COVID-19 RESPONSE LEGISLATION AMENDMENT (EXTENSION OF EXPIRING PROVISIONS) BILL (NO. 2) 2021

Second Reading

Resumed from an earlier stage of the sitting.

HON TJORN SIBMA (North Metropolitan) [5.04 pm]: As I recall, I was last discussing this perennial state of emergency, which is being renewed without much of a murmur. The extension of the state of emergency, as described in the second reading speech, is a decision based on—this is one of the phrases that has been deployed extensively in not only this jurisdiction, but also other jurisdictions—"expert advice" from the State Emergency Coordinator and the deliberations of the State Disaster Council.

I do not quibble with the facts. The facts are the facts. That is absolutely true. If indeed this is a deliberative decision made in a sober, methodical way, I have a piece of advice for the government. It is this: do not use the opportunities of extending a state of emergency as another picture opportunity for Twitter. There has been a degree of grandstanding around this issue. I will not identify the ministers; it is not really that important. But if you are going to utilise something that should be in extremist measure, do not use that as the opportunity to show how safe you are being and how you are protecting us.

We need to start scrutinising the continual deployment of this state of emergency at the point at which we reach the vaccination target—such as that is; it appears to be 90 per cent—for those 12 and over in this jurisdiction. I say that because an insinuation seems to be embedded in the transition plan, as it has been described so far, and will continue to be refined no doubt, that the state of emergency will continue in some form. I am coming around to the view that that is quite problematic. We cannot justify the continuation of a state of emergency toward the end of next year if there is no precipitant new crisis in respect of the management of the COVID-19 pandemic. This is something that I think should become easier should we reach the 80 and 90 per cent vaccine thresholds.

I am not using this opportunity to make a political pronouncement. I just think that as a matter of principle there has to be a point at which a state of emergency is no longer required. I am seeking when that point is. It is actually a different question from when the border opens. This is a facet that most commentary has missed. Everyone is obviously focused on broader issues, but the capacity to control the border is itself dependent on not only the passage of this bill, but also the continuation of the state of emergency so declared. To me, that is the fundamental issue here, and it is one that I think, for understandable reasons, we have lost a little bit of sight over.

I want to very quickly talk about the directions that are enabled by the extension of these provisions. The most salient feature, the most powerful tool in the arsenal, is the capacity for the controlled border. I do not dispute the fact that the controlled border has contributed in large part to our exemplary COVID-19 performance. If we measure an exemplary performance, the fact that we have actually managed to keep COVID out is it. I have no disputation about that at all. However, the transparency of the deployment of those directions invites greater examination. I, like many others, have received emails over the last 12 months, but there is now a greater sense of urgency in some of them about the lack of clarity and questions about why there seems to be a privileged class of people who, for whatever reason, seem to get the VIP treatment when they apply for a travel exemption.

Hon Alannah MacTiernan: Like Nev Power?

Hon TJORN SIBMA: They might be Hollywood stars. I will utilise a phrase that the Minister for Regional Development used during another debate: they might be a baron of some kind or another. There seems to be a class of persons who can navigate the G2G PASS exemption process without a care in the world, while others—I am not a special case—such as members of my family, have found it to be exceedingly difficult. I will not name the member of the family, but a close member of my family has had to care for another member of our family on the other side of the country. This has struck me as odd, and I have held my tongue, but I think now is the time to say it: I cannot see why the mere fact that a person's ordinary place of residence or ordinary place of business is an address in Western Australia, and they have been compelled to travel interstate to care for a family member or a close person, means that their return journey is beset by confusion and murk because returning to their residence or place of business is not a high enough compassionate threshold. There is no implied return for residents. I find that an extraordinary provision. I do not know whether I have expressed it properly and technically correctly, but that is effectively the essence of the issue. It is no easy thing, particularly for someone in their 60s or 70s who is under stress for some reason, to put in multiple G2G applications on an iPhone or an Android phone when the automatic response is exemption denied, denied, denied—until there seems to be, miraculously, a breakthrough. I think there needs to be, at a suitable time, a dispassionate examination of how these exemption requests have been managed and precisely who the decision-maker is or whether there is a team of decision-makers. That has not been made clear at all in the course of the last 18 months or so.

I will reflect on the border controls to this degree as well. In my personal estimation, there should have been an effort last year, although it was difficult to do so. There should most definitely be an effort, or a resolve, by the government

now to do what it can to facilitate the reunion of families in time for Christmas. If there is a consistent thread to the emails I have received and the conversations I have had with people, it is that they have missed out on two years of family life. They understand that an Ashes test might be played in Perth—again, there is another privileged class of individuals. They understand that the AFL grand final was played at Optus Stadium, which was a great outcome for Western Australia, but, again, it established a privileged class of individuals. I acknowledge and welcome movement on creating at least some certainty insofar as the international student market is concerned. The minister is here and it is a sector I came from immediately before coming to this place. There is a common view, which I do not find very easy to dispute, that the foreign overseas student market is another privileged class of individuals. This is the sentiment, minister.

Hon Sue Ellery: How, when the same provisions apply?

