department, is satisfied that the order is necessary or expedient for any of the three primary purposes of the bill. Like many of the other provisions that I have mentioned, the sunset for the making of an order is 31 December 2021, and potentially up to 30 June 2025. Also, like the other provisions, extensions are by Governor's proclamation, on the minister's recommendation, which the minister can make only if they are satisfied that it is necessary and expedient for one of the three primary purposes of the bill. Again, I note that that proclamation is disallowable. A consequence of extending the time for making orders in this way is that orders to extend the permit or licence expiry date themselves can be extended by the decision-maker in 12-month bursts. However, nothing in this provision will stop the authorisation from being able to be suspended or cancelled, or a person from being disqualified from holding the authorisation. The provision relates only to the expiry date for the authorisation.

Insofar as the provision will give back to the authorisation holder time that was lost as a result of COVID-related shutdowns, that is not particularly controversial. It will put the authorisation holder in the equivalent position as

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though the pandemic had not happened. However, my concern is that the orders have the potential to do more than that, and there is no ability to disallow them. This power is too broad. I would prefer this power to be exercisable for only the first two primary purposes. I think that to include the third primary purpose as a reason for overriding a time period that Parliament may have specifically intended, for very good policy reasons, when it passed the parent act, is too open-ended. I have an amendment on the supplementary notice paper pertaining to this, which I will discuss when we go into Committee of the Whole.

The next bit of part 3 will allow decision-makers to make an order modifying or removing conditions related to authorisation if they are satisfied that the order is necessary or expedient for any of the three primary purposes of the bill. Again, this is not disallowable. That power is exercisable in respect of any condition of a clearing licence under section 12C of the Country Areas Water Supply Act, any condition about meters in a licence under section 5C of the Rights in Water and Irrigation Act—in both of those, the decision-maker is the minister who holds the portfolio—and any prescribed class of conditions in any prescribed authorisation.

An order will cease to have effect after one year, or any earlier day specified in the order, but consecutive orders can be made, with the same sunset clauses as have been previously commented on. Again, I have concerns about the breadth of this power, particularly the inclusion of the third primary purpose, because it provides very little restriction or guidance on how the power should be exercised. It is a power that can, if so prescribed, be exercised in respect of any kind of authorisation that exists in this state. Therefore, it is capable of subverting very good policy reasons underlying a condition of authorisation. Again, I have an amendment on the supplementary notice paper, which we will discuss later, to try to ameliorate this. Both kinds of order can be, but do not have to be, revoked if the authorisation holder breaches any of the remaining conditions. In that event, a show cause notice will be issued. The authorisation holder will have 28 days in which to make written submissions and a decision will be made after any submissions received have been considered. If the decision is to revoke the order, reasons for the decision must be provided to the authorisation holder.

The last thing part 3 does is in relation to planning laws. In April, regulations were made allowing the minister to issue exemptions from planning requirements while we are in a state of emergency. These are called clause 78H notices. Lengthy clause 78H notices containing a variety of exemptions were gazetted on 17 April and 5 May this year. Clause 78H notices apply to local planning schemes but not to region planning schemes; therefore, things that are done or not done pursuant to a clause 78H notice are valid for local planning schemes but not for region planning schemes. The bill provides for them to be retrospectively validated for region planning schemes as well. One of the things the April clause 78H notice specifically did was to extend by two years the time for substantially commencing development pursuant to a development approval; however, as I said a moment ago, clause 78H notices apply only to planning schemes. Therefore, the bill is delivering a similar extension to improvement schemes and region planning schemes, so there is no change to the right to seek amendment to development approvals, including to vary and extend the time frame.

The proposed new part 7 contains provisions about orders and regulations made under the bill. Two kinds of orders can be made—that is, those relating to reducing, waiving and refunding of fees, and those relating to the expiry dates or conditions of authorisations. The bill provides that both kinds of orders are subsidiary legislation, so they have to be gazetted, with two exceptions. The first is that the provision in the Interpretation Act that says subsidiary legislation cannot be inconsistent with its parent act is ousted. The bill specifically allows for inconsistent orders, provided the order is not inconsistent with the bill, because the whole point of orders is to modify and override other laws. The other provision in the Interpretation Act that is ousted is section 43(6), which allows subsidiary legislation to make noncompliance an offence with a maximum penalty of \$1 000. Orders under this bill cannot create new offences, and that is a good thing. The bill also requires that all orders be published on a website. However, if someone does not publish an order, it does not invalidate it, and even if orders are not published in that way, they still need to be gazetted.

I refer to the regulations. In addition to the regulation-making powers I have already mentioned, the bill includes the usual provision for making regulations that are required or permitted by it, or are necessary or convenient for giving effect to its purposes. That includes power for making regulations about savings and transitional matters. Its scope is limited to matters arising from the cessation of the effect of a provision in the act or an order made under the act. Those regulations may have effect despite any other written law and they can retrospectively deem a particular state of affairs to have existed or to have not existed. There is a safeguard that such deeming cannot prejudice a person or their rights or retrospectively impose liabilities on them, but I note that safeguard does not apply to the state or public authorities. There is also a sunset for regulations about savings and transitional matters. They are required to be made within a period that is reasonably and practically necessary, and, in any event, by 30 June 2025. Again, if the bill is passed, this power will be exercisable for the whole of the next term.

The Greens will allow this bill to pass. We are keen to get on the record a number of the issues that I have raised that I was given assurances about during briefings, and we will consider the amendments as indicated.

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HON NICK GOIRAN (South Metropolitan) [2.43 pm]: I rise to speak on the COVID-19 Response and Economic Recovery Omnibus Bill 2020, as so named. In doing so, I rise following the excellent contributions made by previous members and speakers, and, in particular, the opposition lead speaker on this matter, Hon Tjorn Sibma. What is particularly interesting to me about this bill is just what a government can do under the guise of an omnibus bill. I think that this bill would be far more accurately renamed the “Retrospective Validation of Unlawful Actions by the McGowan Government Bill 2020”. I note that there seems to be some pattern emerging with this government that whenever a bill contains the five-letter word “COVID”, it is seemingly immediately categorised as an urgent bill. I think that it is important for us to distinguish between a COVID-related bill and a COVID urgent bill. As I say, just because the word “COVID” is somewhere in the bill, or even in the title of the bill, does not automatically justify it being considered an urgent bill.

It is now apparent to me that the government is in agreement that this is no longer an urgent bill, as best demonstrated by the fact that the government was unwilling to dispense with private members’ business today. I applaud the government for that concession, because it is appropriate that matters of this significance in the house of review receive proper scrutiny and we do not allow what has been happening as a routine pattern this year—that is, for everything to be pushed through the Parliament without an adequate opportunity for members to not only get across the materials, but also provide suggestions and improvements.

I note that there is a supplementary notice paper for the bill that is currently before the house, and I particularly commend Hon Tjorn Sibma and Hon Alison Xamon, who clearly have had the opportunity, albeit in a perhaps rushed or truncated fashion, to digest this 106-clause bill of more than 52 pages in length, and to provide a series of amendments for members to consider, which we will do when we get into the Committee of the Whole House.