Hon TJORN SIBMA: This is something that the government has given priority to and I understand it.

Hon Sue Ellery: The same arrangements apply for people arriving from overseas. They are the same.

Hon TJORN SIBMA: Okay. I have given three examples of privileged classes of individuals who seem to be able to enter the state on a whim, but there is absolutely no scope or certainty for family reunions.

Hon Sue Ellery: You are inaccurate on international students.

Hon TJORN SIBMA: I think the government has been absolutely murky in its communications, because it has reinforced—I do not think it has intended to do this—the perception that it privileges one class of individuals over another.

Hon Sue Ellery: No.

Hon TJORN SIBMA: It has.

Hon Sue Ellery: That is all spin.

Hon TJORN SIBMA: No, that is not spin.

Hon Sue Ellery: Yes, it is.

Hon TJORN SIBMA: No; it is 24 months of frustration, anxiety and disappointment.

Hon Sue Ellery interjected.

Hon TJORN SIBMA: I am sorry; the government has to wear the consequences of its policy. It has traded on its success. It went to a campaign and it campaigned on a mantra, so it also has to wear the downside.

Hon Sue Ellery interjected.

Hon TJORN SIBMA: It has to wear the downside.

The DEPUTY PRESIDENT: Members! One interjection at a time or through the chair, please.

Hon TJORN SIBMA: It is only this: it is important to provide certainty. It is the certainty that the second reading speech for this bill purports will be provided, but the government has not done it in time for Christmas. The government needs to move on with its mantras. It needs to provide a measure of certainty. I think the government has failed to achieve an achievable outcome in facilitating at least family reunions before this Christmas. That is a shameful missed opportunity, but it is an opportunity that will be missed. It will be missed in part—not completely—because our vaccination program has not yet achieved the kinds of outcomes that we have seen in other Australian jurisdictions. We are lagging the field. There is a range of reasons for that, but even since the apparent super Saturday campaign—the Bunnings COVID jab campaign—there does not seem to have been a demonstrable uplift in vaccines received. There is growth, but the growth rate is getting incrementally smaller. I think this is indicative of a really hard to reach sector.

The questions posed by Hon Dr Steve Thomas are appropriate to ask and to seek an answer to in this debate. If we have made certain decisions contingent on reaching certain vaccination thresholds, what will happen if we do not reach them? What will happen if we get stuck at an 85 per cent double vaccination rate? What will happen if we get stuck at 88 or 89 per cent? What will happen if we never get to 90 per cent? It is worth having some contingency plans. I hope we achieve those targets and go beyond them, but we are not setting the world on fire with that outcome. There is also going to be the need—I hope this is not the case, but it seems to be insinuated in public commentary—for the state to have to be segmented to some degree. What we will get is very clear when we compare the metropolitan vaccination outcomes with those in the Pilbara. I fully anticipate the return of regional travel restrictions. That is probably why the government has been quiet on the future of the state of emergency. I fully expect that to be an issue.

I am not here to win points; I am here to point out that the management of this phase is more complicated and there is a greater appetite by my constituents and ordinary people for more information about when life will return to

normal. Although we live somewhat in blessed isolation, I do not think the appetite for the new normal is quite as deep as people sometimes like to think it is. The new normal is not normal—it is not.

I also want to ask some questions about the isolation provisions. I might misinterpret this as it relates, but this is effectively the power to compel a person to isolate on return from a jurisdiction. That is fine. I think this may have been raised either in the course of debate here or in the other place in previous iterations of it. This seems to be something of a nonsense embedded in the isolation directions, because it is more than possible for a person to be compelled to self-isolate at a residence they share with people who do not have to self-isolate, and that has been the case over the last 18 months or so. I have just found it odd. There are some interesting facets in these directions. The outcomes are not clear. I think we are at a far more interesting stage.

This is a time-limited debate, so I will conclude this contribution only to round out where I was at the start. There needs to be greater certainty. At the moment, there is absolutely every imperative to support the government to get this bill through and as soon as possible, particularly as we are now at this crucial, crucial stage of reaching a defined-ish vaccination target. But once we reach that target and we see freedom of travel across all other Australian jurisdictions, I think the expectation then for greater certainty and clarity about how we are going to live our lives will rise to the surface, and I think it might complicate or at least make more challenging any government intention to bring again another extension of a provision like this in eight or nine months' time.

HON NICK GOIRAN (South Metropolitan) [5.21 pm]: I rise to speak on the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill (No. 2) 2021. I want to thank my colleague Hon Tjorn Sibma for the contribution he just made, and I hope some within government will take a measured approach and give it some due consideration, because above all else he is quite right when he says there is a genuine lack of certainty within the community. There is confusion, and it cannot possibly be only his electorate office and mine that gets bombarded with phone calls and emails. I am confident it is happening across the board. I know this to be true, because we have even had constituents contacting our electorate office saying they have tried to getting in contact with the member for Rockingham in his office, and in the event they can get through, the office has been completely unhelpful and unable to provide constituents with the information to steer them in the right direction. In other debates on different topics we have talked about the concept of navigators. Navigators are sometimes necessary, we are told, particularly in the health system, to try to help navigate people through the various complicated pathways. We talked about that in the context of palliative care, for example. It seems that people now need to have a navigator in order to navigate their way through the G2G PASS system and through the various directions applied.

The bill before us continues to do a number of things, particularly with respect to enhanced penalties under the Criminal Code, but also with regard to section 72A of the Emergency Management Act 2005. I want to take a moment to unpack the issues surrounding the Criminal Code and the increased penalties, but before I do so, I want members to pause for a moment and consider what section 72A of the Emergency Management Act does. As honourable members have said in their recent contributions, this is not the first time this matter has been brought to the attention of the house. Indeed, I think the Leader of the House when making the second reading speech to accompany the bill on or around 10 November—this time last week—mentioned that this is, if you like, a repeat episode. What are we repeating? The bill before us is some five pages in length. It traverses some nine clauses across four parts, but it is a relatively straightforward bill, because it simply seeks to extend the so-called sunset clauses for another six months in respect of two elements or provisions that the government has, interestingly, repeatedly referred to in its second reading speeches as "vital". I have not had the opportunity to do a word count, but the word "vital" appears on many occasions in the Leader of the House's second reading speech. This vital provision that the government asked us to continue to agree to extending in large part revolves around section 72A of the Emergency Management Act 2005. It is worth noting that until last year there was no such thing as a section 72A of the Emergency Management Act 2005. That provision was inserted into the statute books of Western Australia last year, courtesy, as I understand it, of the eleventh act of last year. Section 72A reads as follows. It is entitled "General powers during emergency situation or state of emergency". It states —

> (1) In this section —
>
> ***relevant information*** means —
>
> (a) relevant information as defined in section 72(1); and
>
> (b) information of a kind specified by the State Emergency Coordinator as relevant to the emergency.
>
> (2) For the purposes of emergency management during an emergency situation or state of emergency, a hazard management officer or authorised officer may take, or direct a person or a class of person to take, any action that the officer considers is reasonably necessary to prevent, control or abate risks associated with the emergency.
>
> (3) For the purposes of emergency management during an emergency situation or state of emergency, a hazard management officer or authorised officer may direct a person to —

(a) give to the officer relevant information about the person or any other person closely associated with the person;

or

(b) answer questions intended to elicit relevant information about the person or any other person closely associated with the person.

(4) A person is not excused from complying with a direction given to the person under subsection (3) on the ground that giving the information or answering the question might tend to incriminate the person or expose the person to a criminal penalty.

(5) However, any information or answer given by a person in compliance with a direction given to the person under subsection (3) is not admissible in evidence in any criminal proceedings against the person other than proceedings for an offence under section 89.

That is what we are continuing to give life to. Section 72A of the Emergency Management Act 2005 did not exist until last year. It currently exists. I think it is due to expire on 4 January 2022, and the government is now asking us to agree to extend the life of section 72A for another six months.

There has been a lot of misinformation in the community about what this bill does and does not do. Hence, I am taking a few extra moments to specify precisely what this bill is doing. It extends what I have just read out, section 72A, for another six months. The government has indicated that such an extension is, according to the second reading speech, vital to the plan. That is the phrase that has been used by the Leader of the House. What plan is the Leader of the House referring to? Earlier in the second reading speech, she said —

> The government has released the safe transition plan in line with expert health advice.

According to the Leader of the House, this bill is vital to that plan, whatever people might think about the plan. There has been plenty of criticism about it being a non-plan. Keep in mind that the plan did not exist when section 72A was inserted into the Emergency Management Act 2005. The government has introduced a new reason for the extension. According to the government, it is vital because of the so-called safe transition plan. Interestingly, the second reading speech reads —

> Over the course of the pandemic, a large number of directions have been made in reliance, or partial reliance, on this section.

The Leader of the House was again referring to section 72A, which I referred to earlier. She went on to say —

> Those directions include, but are not limited to, —

I will come back to that; it is a crucial phrase that was included in the second reading speech. It continues —

> current versions of the Contact Register Directions, Controlled Border for Western Australia Directions, Isolation (Diagnosed) Directions, Exposure Site (Western Australia) Directions, Exposure Sites (outside Western Australia) Directions, Quarantine (Undiagnosed) Directions and Presentation for Testing Directions.

When I read that, I wondered, when the Leader of the House slipped into the speech the phrase "but are not limited to", how many others there have been. Reference in the speech is made to seven directions or categories of directions. That does not sound like too many. Thanks to the hardworking Hon Martin Aldridge, we know that the number is far greater than that. That hardworking member attended a briefing, which unfortunately I was unable to attend, and managed to extract some information out of the government. This is a very difficult government to extract information from because it has been known to be obsessed with secrecy. In this instance, Hon Martin Aldridge cracked the safe, and some information has come out of the safe. It might interest members to know that the total number of directions made during the state of emergency in response to the pandemic hazard that rely or partially rely on section 72A is 413. It is no wonder that the Leader of the House, in the second reading speech, had to insert that phrase "but are not limited to" because had she then had to recite the 413 directions, we would have been here for a very long time.