As with all bills, it is important for all members to consider what this bill is seeking to do. I do not intend to cover off on the matters already undertaken by Hon Tjorn Sibma on behalf of the opposition—he did a good job in outlining those matters—but I do want to highlight three areas in particular. I think that all the areas of concern are worthy of note, but I want to underscore and highlight these three in particular. The first is that this bill grants the government extraordinary powers up until 2025. Secondly, this bill validates unlawful actions by the McGowan government. Thirdly, and actually quite staggeringly after the events of the past week or so, this bill continues to include a Henry VIII clause, and that is even without the now infamous former part 7 of this bill being included in the version of the bill before us. One has to wonder: What is it with this government? What is it with the McGowan government and its complete obsession with Henry VIII? How many more bills do we need to continue to have brought into this place and for the Legislative Council to consistently say “no” or to raise significant concerns about before any one of those people responsible for drafting these bills or advising the ministers, or those members who sit around the cabinet table or sit on the backbench in the caucus, says, “Enough is enough! We are embarrassed that our Premier, our leader, is now being characterised with a cartoon dressing him up as Henry VIII. We want you—the drafters and advisers and cabinet ministers—to stop this practice so that we can desist this unbecoming approach.” It seems that, in one bill after another, there is an insistence that the McGowan government wants to continue with its obsession with the practice of including Henry VIII clauses and, yet again, we will go into Committee of the Whole House and, yet again, we will have the same debate. I hope that, yet again, the Legislative Council will push back on the government and say that enough is enough.

Quite apart from that, this bill seeks to validate unlawful actions by the McGowan government. I draw members’ attention to the very instructive long title of this bill, which can be found on page 1 of the bill. It states that this is —

A Bill for

An Act —

- **to provide for the amelioration of problems and impediments arising from the emergency response to the COVID-19 pandemic; and**
- **to facilitate aspects of the economic recovery from the emergency response to the pandemic; and**
- **to make related amendments to various Acts; and**
- **to validate certain actions taken immediately before, during or following the state of emergency declared in relation to the pandemic on 16 March 2020; and**
- **for related purposes.**

I want to spend a moment discussing, in particular, the fourth of the five elements in the long title; that is, the government desires for this bill “to validate certain actions taken immediately before, during or following the state of emergency declared in relation to the pandemic on 16 March 2020”. A number of matters arise from that. Firstly, the government, the drafters and the advisers have decided to specifically list 16 March in the long title as the key date on which the state of emergency was declared for the COVID-19 pandemic. There is nothing necessarily

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objectionable about that. In fact, to the extent that it provides precision, as good laws should, it should be applauded. It is peculiar that the government, in the long title of this bill, seeks to validate certain actions that it says occurred before, during or following that date.

I will take the last of those first as it is the easiest to comprehend and is, in one sense, not an unreasonable provision to ask members to agree to, albeit that there should be certain caveats associated with our agreement to the government's request. If the government would like the Legislative Council to validate certain unlawful actions that the government has taken following the declaration of the state of emergency on 16 March 2020, that is, in and of itself, not an unreasonable request. However, the caveat is that the government should itemise and specify what those actions are. By way of analogy, it is customary in Western Australia for legal practitioners to provide their clients with what is referred to as a lump sum account. In other words, they will provide a narrative description of the work that they have undertaken and will say to the client that this is the amount of money owed for the services rendered. However, under Western Australian law, it is possible for a client to ask a lawyer for an itemisation. Let us say the bill totals \$10 000. The client is then entitled, as best as I can recall, to go to the lawyer within a 30-day period and say that they would like an itemisation for the \$10 000 fee that they have been charged. The client does not have to do that, but the client is entitled to make that request and has a statutory right to demand that of their legal practitioner.

By way of analogy, I think that it is only fair and reasonable for the people of Western Australia to demand from this government an itemisation of the unlawful actions that it has taken that it would now like its representatives in the Legislative Council to give retrospective validation to. That is what I am seeking from the minister in his reply to the second reading debate or, alternatively, when we get to the relevant clauses in Committee of the Whole House. I am seeking an itemisation of the certain actions that the government says it needs to have validated following the state of emergency having been declared on 16 March 2020. I indicate that it is not unreasonable for responsible lawmakers to consider the request put forward by the government, but we have to be clear about what we are agreeing to and what certain actions were taken that we are being asked to validate. That deals with the government's request about matters that it has dealt with unlawfully following the state of emergency being declared on 16 March 2020.

However, the government is seeking for us to agree to two other time frames. One is a curious provision in which the government seeks for us to validate certain actions taken during the state of emergency declared in relation to the pandemic on 16 March 2020. I ask the honourable minister to clarify for members what is intended by the term "during the state of emergency declared in relation to the pandemic on 16 of March 2020"? One interpretation of that might be that it is actually seeking validation for actions it took on that day as the state of emergency was being declared at a particular time on 16 March 2020—to capture that time frame while that declaration was being made, the government would like that period to be covered off on. My question is whether that is what the government is saying when it is seeking for us to validate the certain actions that it took during the state of emergency being declared on 16 March. Clearly, the interpretation that cannot be applied to the word "during" is the same that applies to the word "following". There was a series of actions that the government is saying it has done in an unlawful fashion following the state of emergency being declared on 16 March and there was a state of emergency occurring at that time. The two words cannot be interpreted in the same way. I would have thought that the simple solution to that would be for the government to say that it would like the Legislative Council to validate the unlawful actions that it took on 16 March and following that date—in other words, inclusive of 16 March. I seek confirmation from the honourable minister of the distinction intended between the period during the state of emergency being declared on 16 March 2020 and following the state of emergency being declared in relation to the pandemic on 16 March 2020.

The most curious element of these three time frames is the suggestion that the Legislative Council should be asked to validate certain actions taken immediately before the state of emergency being declared in relation to the pandemic on 16 March 2020. We absolutely need a comprehensive explanation by the minister of not only why that would be justified and why it is necessary for this government, but also, and above all, an itemisation of those unlawful actions that the McGowan government took before 16 March 2020 that it now seeks validation for. I ask the honourable minister to provide a response about those time frames either during the reply on the second reading debate or, alternatively, when we consider the matter in Committee of the Whole House.

I will take a moment to compare and contrast part 7 of the bill that is before us with what I was originally provided in respect of part 7 of the bill. Part 7 of the bill is found on page 51 and is titled "Miscellaneous". It consists of clauses 104, 105 and 106 and I will look specifically at clauses 104(3) and 106(3). I will park that to one side for a moment and go back to the consultation draft that I was provided; I note that those three provisions appear in the consultation draft. In the consultation draft, the proposed clauses were numbered 116, 117 and 118. Clause 116 of the consultation draft was titled "Provisions about orders made under Act"; clause 117 was the "Effect of provisions of this Act, certain regulations and orders ceasing to have effect"; and, thirdly, clause 118 was titled "Regulations". On the face of it, they appear to be identical in form.

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These provisions were housed in the consultation draft under a heading titled “Part 8 — Miscellaneous” and, as I say, the bill before us now sets them out as “Part 7 — Miscellaneous”. The key difference between the consultation draft and the bill before us is the historical part 7, “Powers that may be exercised during emergency periods”. This particular part, which I have described as the old part 7 of the bill, commenced at clause 104 and went right through to clause 115; therefore, 12 clauses of the old consultation draft bill no longer appear.

There has been a fair amount of controversy with respect to the disappearance of this old part 7. If members have general concerns with Henry VIII clauses—my word!—they will not believe this old part 7. The distinction of an ordinary, run-of-the-mill, McGowan government-type of Henry VIII clause is that it is usually limited to the bill before us. In other words, before the house is a bill to amend an act, and in the government’s obsession to continue to behave in Henry VIII-like fashion, it tries to give itself the power to, at the stroke of a pen, change that bill or that act that is being amended by virtue of one of those powers.

There is nothing positive to be said about that obsession. However, in the context of this old part 7—if we are trying to say anything positive or charitable about it—the McGowan government, in all of its numerous attempts over the last three and a half years to sneak these clauses in, has at least restricted it to the particular bill or the act under consideration. But in the old part 7, we had this, dare I say, mother of all Henry VIII clauses that would have allowed the stroke of a pen to, in effect, change the entire statute book of Western Australia. I say “in effect” because, again, it is very important for us as the Legislative Council and as lawmakers to be accurate. At least a small number of acts were excluded. The architects behind the previous part 7 thought: it is perhaps a bit over the top for us to think that we can at the stroke of a pen give ourselves the powers under this so-called omnibus bill to change the Children’s Court of Western Australia Act 1988. Someone else would have thought: I suppose we probably should not be able to at the stroke of a pen change the Constitution Act 1889, given that, ordinarily, one needs an absolute majority to make a change to the constitution, even if one is the Parliament of Western Australia, let alone somebody in a back room putting on their most favourite costume and continuing to behave like Henry VIII.

The architects go on to look at the Corruption, Crime and Misconduct Act, District Court of Western Australia Act, Electoral Act, Emergency Management Act, Family Court Act 1997, Freedom of Information Act, Interpretation Act, Magistrates Court Act, Parliamentary Commissioner Act, Parliamentary Papers Act, Parliamentary Privileges Act, Public Health Act, State Administrative Tribunal Act, and the Supreme Court Act. Plainly, none of those acts should be able to be changed with the stroke of a pen. It is curious that the McGowan government or somebody who was the architect behind this genius former part 7 decided to exclude the Parliamentary Privileges Act. As we know, the McGowan government has a particular view on the Parliamentary Privileges Act; in fact, it feels so passionately and strongly about the parliamentary privileges that it is busy suing the Legislative Council because of its view on that matter. In one respect, we can understand why the government did not feel it was necessary to be able to change the act at the stroke of a pen, because it is busy spending taxpayers’ money fighting with the Legislative Council and Parliament over what the Parliamentary Privileges Act should or should not be.

That is a short list of the acts that constitute Western Australia’s statute book. Other than that small number of acts that I have just read out, the architects and the geniuses behind the former part 7 thought that they would be able to ask the Legislative Council to agree that Mr McGowan should be able to put on his favourite costume, get out his pen—maybe it is a feather pen; I do not know—and sign into law all the new laws for Western Australia, other than this particular small section over here. He would sit there, perhaps with a banquet, surrounded by his minions at the same time, with his feather pen and sign into law whatever he liked. What a wonderful world it would be to be “McGowan VIII”. Maybe that is what the architects and the geniuses behind old part 7 were thinking.

Hon Alannah MacTiernan: Augustus Caesar.

Hon NICK GOIRAN: I always really appreciate the Minister for Regional Development’s interjections.

Somewhere along the line, cooler heads prevailed, and one has to wonder whether it was somebody in cabinet. Was it a brave government backbencher who said to the McGowan government, “Listen, we’ve had enough of this. You’ve just got to stop”? We do not know the answer to that question, but somewhere cooler heads have prevailed, and the government decided to expunge the heinous former part 7 from the bill before us. It has been interesting to observe in recent days the exchange, it would seem, between the most honourable Tjorn Sibma and the minister with carriage of this bill in the other place. There seems to have been some suggestion that cheap politics are being made of this particular provision. Whilst everybody is busy having a discussion about the Premier’s favourite costume, his feather pen and his preference for banquets and the like, what worries me is that the bill before us still has a Henry VIII clause—in fact, two of them—that the government wants to sneak in. The government has brought in the mother of all Henry VIII clauses as a distraction for members to get them all fired up. Thankfully, some mainstream media have decided to pick up this issue; it is something that we have been discussing for three and a half years. This kind of behaviour has been going on in bill after bill. Admittedly, this is the mother of them all! Nevertheless, at least it has been picked up by the media and it is being exposed and discussed. Meanwhile, while the distraction has been going

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on, the government is still trying to sneak in another couple of provisions. I hope that when we get to those particular provisions towards the very end of the bill, members will take the opportunity to dispatch them accordingly.

My concern is that, once again, because the word “COVID-19” is in the bill, the government has decided to invoke its much loved temporary order, which the house agreed to on 31 March. We had that debate previously, but when we get into Committee of the Whole House, we will have 310 minutes to deal with the provisions of this bill. As I said earlier, the bill has some 54 pages, including several shifty positions. The problem is that the type of Henry VIII clauses that the government is obsessed with are routinely found towards the end of the bill. The other night, another of the government’s so-called COVID-19 urgent bills was brought forward and the temporary order was applied. In that particular instance, the Committee of the Whole House had 200 minutes. As best as I recall, that bill had 16 clauses to be examined and considered—unlike this bill, which has a mammoth 106 clauses—and unfortunately we could have only a truncated examination of those clauses up to consideration of clause 14. There were serious issues, particularly in clause 15 and the compensation issues, that we were not able to get to. When we get to this bill, I do not want to get to maybe clause 15 or 16 and find that the Leader of the House again implements the guillotine. Perhaps that also goes back to the days of Henry VIII. The government is going to use the guillotine to cut off debate on this matter so that we cannot get to the provisions in clauses 104, 105 and 106 and examine them properly.

Hon Alannah MacTiernan interjected.

Hon NICK GOIRAN: That is actually true.

Hon Alannah MacTiernan: He used an axe.

Hon NICK GOIRAN: The Minister for Regional Development’s correction is good.

Nevertheless, whether it is by a guillotine or an axe, we do not want to need to examine part 7 but not have the opportunity to do so because of the government’s insistence on continuing to apply the temporary order simply because it says the legislation has the word “COVID” in it. No. It might well be COVID related. Clearly, this bill is COVID-19 related. I absolutely accept that because at the heart of it is a decision by the government to ask us to agree to validate the unlawful decisions it made during the COVID-19 period. It is absolutely COVID-19 related, but is it COVID-19 urgent? Does it warrant the temporary order being applied and will we have sufficient time to examine all 106 clauses? Given that Parliament is being asked to validate the actions of the executive that are said to have been unlawful for a period, it is the type of bill that ordinarily one would think would be considered by a standing committee. But in this instance that opportunity will not be presented, because the government says it is an urgent matter and needs the full scrutiny of the Committee of the Whole House. I question whether that is possible given that the axe or the guillotine will be applied at some point.