The information that has been extracted out of the secret government vault lists all 413 of these directions. Members would be interested to know how many relate to AFL and venues, umpires, the West Coast Eagles, the Western Bulldogs, Geelong, Greater Western Sydney, Melbourne and the like. When I read it, it reminded me of a recent controversy within the community. This goes to the point that some of my honourable colleagues have been making over the course of this debate about perceived double standards. I want to draw to members' attention an article from *The West Australian* last week, on 11 November. It is less than a week old. Comments are made recounting an episode in which the beleaguered Premier was being examined by the media on this issue. The article reads —

> Asked if the changing rules would also apply to anyone wanting to travel from COVID affected States to WA, the Premier replied: "It's subject to quarantine arrangements and bubbles.
>
> "But we've done it for football, for round-ball football, for cricket, for basketball for netball—for every sport over the course of the last two years. This is really no different."

When the Premier said that last week, Acting Premier—Acting President!

Several members interjected.

Hon NICK GOIRAN: Hon Steve Martin would be an outstanding Acting Premier, it must be said.

When the Premier said last week, "This is really no different", what was he referring to? What is the "this" he was speaking of? Of course, he is speaking of the alleged double standards after the relaxation of quarantine rules for international cricketers. It would appear to some in the community that, if you want to expedite your quarantine or perhaps get some form of favourable treatment for a G2G PASS, the key is to present your application with your cricket bat. As long as you do that, you have a decent chance of getting an approval. If the cricket bat does not work for you, you might want to bring your football or, as the Premier refers to it, your "round-ball football". Of course, you could also bring a basketball or a netball. If you use one of those pieces of sporting equipment, you might find special favour within the McGowan government.

This has attracted some controversy, from not just the opposition and the hardworking shadow Minister for Health but also some people outside of politics, including the Australian Medical Association WA president, Dr Mark Duncan-Smith. He is quoted in the article as saying —

> "I believe that anybody entering WA should be subject to the same rules and the same regulations for quarantine.
>
> "I don't think it is appropriate to have double standards. And yes, I do think it has the potential to undermine people's willingness and confidence in the system if other people get special rules."

When the Leader of the House said in the second reading speech that the provisions in this bill that are being extended are vital to the plan, it would be of some assistance to people in the Western Australian community to know whether this plan is intended to continue to be one of double standards, or whether it will be equal for all.

Government members have made quite a bit of noise over the last 24 hours. In fact, as I look up at the clock, it seems not that long ago that we were here at one o'clock in the morning—today—finishing off yesterday's sitting session. Quite a bit of noise was made by government members who had recovered from their political laryngitis. In their comments, it became apparent that these members believe very strongly in what they refer to as equality of voting for the people of Western Australia. Various arguments were made. I never heard any of them raise this same principle when it comes to the treatment of individuals in quarantine and the like. When people like the president of the Australian Medical Association call out what they perceive to be double standards and special rules, it requires at the very least a response from government. Government members will no doubt disagree and hopefully they will have some persuasive, cogent explanation as to why they say this is not a case of double standards and people are not abiding by special rules. Nevertheless, a government that is not arrogant—a government that is committed to principles of accountability and transparency—will at the very least provide a response to what appears on the surface to be concerns that have some merits.

I also want to draw to members' attention a remark made by the Leader of the House in her second reading speech. She stated —

> As outlined to this house last time, one of the key directions using section 72A information-gathering powers is the Contact Register Directions. Contact records and the continued use of the SafeWA app are integral to the state's ability to efficiently respond to and control ongoing pandemic risks.

According to the Leader of the House, this is not the first time this has been raised. The section 72A powers, especially the information-gathering ones, are vital with regard to the SafeWA app. I want to draw to members' attention—those who have not yet recovered from their political amnesia!—a highly disturbing episode that occurred this calendar year. That was a set of circumstances that saw Western Australian police officers accessing data from the SafeWA app contrary to the decision made by key leaders within government. I have spent some time examining this matter, not only during public hearings with the Standing Committee on Estimates and Financial Operations, but also during budget estimates hearings and the like. When I say "key leaders", we are not talking just about the Premier; we are also talking about the Commissioner of Police. When the decision was made last year to tell Western Australians that they needed to comply with the SafeWA app, as one of the various means to comply with the contact register directions, they were assured that the data would not be used for anything other than contact tracing purposes. That decision that was made last year involved not only the member for Rockingham, the Premier of Western Australia, but also the police commissioner. The police commissioner was sitting around the desk at the same time as the Premier when the decision was made that this direction would be issued and an assurance would be provided to Western Australians that their contact details via the app would not be accessed other than for contact tracing purposes. No sooner did the Premier and the police commissioner make that decision—of course, the Premier, in his typical media-obsessed fashion, was out there beating his chest about this latest announcement—WA police officers continued to embark upon cracking open a different type of vault, which was supposed to be the SafeWA app data. I might add that none of this was revealed until after the election. The question remains: who knew about

this prior to the election? Members are probably not aware of this because I doubt they have time in their busy schedule to peruse and consider the website of the Standing Committee on Estimates and Financial Operations. If they do, they will find a document that has been made public. It is a letter written by the director general of Health on 31 August 2021 to Hon Peter Collier, MLC, the chair of that standing committee. In this letter, the director general said to the honourable member, with respect to three sessions that took place —

> Please find the unredacted email at attachment 1. The information was previously redacted as it contains personal information which does not concern the conduct or operation of the Department of Health. The Department requests the email sign off —

It has the sign-off, and it is then redacted in this public document —

> be redacted if the document is published on this basis. Please note the remaining redaction is retained on the basis of legal professional privilege.