The government provided us with a briefing note—it continues to have the Western Australian emblem on it and not a cartoon of Henry VIII, which is good—that identifies a number of portfolios that will be affected by this so-called omnibus bill. A number of those portfolios intersect with portfolios that I have the privilege of being shadow minister for or, alternatively, in this place I represent the shadow minister in the other place. In particular, I note that in part 2, division 1 of the bill, the government says that clause 11 will look to validate that certain fees have been waived. We will look at that in greater detail when we get to clause 11, but that impacts on the consumer protection and industrial relations portfolios. In addition, under part 3, division 2 of the bill, the government informs us that clause 30 deals with a decision-maker’s ability to set new expiry dates for authorisations. This impacts on a range of portfolios, but for my responsibilities and duties in this place, the one that attracts my attention is the health portfolio. I note also that under that same part and that same division, clause 32 deals with a decision-maker who may decide that an order no longer applies to the relevant authorisation if a condition of an order is breached. In this instance, that will intersect with a number of portfolios. Of particular interest to me are the consumer protection and health portfolios.

Lastly, at least for my responsibilities, under part 4, division 2, there is a provision that the government says deals with the health portfolio. I think it would be more accurately described as the mental health portfolio. Be that as it may, this matter will deal with the provision of assessments by audiovisual means and occasions when it is not practical for a health professional and the person to be examined to be in the same physical location so that they can hear one another without using a communication device. It also seeks to validate certain assessments and examinations, and we will need to have a look at that when we get to division 2 in part 4 of the bill.

These are the provisions that relate to the portfolios that I have responsibility for, but I note that the bill in its omnibus fashion captures a range of other portfolios, including planning, justice, transport and environment, to name just a few. In each of these instances, it would appear that some unlawful actions have been undertaken by the McGowan government that it would like us to validate after the event.

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I conclude by simply saying that I have no philosophical objection to a government being accountable and transparent in coming to the Parliament and saying, “We have broken the law, we have undertaken certain unlawful actions, and we would like you, the Parliament, to validate what we have done.” Although I do not applaud that, I understand why it may happen in a pandemic situation like this, so to the extent that I can applaud the government, I thank it for bringing that forward. However, as I said at the outset, the actions that the government wants us to validate need to be itemised, and the government needs to provide very good reasons for why any unlawful actions and decisions it made before the state of emergency declaration was made on 16 March should be validated by this house. We cannot yet again simply sign a blank cheque for the McGowan government to validate unlawful actions undertaken before, apparently during, and following the declaration of emergency, without the actions being itemised, portfolio by portfolio, so that the people of Western Australia can understand exactly what the McGowan government has done.

I support Hon Tjorn Sibma in his reference to the fact that some of those actions and decisions were to do with the reduction, deferral or waiver of fees. It is quite understandable why that might have been required in certain instances, so again I do not have any philosophical objection to that, but those actions and decisions should be itemised so that we know exactly what we are being asked to agree to. Above all, we cannot pass a bill of this magnitude, through which the government seeks to grant itself extraordinary powers up until 2025, without proper scrutiny. It is regrettable that the bill will not go to the Standing Committee on Legislation for consideration of those unlawful actions; however, it is good that we will have the opportunity to consider each of its clauses in Committee of the Whole House.

In the event that in the consideration of the clauses of this bill a bit more time may perhaps be required to conclude our examination, I simply ask the government to refrain from once again using the guillotine, and to allow the Legislative Council to do its job properly. Each and every time we get the opportunity to do our job properly, we improve the legislation that has been brought forward by the executive, and that is something that has happened in not only this Parliament, but also over many parliaments. We should be given the opportunity to do that, especially for a bill that, as I said at the outset, could probably more accurately be renamed the “Retrospective Validation of Unlawful Actions by the McGowan Government Bill 2020”.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [3.23 pm] — in reply: I thank all those members who made a contribution today to the second reading debate on the COVID-19 Response and Economic Recovery Omnibus Bill 2020. This is an important piece of legislation and I acknowledge members’ support for it, noting, of course, that many honourable members had a range of questions on elements of the bill. I will answer as many of those questions as I can now, but I note that we will go into Committee of the Whole to give members an opportunity to seek further answers if I have not given the exact answers members want.

I first of all acknowledge Hon Tjorn Sibma and his commitment to facilitating the passage of the bill on behalf of the opposition. He characterised the bill as being about retrospective validation. The bill does that, but not only that; it also prospectively provides for the more flexible operation of government business over the coming months in response to ongoing or potential new or reintroduced constraints in relation to the COVID-19 pandemic. Western Australia is introducing its version of this legislation later than other states. I can advise that drafting of the bill continued through the winter recess, and it received approval to print shortly before Parliament resumed. That extra time has enabled us to directly and specifically address more issues in this bill than was possible in other states’ legislation, which tended to grant broader powers to executive government.

As I said in my second reading speech, we believe that this bill meets the challenges of the pandemic that have been identified so far. It is important for this bill to be passed to remove specific areas of uncertainty around the validity of the way in which the government carries out its business in response to the challenges of the pandemic. It is important that this certainty is achieved in a timely way so that government decisions, which the opposition accepts were generally made for pragmatic and genuine reasons, will not be subject to challenge in the interim for reasons that this bill will cure. It is also appropriate that we give agencies full confidence, prospectively, that they are conducting their business validly, given that the opposition has suggested that such doubts might chill the blood or give rise to alarm.

Many comments were made by a variety of members about a version of the bill that is not before the house, which had proposed what we know colloquially in this place as Henry VIII clauses. It would, however, have permitted the government to respond more quickly in certain areas and had safeguards in place to ensure that future unanticipated challenges of the pandemic could have been dealt with. I am advised that variants of such powers have been enacted in other states for the same reasons. I can place on the record that we do not propose to seek such powers; a decision to do so would require a decision of cabinet. I also note the full advice from the Minister for Planning’s office at 8.22 am on 18 August, which was partially quoted in debate here yesterday, and goes on to say —

Whether it —

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That is, a new, second bill, based on part 7 —

is introduced will depend on future Cabinet consideration of further agency and legal advice and the evolving circumstances related to the pandemic.

If circumstances were such in the future that the government decided it needed to seek such powers, it would introduce a bill to do so, and it would justify its position at that time. I do not propose to say anything further in response to the debate on that previous bill.

Hon Tjorn Sibma also raised a number of points relating to the issue of government accountability and the question of validation of government actions. In that regard, I can respond as follows. On the question of the validation of actions prior to the declaration of the state of emergency, I am advised that that was a drafting error. This bill was not intended to seek to validate actions prior to this emergency. On the validation of meetings, I acknowledge and thank the member for his recognition of the need to validate the processes by which decisions might be arrived at or determinations made. Indeed, the world has moved on, and our way of doing business had to evolve in a sudden way that the drafters of the original legislation could not have foreseen. I appreciate the understanding that validating such processes is reasonable and understandable.

On that point, I seek to assure the house that this bill seeks to validate the procedures by which such meetings are held. Those procedures relate to using audiovisual methods to conduct meetings. The Parliamentary Counsel's Office drafted those provisions very deliberately to not over-validate the decisions and meetings to which they apply. Validation does not touch upon the merits or substance of the decisions made. If a decision was flawed on its merits, the validation clause for meetings does not cure that. Greater transparency and accountability is called for about what is being validated; that is a fair request. The meetings held under the listed acts during the relevant period are what this validation relates to, and I hope at a later stage to be able to provide a list of what those were.

I refer to the validation of fees. Hon Tjorn Sibma, I think, called for greater transparency of the fees that are being waived, in particular by volume and quantum. In response to that, I can advise as follows. Clause 11 lists acts under which fees have already been waived in response to the government's announcements. Twenty-two acts are listed, mostly related to portfolios covering industry, commerce and transport. These provisions provide economic relief and certainty to multiple small businesses and industries. Within the remit of the Department of Mines, Industry Regulation and Safety, I understand approximately 25 000 licence applications were accepted without payment between the government's announcement on 31 March 2020 and 1 July 2020. These fees relate to licences such as those for plumbers, electricians and settlement agents. I hope to have a list of the 75 types of licences administered by DMIRS later. But to the best of my advisers' knowledge, if applications were received in relation to these, DMIRS did not collect a fee for them.

I can also provide details related to the waiver of transport fees. Parking fees at metropolitan train stations have been waived since 14 April 2020. I do not have exact figures on this but it is estimated to cost approximately \$2.9 million. Vessel accommodation fees have been waived that affect existing Department of Transport commercial fishing or tourism vessel owners. This is estimated to cost approximately \$3 million for the period commencing 31 March 2021.

I thank Hon Alison Xamon for her comments on the COVID-19 Response and Economic Recovery Omnibus Bill. She asked me to confirm a number of matters relating to how various provisions work. Firstly, the regulations cannot amplify the scope of the provisions in the bill. I can confirm that they refer to overriding laws, but this has to be understood in the confined provision to which it applies. Regulations may be made to deal with transitional issues or savings matters. The powers in clauses 106(3) to (5) apply only to transitional or savings matters, and not otherwise. Anything valid before the sunset provision will remain valid. When the provision applies, the remaining provisions will apply, but the provisions after the sunset clause will spring back, except for any rights or interests accrued under the new expired provisions. Standard transitional and savings provisions apply. I confirm that this provision does not provide any extra power to impose fees or charges. It gives power only to waive existing fees or charges.

Concerning provisions relating to meetings, we are happy to remove the provision relating to circulating resolutions in clause 14. I can confirm that the provisions relating to meetings are not intended to, nor do they in effect, remove the rights a person has had to observe or participate in meetings. Instead, I can give an assurance that no rights are being taken away. We are simply providing an alternative mechanism by which meetings can be held in a manner reflective of the COVID-19 environment. The meetings were held in accordance with existing standing orders and requirements. I further note that this bill does not seek to validate anything relating to meetings beyond the procedural steps provided for in the bill to permit audiovisual measures to be used. For that reason, in the unlikely event there was an error in a decision that went to its merits or matters not related to these procedures, these provisions do not cure them.

Hon Tjorn Sibma asked whether the Department of Water and Environmental Regulation identified licences that may require a condition to be modified or removed. Clause 31 is not a retrospective power and as such, no Country Areas Water Supply Act 1947 clearing licences conditions or metering conditions from section 5C licences under the

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Rights in Water and Irrigation Act 1914, as set out in the Rights in Water and Irrigation Regulations 2000, have been modified or removed as a result of COVID-19. Hon Alison Xamon asked about that.

At this stage, the department is not aware of any clearing licence conditions under the Country Areas Supply Act 1947, while metering conditions under the Rights in Water and Irrigation Act 1914 as set out in the Rights in Water and Irrigation Regulations 2000, that may need to be modified or removed as a result of COVID-19. The Rights in Water and Irrigation Act 1914 metering conditions are limited to conditions included through the Rights in Water and Irrigation Regulations 2000. A number of these conditions require certain licence holders to be met by a certain date—that is, the installation of meters or the provision of meter reads from the Department of Water and Environmental Regulation. A number of licensees engaged contractors to do this work. In the event of a second wave or an outbreak of COVID-19, and the contractors may not be able to do the work or there is a delay due to sickness or a lockdown, that will mean the licensee does not meet the condition. Further, the regulations require a number of licensees to have metering on their well by 31 December 2020. This work is generally undertaken by contractors who may be delayed in undertaking the work past 31 December 2020 in the event of a second wave or an outbreak of COVID-19, which means the licensee does not meet the condition.

For Country Areas Water Supply Act 1947 clearing licences, revegetation work is required to be done by a certain date in the licence. Revegetation often requires a contractor to undertake the work. In the event of a second wave or an outbreak of COVID-19, if the contractors or the licence holder undertake the work themselves, and may not be able to do the work by the specified date, and this causes a delay in undertaking the work due to sickness or a lockdown, it means the licensee does not meet the condition. Clause 31 provides for the minister to modify these conditions. There is no ability to delegate this power, so the minister will be the decision-maker.

I refer to part 3, division 2, clause 30 and the expiry date on condition of authorisations. Clause 30 is not a retrospective clause and as such, no authorisations have been extended. Setting a new expiry date for a clearing permit licence or works approval is not a condition of that authorisation. Clause 30 states who the decision-maker is—the chief executive officer of the Department of Water and Environmental Regulation—for environmental authorisations or the Economic Regulation Authority for water services licences. The bill does not provide for the power to be delegated.

The Environmental Protection Act 1986 provides for clearing permit conditions under section 51H and 51I. Section 51H states that a clearing permit can be subject to conditions that the CEO considers to be necessary or convenient for the purposes of preventing, controlling, abating or mitigating environmental harm or offsetting the loss of the cleared vegetation. Section 51I sets out a list of things that the holder of a clearing permit can be required to do under conditions attached to the clearing permit, such as investigating options for measures for preventing, controlling or abating environmental harm.

In a separate provision, section 51G of the Environmental Protection Act 1986, a clearing permit continues in force if it is an area permit for two years. An area permit relates to the clearing of a particular area of land specified in the application. Alternatively, if it is a purposes permit, it is for five years. A purposes permit relates to clearing different areas from time to time for a purpose specified in the application from the date on which it is granted unless another person is specified in the permit. The Department of Water and Environmental Regulation confirms that section 52G(a) and (b) are not a condition of a clearing permit and any period specified in the clearing permit itself is not a condition of the clearing permit.