Appended to this public document is an email from one of the most senior individuals in Health, Mr Williamson. The second paragraph of that email states —

> When I was covering for you I (verbally) raised the issue of police access to the COVIDSafe app information (eg raceway shooting) with … —

Once again, a name has been redacted —

> and his colleague —

Whoever this mysterious individual is, whose name has been redacted, obviously a male —

> who attends the Premier's meetings. There seems to be minimal judicial oversight of such requests and I think 2-3 were made in connection with that incident. I have repeatedly called this out as a cause for concern which could threaten public trust.

This email dated 22 February this year, written by Mr Williamson, a senior official in Health, was to none other than the director general of Health. Once again, that confirms that people attending the Premier's meetings this year knew that WA police were accessing data from the SafeWA app, despite the fact that the Premier had provided an assurance around this time last year that that would not happen. This is the type of power under which the Leader of the House is asking the Parliament to agree to a further extension of six months. After the election, apparently, some senior ministers found out about this for the first time, including the Premier and the Deputy Premier. We know from some questions that I asked recently that the police commissioner admitted that he never raised this issue with the previous police minister, who is now the Speaker in the other place—he never raised it with any of these senior ministers, apparently—but we know all this was going on in January and February this year. In fairness to the government, if all of that is true and these senior public servants were keeping all of this secret from senior ministers, the first time that it came to their attention after the election, a bill was rushed in to fix this problem so it will no longer be possible for WA police to access this information. Once again, this goes to show the importance of scrutiny of these types of extraordinary powers.

It is too easy for bills like this to be rolled in. Members were asked to agree to an extension of six months and if we asked them whether they could articulate what they were agreeing to with another six-month extension, they would have no clue. They are just agreeing to an extra six months. An extra six months of what? What power are they giving the government that it previously did not have and that it recognised is of some significance that it warrants a sunset clause? If a routine rudimentary type of power was being provided to government, we would not bother having a sunset clause on the end of it. The government has recognised, once again, as proven by this bill, that it is appropriate for there to be an end to these extraordinary powers. I hope that in reply we get an explanation of the criteria by which the government will decide whether these powers need to continue to be extended. Has anyone in government thought that through? Is there a plan?

We have been told that there are plans, but is there a plan for when the government lays down the section 74A power or is it the government's intention to continue to extend the section 72A powers indefinitely? I think, either way, the government will need to come clean on its intentions. If its intention is to continue to extend them indefinitely, it should say so. If it is the intention of the government to lay down this section 72A power at some point in time, it has a duty to outline the criteria under which it will make that decision. At the moment, that is not evident.

If I am not mistaken, somewhere in the second reading speech mention is made of these types of powers only needing to be used for the COVID-19 pandemic. In the second reading speech, the Leader of the House made this remark —

> The intent of this sunset clause was to ensure that the section 72A powers were applied only to the circumstances of an appropriate emergency response to the COVID-19 pandemic.

I was away on urgent parliamentary business, but I think I caught a comment by my colleague Hon Martin Aldridge that he had uncovered that these powers have been used in a non-COVID-19 emergency. I hope that the Leader of the House is in a position to explain, at last, how that is consistent with what she told us a week ago, on 10 November 2021, when she said —

> The intent of this sunset clause was to ensure that the section 72A powers were applied only to the circumstances of an appropriate emergency response to the COVID-19 pandemic.

She used the word "only", yet we have found out that it has been used in other circumstances. Why is that the case? Is this another case, just like when the Premier said a year ago, "Don't worry about it; you can trust us. Sign up for the SafeWA app. Rest assured, it'll be like Fort Knox; no-one is going to be able to get in—certainly not WA police. They're not going to be able to access it. The only people who are going to access it are health officials when they do their contact tracing"? The exact opposite happened. Is this another circumstance like that? It is another circumstance in which a senior person in government is telling the Parliament one thing and something else is happening. We are told that these powers will be used only for the COVID-19 pandemic but, in actual fact, if other emergency situations arise, they will be used.

That may well be; let us give the government the benefit of the doubt. Let us assume that there is a good reason why that should occur; but it should say so. It should come clean and say, "We've actually used these powers in circumstances other than in the circumstances that we told you about last time when this matter was before the Parliament." It should do that. Why? It needs to continue to build and maintain trust in this regime of extraordinary powers. As time marches on with this supposedly expedited and urgent bill before us, I note in passing that the only thing that is urgent about this bill is that it needs to be passed so that the government is able to maintain the life of the section 72A powers, and it needs to be done before the sunset date of 4 January 2022. Other than that, there is nothing particularly urgent about it, noting that we are due to still be sitting not only tomorrow but for another two sitting weeks. I again make this simple point: this is another example of a bill that does not warrant the use of the battering ram–type conditions that we find ourselves in when trying to scrutinise legislation. It is an unnecessary use of extraordinary parliamentary power. Nevertheless, that is where we are at the moment.