In relation to licences and works approval, section 63 of the Environmental Protection Authority Act 1986 provides that each authorisation specifies the period it continues to be in force and the Department of Water and Environmental Regulation confirms that this is not a condition of a works approval or licence. The condition of works approvals and licences are provided for in sections 62 and 62A of the Environmental Protection Act 1986. Section 62 states that a works approval or licence may be granted subject to such conditions as the CEO considers necessary or convenient for the purposes relating to the prevention and control, abatement or mitigation of pollution or environmental harm. Section 62A of the Environmental Protection Act sets out some kinds of conditions that may be attached to a works approval or licence, such as installing or operating equipment for preventing, controlling, abating or monitoring pollution or environmental harm in accordance with specified criteria.

Section 14 of the Water Services Act 2012 specifies that a water services licence can be for a period of up to 25 years. The Department of Water and Environmental Regulation confirms that this is not a condition of the licence.

Conditions are dealt with separately in section 12 of the Water Services Act 2012, which provides that water services licences can be issued subject to conditions, including conditions that deal with the quality and performance standards to be met by the licensee in the provision of a water service authorised by the licence.

Hon Tjorn Sibma has some amendments on the supplementary notice paper in relation to clauses 84 and 85 of the bill, which seek to permit Executive Council meetings to occur by means of remote communication. He queried whether any Exco meetings had been held remotely during the COVID period. I can confirm for the honourable

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member that there have not been any remotely convened Exco meetings to date, because the letters patent contemplate physical attendance. That is the reason that the government seeks to permit allowing remote Exco meetings should there be a need given a further outbreak of COVID-19. It will always be the first preference of Executive Council to meet in person, and the proposed remote arrangements would not be used unless absolutely necessary.

Hon Dr Steve Thomas queried the necessity and effect of the proposed permanent amendments in the justice portfolio and sought advice about their relationship to COVID-19. I am advised that the proposed permanent amendments generally seek to facilitate an increased use of technology in the courts and should be considered in that context as one of the number of measures the courts have taken in response to COVID-19. The courts have needed to review a number of their operations and respond flexibly. For example, a number of practice directions have been issued by the Chief Magistrate to enshrine practices that have been put in place to deal with social distancing measures. Practice direction 4 of 2020 provides —

Where an Accused is not in custody and Prosecution and Defence agree that a matter can be adjourned by consent the Court will agree to the adjournment and where necessary extend bail without the need for the accused or Defence to appear provided that a Magistrate has not previously ordered that there is to be no further consent adjournment.

Hon Alison Xamon spoke about the Interpretation Act amendment in division 5 of part 6 of the bill. I can confirm for the honourable member that her understanding of the provision is correct. The amendment will not authorise the imposition of new fees. The honourable member also spoke about the Bail Act amendments in division 1 of part 6. I confirm that the honourable member's understanding of the advice given at the briefing is correct. Electronic notification will happen only if the accused or their surety are not present in court and have provided an electronic means of communicating with them. When they have not provided an email address and their mobile phone number or fax number, they will continue to receive the notices by post, or in person if they are present. I thank the member for recognising that under the Constitution Acts Amendment Act, the proposed remote communication arrangements are an option for Executive Council. These arrangements are supplementary to, not in place of, face-to-face meetings, and I thank the honourable member for indicating her support for this proposed amendment.

In relation to the Evidence Act, the honourable member recognised that the intent of these provisions is to ensure the timely administration of justice and prevent further trauma for child witnesses, together with allowing the accused the opportunity to view the visually recorded evidence that they heard at a later date, but before the evidence is presented. I do not think I need to clarify for the honourable member that it is envisaged that the accused's counsel will be in the court, conducting examination and cross-examination of the witness, not with the accused, but they will have the opportunity to communicate with their client throughout.

The honourable member canvassed the various electronic processing amendments and reminded the house that not everyone has ready digital connectivity. I assure members that electronic lodgement, although mandated in some jurisdictions, still accommodates lodgement of documents in hard copy over the counter in accordance with the rules of the court when parties are unable to use technology for this purpose.

In relation to the Oaths, Affidavits and Statutory Declarations Act, the government will monitor any need to increase the list of authorised witnesses for affidavits. As was advised at the honourable member's briefing, the government will consider the Victorian Oaths and Affirmations Act in any expansion of that list. Members will note that the relevant regulation-making power to expand that list is tied to a COVID emergency declaration that will allow the government to monitor whether that is needed and respond accordingly.

Hon Alison Xamon raised concerns about the lack of oversight of the use of audiovisual communications in accordance with the proposed amendments and directions. As Hon Alison Xamon I think would acknowledge, these amendments are important to assist individuals who may be at significant acute mental health risk to receive prompt care and prevent harm during any COVID-19 period. I am informed by the Mental Health Commission that the use of audiovisual communications in accordance with these amendments and the directions will be tracked, and a sample-based audit will be used to analyse how these provisions are being used. In addition, the Chief Psychiatrist has committed to developing guidelines for the safe implementation of the use of audiovisual community communications, as set out in the directions. These guidelines will be developed in collaboration with consumers, carers, health service providers and clinicians, and are expected to be rolled out within weeks of the bill's enactment.

The guidelines will build on current Western Australian Country Health Service policy and national and international best practice in the use of audiovisual technology. I am also informed that significant consideration has already been given to the requirements for additional audiovisual hardware by health service providers, and additional equipment has been purchased.

I have some advice from the Department of Mines, Industry Regulation and Safety in relation to the licence fee waiver questions from Hon Tjorn Sibma. The Premier announced on 31 March 2020 that \$100.4 million has been allocated to waive a wide range of licence fees for small and medium-sized business in COVID-19-impacted

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industries for the next 12 months. This includes licences for building services, plumbers and electricians. The DMIRS share of this totals \$17 579 291. At the time of the announcement, it was understood by DMIRS that all licence fees falling due in the 12-month period, including both one-year and multiyear licence fees, were to be waived with effect from the date of the announcement. On the basis of this understanding, and to minimise the impact of collecting licence fees from licence holders at the peak period of the adverse impacts of COVID-19, and to reduce the potentially significant number of refunds that would need to be processed, DMIRS ceased collecting relevant licence fees on 25 May 2020. Both the DMIRS portfolio ministers were formally advised of and endorsed this approach prior to 25 May 2020.

On 10 June 2020, DMIRS received formal advice from the Department of Treasury that the government's intention was to provide a waiver of one-year licence fees that fell due between 1 April 2020 and 31 March 2021, and a 12-month discount on multiyear licence fees that fell due in the same period. As a result of this advice, DMIRS recommenced collecting licence fees on 1 July 2020. The delay between 10 June and 1 July 2020 was due to the need to make system changes to recommence collecting licence fees. Amendment regulations are being drafted to enable DMIRS to discount multiyear licence fees by 12 months and waive any relevant 12-month licence fees payable in the period 1 April 2020 to 31 March 2021, and pay relevant refunds. Once the amendment regulations have been made, DMIRS will directly contact any licence applicants to provide refunds to those who have paid full licence fees since 1 April 2020 but who are entitled to a discount or a waiver. During the period between 25 May and 30 June 2020, DMIRS accepted approximately 25 000 licence applications without taking the fee. The total dollar amount involved has been calculated at \$4 276 275, but I want to clarify that and will do that in Committee of the Whole. It is not intended to seek recovery of any licence fees not collected during this period; rather, it is intended to write those fees off.