In the time remaining, I want to touch on another element of the bill, which is the amendments to the Criminal Code Amendment (COVID-19 Response) Act 2020. Members may recall that the purpose of that act was to provide a range of higher penalties in the event that Western Australians committed serious assaults and threats against public officers. The rationale behind that act was that if there was a circumstance in which a person threatened, for example, a police officer or any other public officer, particularly with respect to the COVID-19 disease, an extra penalty would apply to those individuals. Indeed, the house agreed to that and to subsequent extensions. I have not heard any concerns about those provisions with regard to the Criminal Code. In one sense, that is not surprising because, as I understand it—I think this was consistent with a briefing I attended more than six months ago—some provisions have never been used. My recollection is that we are dealing with two provisions of the Criminal Code—sections 318 and 338. I think that section 338 has never been used, but section 318 has been used on several occasions. It is no wonder that we do not get any complaints about section 338 if it has never been used. That is a point that is probably worthy of the government's response. If it has never been used, why do we keep extending it? There has been plenty of time in which to use it, but it does not appear to have been necessary, so let us lay this one down. It is not going to be used. It has not been used now; I do not know why suddenly it will be used. Again, if there is a very good persuasive reason for the government to say that it absolutely is "vital" for it to be extended, it should say so.

Regarding section 318 provisions in the Criminal Code, again the hardworking Hon Martin Aldridge managed to crack that government safe a second time. Not only was he able to find out the 413 directions, but also he was able to crack the McGowan government secret safe that keeps all the information on how many times there have been charges pertaining to section 318. I understand that the maximum penalty that somebody has received following a charge under section 318 —

[Interruption.]

Hon NICK GOIRAN: I know this will be of particular interest to Hon Samantha Rowe—the maximum penalty imposed upon a person for a breach of section 318 of the Criminal Code, I believe, is 12 months' imprisonment. If that is not correct, will the Leader of the House, please, during her reply, or otherwise on clause 1 during the Committee of the Whole, clarify what the maximum penalty is for a person who has been sentenced. I believe it is 12 months, from the information that has been provided to me. But my point is this: the provision that we are dealing with here allows for a very significant increase in penalty and, again, it appears as though these penalty provisions are not being used.

I anticipate that the response of the government will be, "Well, it's a good thing that they are not being used because there are all these people in the Western Australian community who would otherwise be looking to commit serious assaults against nurses and medical staff and Transperth personnel and the like, but they are restraining themselves from committing these offences because of the existence of this particular higher penalty." I doubt very much that that is the case, but I suspect that will be the response provided by government; in other words, it will say that it

is an important deterrent and that this demonstrates that the provisions are working well. If that is true, then the government will also need to wrestle with the dilemma and tell us when it will lay down this particular provision. If it is such a tremendous deterrent, the argument surely follows that it should be left there in perpetuity, but, again, we know that that is not the current intention of the government, because it is not seeking that. It is seeking to keep these provisions alive for another six months.

In conclusion, I ask the Leader of the House to deal with a number of matters preferably in reply, but, if not, then perhaps we can tackle them when we are debating clause 1 in Committee of the Whole. Those matters that are of particular interest to me at the moment are: what are the criteria by which the government says that the section 72A powers in the Emergency Management Act 2005 will no longer be needed? To be clear, I am not asking when they will be used, because the government has already told us that they will be used only in a state of emergency; but these particular powers currently exist on the statute book, regardless of whether there is a state of emergency. They can be used only when a state of emergency has been declared, but they still remain on the statute book and they will continue to be until such time as the cessation date arrives. But the Parliament is constantly being asked by the government to extend that cessation date, so what is the criteria by which the government will determine that it no longer wants the cessation date to be extended? I know that Hon Tjorn Sibma, who is away on urgent parliamentary business, forecasted that that would be after the opening of borders. That seems to me to be correct; nevertheless, what is not explained in that is the criteria by which the government will be making decisions. That is the first thing. At what point does section 72A get laid down by government?

The second thing that I think requires an explanation by government is: At what point in time will the extended penalties applicable in the Criminal Code also be laid down? In what circumstances would the government anticipate that it will no longer be necessary for the Parliament to extend that sunset clause provision? At the moment, the cessation date is 4 January 2022. After this bill passes, it will be, as I understand it, 4 July next year. Again, what are the criteria by which it is making this decision?

We know that some correspondence has been exchanged between the police commissioner in one of his various capacities—he has a few hats at the moment—and government in which he has written to provide support for this extension. I accept that that has occurred, and that has also occurred in respect of previous bills, but that in and of itself is not a justification. That is not the criteria; I hope it is not the criteria. I hope that the criteria by which the government says it is going to lay down these section 72A Emergency Management Act powers and the provisions in the Criminal Code are not solely reliant on a letter from the police commissioner. There ought to be substantive, accountable criteria that those of us entrusted with holding the government to account can assess and ask the government questions about. That would be the transparent way forward for Western Australians. It is in that context that I earlier referred to some people in Western Australia who are genuinely confused about their rights and privileges and what exactly is expected of them. When they contact the offices of members of Parliament and ministers, either the offices are uncontactable or they get vague responses, and that only heightens their level of stress. This is an example today of how the government can try to alleviate some of that stress by providing a clear and cogent response as to when these sunset dates will no longer be required.

I would think that this is a matter that cabinet would have already considered and discussed. I see no good reason that information cannot be transparently provided. We are not asking for any secret information from cabinet; we are just recognising that it will have made some form of decision, one would assume as a responsible government, to determine exactly when these particular provisions will come to an end. If that can be done, I anticipate that we might be able to conclude our consideration of this otherwise relatively straightforward five-page bill in an efficient fashion. But if the government is unable to provide some of those basic answers, regrettably, I anticipate we probably will need the full two hours and 40 minutes that has been allocated for the Committee of the Whole House stage.

The ACTING PRESIDENT (Hon Steve Martin): Members, the question is that the bill be read a second time.

Hon Sue Ellery: Before I stand, I had an indication that other members wanted to speak. They do not have to, but, if I stand, I end the second reading stage.

The ACTING PRESIDENT: I have asked. I give the call to the Leader of the House

HON SUE ELLERY (South Metropolitan — Leader of the House) [6.06 pm] — in reply: I thank honourable members for their contributions. There were a couple of consistent themes and then there were some specific questions asked, so I will deal with the themes and then get into the specifics, if I can, in my second reading reply. If not, we will be able to do it at the Committee of the Whole House stage.

We continue to face an unprecedented emergency with the COVID-19 pandemic. We are still facing uncertain times, and the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill (No. 2) 2021 is key to our ability to continue to manage the pandemic. The powers enabled by section 72A of the Emergency Management Act continue to be required while we increase WA's vaccination rates and will be required to keep public health and social measures in place to protect the community from COVID-19 into the future. *WA's safe*

transition plan outlines the state's path forward to minimise the impacts of COVID. It outlines safe conditions for interstate and international travel and provides certainty on how businesses and WA's way of life can continue safely with the introduction of public health and social measures once COVID-19 enters WA's community. The powers under section 72A remain vital to this plan and to effectively direct the isolation and testing of people arriving in Western Australia. We need to continue to have the capacity to make such directions. The powers will be needed to facilitate community-based events in a COVID-safe manner and for the safe movement of people in general, while having the agility to swiftly respond to any need to put in place further temporary restrictions. The powers are relied on for face-covering directions when necessary. They are also required for contact records and the continued use of the SafeWA app, which are integral to the state's ability to efficiently respond to and control ongoing risks. Ensuring that these provisions continue in the act for another six months is essential. The further extension will allow the government to respond to the challenges of the pandemic in the short term while vaccination rates increase, and in the longer term as we navigate the way forward.

Extension of the state of emergency will continue to be based on expert advice from the State Emergency Coordinator. It is critical that every tool that has served us so well to this point remains available to help keep us safe in uncertain times. In relation to amendments to the Criminal Code that increase the maximum penalties for the offences of serious assault and threats committed in the context of COVID-19, the increased penalties reflect the seriousness of this unacceptable conduct and convey that the government and Western Australian community does not accept such conduct. Because we rely so much on our frontline essential staff, it is critical that any people who assault or threaten them in the context of COVID-19 can be dealt with appropriately. On that point, a number of members raised the issue of whether threats of such behaviour or the behaviour itself has stopped or slowed since what might be described as the peak period of COVID in Western Australia last year. It has been put to me by the advisers that it is just as important to have real measures in place to deal with these threats as it is to send a message to our frontline staff that we have their back. Regardless of whether charges have been laid or allegations have been made about someone with COVID threatening to cough or spit on someone, the advice to me from those who represent frontline staff is that it is important to send a message to those people that these measures are in place to protect them and that we take seriously the work they do on our behalf every day. The bill will maximise certainty that we have the necessary tools in place to do everything we can to protect our state and help us with a long-term strategy as we continue to cope with COVID-19.

I will now turn to some of the specific comments made by individual members who contributed to the second reading debate. Hon Martin Aldridge made reference to the section 72A powers as being "draconian". Those powers allow immediate and ongoing directions to be made —

Hon Martin Aldridge interjected.

Hon SUE ELLERY: I understand; the member was talking about how they had been described by government. I understand that.

The controls and processes that arise from the directions made under section 72A are proportionate and necessary to the measures needed to prevent, control or abate the risks to the WA community from the spread of COVID-19. They are not excessive or restrictive. They are, I guess, draconian to the extent that they are unusual and serious, but we say that a serious situation requires serious measures. Section 72A requires any action to be reasonably necessary to prevent, control or abate the risks associated with the COVID emergency. The power to obtain information for the purposes of COVID management is also constrained and can only be exercised for the purpose of emergency management, and the information must be relevant to the COVID emergency.