I note that some other comments were made. That includes a comment by Hon Nick Goiran about whether there is an itemised list. I am not aware of such a list, but I undertake to follow that up as we progress through the committee stage. If I have not answered the member's question, it is because I have not been provided with an answer at this stage. We will certainly get an opportunity to deal with those issues when we go into Committee of the Whole.

With that, I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Matthew Swinbourn) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

The DEPUTY CHAIR: I note that I have supplementary notice paper 199, issue 2, before me, and that this is a time-limited Committee of the Whole House, being 310 minutes in total.

Clause 1: Short title —

Hon STEPHEN DAWSON: Can I just indicate that because this is a complex, omnibus piece of legislation, I have different advisers for different elements. Members may ask questions at clause 1 that I ask to leave to a later clause, to enable the appropriate advisers to answer the question.

Hon TJORN SIBMA: I thank the minister for providing that reply to the second reading debate. One of the many things I want to delve into as a consequence of that is the minister referred to a drafting error in the second reading speech that made reference to decisions being validated before the onset of COVID-19 and the declaration of the state of emergency. It has subsequently been drawn to my attention that, indeed, my scrutiny of this bill was not nearly as detailed as it should have been. That error has been replicated in the long title of this bill at dot point 4. That, obviously, is a more material concern. I would like to use this opportunity to say that I have taken advice from the procedural staff here and, at a later stage, I will be moving an amendment to that, in addition to the amendments that I have already put on the supplementary notice paper. But I will also use this opportunity to seek some advice from the government, noting that this is a time-limited debate, about whether it has formed a view yet in respect of the proposed amendments as they appear on the supplementary notice paper?

Hon STEPHEN DAWSON: The question was: have we formed an opinion on the amendments? We have.

Hon TJORN SIBMA: That is good. Such clarity of thought is to be commended. Might I use this opportunity now to seek an indication of which of those amendments the government might be minded to support, which it might be determined to oppose, and which it might equivocate on and seek an amendment to?

Hon STEPHEN DAWSON: For the amendments that appear on the supplementary notice paper at this stage, I indicate that the government does not support the proposed amendment to clause 8. That information will be published on agency websites and in the *Government Gazette*. We oppose the proposed amendment to clause 11.

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We accept the proposed amendment to clause 14. In relation to the proposed amendments to clause 19, my advisers tell me that we oppose those because they would make validation provisions unworkable. The proposed amendments to clauses 30 and 31 in the name of Hon Alison Xamon are accepted. The proposed amendments to clauses 84 and 85 on the Executive Council will be opposed. The proposed amendments to clause 104 are opposed, and the proposed amendment to clause 106 is also opposed. I am told that is a standard clause, but, obviously, we will get to that when we get to that stage.

Hon TJORN SIBMA: In a very constructive way, I found that exchange to be useful because it allows us to tailor the questioning and the focus of our energies as we proceed clause by clause. We possibly do not need to waste much time on things that we are in violent agreement about, but obviously dedicate ourselves to advocating our cause to those things upon which we disagree. Let the record show at the moment that we disagree with quite a bit, but we will resolve these issues in time.

Could I get an indication from the minister, consistent with his earlier remarks, whether he is likely to oppose the amendment to the long title of the bill in the terms that I have previously put?

Hon STEPHEN DAWSON: We are awaiting confirmation from Parliamentary Counsel on that issue. My initial advice indicates that there was a meeting held on 15 March that would require validation, but I need to get further advice about that from the Parliamentary Counsel's Office.

Hon TJORN SIBMA: When might be an appropriate time in the course of this debate to inquire into the particulars of that meeting of 15 March? Is the minister in any position now to provide us with some view about what that was about?

Hon STEPHEN DAWSON: We are not at this stage, honourable member, but I am happy to give an undertaking that I will ask that question and see whether, at a later stage in the debate, I can provide some information to the member, if it is indeed possible.

Hon TJORN SIBMA: I will take the minister up on that. I will give an indication that probably clause 12, at division 2, might be the appropriate time. If the minister is agreeable to that as the general bailiwick by which we might put that question again and receive an answer, I think that might be constructive. That is the bit of the bill that deals with the validation of meetings.

Hon Stephen Dawson: I indicate we are happy to deal with it then, if there are any issues.

Hon TJORN SIBMA: Indeed, because I think we would all be concerned if there were a meeting before the declaration of the state of emergency that the government is seeking to validate. We will return to this at that clause. I thank the minister for his generosity of spirit for agreeing to deal with that at clause 12.

Hon Stephen Dawson: As you know, member, I aim to please.

Hon TJORN SIBMA: I think the minister carries a very heavy burden, and he does so with great grace and fortitude. He is to be complimented.

The DEPUTY CHAIR: Order, members. This is getting a bit uncomfortable—come on!

Hon TJORN SIBMA: I am very sorry if I have in any way imperilled the minister's climb. I can give all members this commitment now: I will not imperil any careers with those blandishments!

I find it a little concerning. Without getting into it too early, there seems to be an inconsistency. In the course of the minister's reply to the second reading, he gave a clear indication that the inclusion of the word "before" was a drafting error. When I sought to unpick that and identify the problem with the long title of the bill, and seek clarification about whether the government has a view to accept an amendment that basically would delete that word, the minister indicated that there would be a need to consult with Parliamentary Counsel because there may be a problematic meeting to deal with on 15 March. This is not to impugn any bad intent to the minister, but I am not necessarily sure that the government knows exactly what it is trying to do at the moment. I am a little nervous about that.

Hon Stephen Dawson: Me too. I think it is an issue that we need to get to the bottom of.

Hon TJORN SIBMA: This is not to be unnecessarily pedantic, but in a bill of this magnitude, with this import—I reflect on the remarks I made in this chamber last night about the Herculean effort that the drafters and public servants have gone to to put this bill together—I am concerned about a fundamental drafting error like this being included so early in the bill. I am very deeply concerned about where errors might lie deeper in the detail of the bill, particularly in part 2. As I, Hon Dr Steve Thomas and other speakers on this bill have indicated, the post-facto validation of meetings, meeting processes, waivers given to fees, licences extended or conditions potentially not enforced is no small matter. It introduces a risk from the perspective of governance, but if there is any slipperiness or ambiguity in the wording, the risks involved are magnified. That takes me to my next question, which relates to

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my second reading contribution. The minister said that the drafting of this bill came to some level of mass or weight prior to the winter recess, drafting continued over the course of the recess, and there was a cabinet determination shortly thereafter. Can I ask when cabinet finally pressed go on this bill and, presumably, that meant permission to print? When was that cabinet meeting?

Hon STEPHEN DAWSON: I am sorry to do this to the honourable member, but the information is cabinet-in-confidence, so I will have to seek further advice about whether I can, in fact, release the date. I can confirm that my advice is that the date was after the winter recess.

Hon TJORN SIBMA: I think it is not an unusual practice for governments to make media statements shortly after cabinet meetings to express a view about a decision that was made at that cabinet meeting which has bearing on the public interest in any kind of way and which does not necessarily impinge on cabinet confidentiality. The government does not disclose the cabinet discussion, the cabinet minute, who dissented from the view or what concerns were raised. All it does is say that at this meeting on such and such a date it determined this and this is the policy. In fairness, I think the reply is unnecessarily circumspect, but would it be fair for me to presume that that cabinet meeting occurred not this week, but, say, last Monday?

Hon STEPHEN DAWSON: I will take further advice on this matter. I am happy to provide a date to the member if I can. I am aware of the date, but I need to confirm with the cabinet secretary that it is fine to release that information. I will seek that information this afternoon and get back to the member. Hopefully, it will not delay progress on the bill. I am not sure whether that date is germane to the passage of the bill. However, I will seek the information.

Hon TJORN SIBMA: To some degree I think it is germane. It bears directly on an issue that I raised in my second reading contribution and that the minister addressed in passing in his reply, and that was to deal with the evolution of this bill, particularly from the point in time at which at least the opposition was consulted on it and the form in which it was presented to us then, as well as the fact that we are operating under a time-restricted debate, as the minister has diplomatically reminded me, and that in the briefing we received, the question put to the agencies that were briefing us was: what is the urgency of the bill? Is there a time-critical dimension to the resolution of this issue in this debate? I am trying to understand that, because this bill seems to have had a long genesis before the winter recess, which has passed us by. We are reaching back some two months ago, presumably into the middle of or late June, when the words were coming together on the page. I am trying to ascertain whether or not, firstly, we can test the time criticality of this and the actual urgency of this bill. I am attempting to get an understanding of what urgency the government itself put around this bill and to get some sort of insight into when and how the composition of this bill changed. One metric that I used was: when did cabinet make the final decision on this? Perhaps I will ask another question that the minister might invoke the same protection on: on how many occasions has this bill come to cabinet? Did it go to cabinet at a permission-to-draft stage with the original part 7 provisions included in it; and, if so, when did that occur? Also, at what stage was the bill amended to its current form, when, at the very least, the part 7 “Putin provisions” were taken out to now be presented to us for our contemplation? I would appreciate any insight that the minister can give into the time line of decision-making in the drafting of this bill and the various stages it went through, through executive government, to arrive at this stage.

Hon STEPHEN DAWSON: Again, I am seeking advice on how much I can divulge in relation to cabinet.

In terms of the urgency of the bill, the bill is needed, as I said, to validate both the actions that the government took in response to the initial outbreak, which were done to ensure the continuity of services and that businesses were maintained during the height of the COVID-19 restrictions, and the actions that the public and industry then took in reliance on the government’s emergency response, which ensured that businesses continued to operate. As I indicated, similar legislation has passed in other jurisdictions around the country. Some of it was passed very early on and provided a great deal of power to the executive. That was not the course of action we took here. Plenty of consultation happened right across government, as we can see in the elements included in the omnibus bill. However, consultation happened across government and when we were finally in a position to introduce the bill to Parliament, it was introduced.

I can now confirm that this bill was approved in cabinet on 27 July.

Hon TJORN SIBMA: That was some three weeks ago. From my recollection of my personal time line, the period at which we in the opposition received a briefing on this bill was after 27 July—in fact, I might need to check on a personal calendar. Was the part 7 dimension that we have referred to in this debate an inclusion in the bill that was approved by the cabinet meeting on 27 July? That was certainly the version that was presented to me and my colleagues. For the benefit of the minister’s reply, I will attempt to pull up my own calendar. I received the briefing on Tuesday, 4 August, a week and a bit after that cabinet decision. I assume that part 7 of the consultation draft, which there has been a disavowal of as implied in the Premier’s public statements, was approved by the minister’s cabinet on 27 July. Is it fair and reasonable for me to make that assumption?

Hon STEPHEN DAWSON: I am advised that the consultation draft was approved by cabinet.

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Hon TJORN SIBMA: Was there a subsequent cabinet meeting after 27 July and after the 4 August briefing with the Liberal Party at least? I do not have any insight into when the Nationals WA members were briefed, but Hon Colin de Grussa has indicated that it occurred on 4 August. Was there a subsequent cabinet meeting after 27 July that changed this bill to the version that we have now been presented with?

Hon STEPHEN DAWSON: Again, honourable member, I will have to clarify with the cabinet secretary what I am at liberty to disclose.

Hon TJORN SIBMA: That is very prudent of the minister, but I am going to make it my operating assumption that that is indeed what occurred. I will put it to the minister in this way, which perhaps obviates him of the necessity to answer inappropriately to the directness of my question: has it ever been the case for the period in which he has been a minister of this government for a bill to be read into this house that deviated from the approval provided by cabinet?

The DEPUTY CHAIR: Member, before the minister answers that, this line of questioning is going in a very interesting direction, but I will remind members that we are in the Committee of the Whole House and the debate on clause 1 does no more than give members the opportunity to range over the clauses of the bill, foreshadow amendments and indicate, consistent with the policy of the bill, how its form or content might be improved. It is not a vehicle for continuing the debate on the policy of the bill, which has been decided at the second reading stage. Member, your question asks the minister to speculate about matters that do not directly relate to this bill. I will leave it up to the minister to decide whether he answers that, but we must remember that we are dealing with the document that is before us, not the one that may have been provided in advance. Therefore, as long as the member's questions relate to this bill and what may not be in it to make sure it still makes sense, that is okay, but it is not an examination of the minister and the practices of cabinet as a general thing.

Hon TJORN SIBMA: I will be guided by your advice, Deputy Chair, and your interpretation of the standing orders, and I am not seeking to deviate or question that. I will justify this line of questioning because I was acting on the assumption that this might happen. I am attempting to understand the provenance of this bill and its reliability as a guide to what we are being asked to do here. I am attempting to understand how it came to us in this form and I will move into the body of the bill very swiftly.

The DEPUTY CHAIR: Member, I think that is fair enough, but you just need to make sure your questioning relates to the bill before us. If you remember to keep that tether, I think you will be fine.

Hon TJORN SIBMA: Is it at all possible for the minister to respond to my last question on whether it is the usual practice of the McGowan government to present bills to this Parliament in a way that deviates from cabinet approval?

Hon STEPHEN DAWSON: It is not standard practice; indeed, it does not happen that we deviate from approvals given in cabinet, so the member can read into that what he will. Certainly, the bill before us is the government's piece of legislation and we stand behind it.

Committee interrupted, pursuant to standing orders.

[Continued on page 5338.]

Sitting suspended from 4.15 to 4.30 pm