The honourable member also raised the issue of reviewing the Emergency Management Act. While we are under a state of emergency, the government does not consider it to be an appropriate time to consider any formal review of the operation and effectiveness of the Emergency Management Act 2005 or the powers introduced by the Emergency Management Amendment (COVID-19 Response) Bill 2020. The effectiveness of the emergency management framework in relation to the COVID-19 pandemic hazard is continually considered through the mechanisms available under the Emergency Management Act—for example, the State Disaster Council, which was deployed when the state of emergency was declared. The Emergency Management Act 2005 also establishes various committees and decision-making structures at local, district and state levels, with appropriate cross-agency representation.

Through these structures, and at agency level, observations and insights are being captured regarding the response to COVID-19. Significant issues are escalated for immediate action and attention. It is anticipated that we will learn from the ways we have used our emergency management responses to COVID-19, as well as to other significant events of the past year, including the Wooroloo bushfire and tropical cyclone Seroja. Any proposal to change the existing emergency management arrangements will need to undergo a vigorous consultation process. I understand the point the honourable member was making about the timeliness of conducting a review of one of the parent acts that this legislation amends, but the government's position is that while we are in the midst of a pandemic and need to be able to quickly respond to changes, it is not the appropriate time to undertake a review of that legislation.

With regard to multiagency responses, it is important to note the interaction between the Public Health Act and the Emergency Management Act. I am not sure that every jurisdiction around Australia has used two specific legislative levers simultaneously to manage their responses to COVID, but Western Australia has. I know that some particular members have views about vaccinations and how they might be managed. They are covered under the Public Health Act, not the two acts that are amended by the bill before us today. This is about moving people and tracing, not the provisions that go to who must be vaccinated and what the vaccinations are et cetera. That is a separate piece of legislation and is not covered by the bill before us today.

Border restrictions, including vaccinations, fall under the EMA, but not mandatory vaccination requirements. Vaccination of the workforce falls under directions under the Public Health Act 2016. A state of emergency declaration under the Emergency Management Act 2005 provides for a coordinated multiagency emergency response. The provisions of the EMA are in addition to, and do not detract from, those of the Public Health Act 2016. The Public Health Act allows the Minister for Health to declare and extend a public health state of emergency, having considered the advice of the Chief Health Officer following consultation with the State Emergency Coordinator and being satisfied that the criteria regarding the occurrence of a public health emergency and the measures required, are met. The Emergency Management Act allows the Minister for Emergency Services to declare and extend a state of emergency, having considered the advice of the State Emergency Coordinator, and being satisfied that criteria regarding the occurrence of an emergency and the measures required are met.

The relationship between the Emergency Management Act and the Public Health Act anticipates and provides a simultaneous use of powers. It is appropriate for directions to be issued by the Chief Health Officer under the Public Health Act and by the State Emergency Coordinator under the Emergency Management Act due to the corresponding purpose, scope and application.

In reference to the use of section 72A powers for tropical cyclone Seroja, they were intended to improve the legislative framework to respond to and deal with the pandemic response. They were identified as necessary to deal with the COVID emergency as it was a challenge that was not envisaged or contemplated by the Emergency Management Act. The intent of having a sunset clause for section 72A powers was for the powers to only be available when there is a COVID-19 pandemic, but the provisions were never restricted in application to COVID-19. Section 72A is titled "General powers during emergency situation or state of emergency". It was inserted into division 1, part 6 of the act; division 1 is titled, "Powers during emergency situation or state of emergency". Section 65 provides that division 1 of part 6 of the act will apply if an emergency situation declaration or state of emergency declaration is in force.

By their very nature, the powers under the Emergency Management Act are not ordinary powers and cannot be used in ordinary situations. For the Emergency Management Act to even apply, there must be an emergency of such a nature or magnitude as to require a significant and coordinated response. An emergency situation declaration of a state of emergency cannot be declared unless an emergency has occurred, is occurring or is imminent, and the requisite powers and measures in the act are required to prevent or minimise loss of life; prejudice to safety; harm to the health of persons or animals; or destruction of or damage to property; or destruction of or damage to any part of the environment. Section 72A provisions were introduced for the purposes of the pandemic.

Tropical cyclone Seroja was a one-in-50-year exceptional event. Evacuation powers existed with the requisite plans, procedures and guidelines established. However, tropical cyclone Seroja presented a unique scenario as it required a directed evacuation for islands. These were very limited and unique. The availability of the section 72A powers allowed for the safe evacuation of the islands and bolstered community safety. The powers altered the mechanism for retaining information that was needed to move people to a safer location.

Hon Martin Aldridge: It also posed some questions around the discretion in sentencing.

Hon Darren West: Hardworking.

Hon SUE ELLERY: Yes; I forgot to say hardworking Hon Martin Aldridge.

The highest penalty handed down so far, since the commencement of these temporary provisions, is 12 months' imprisonment. That case involved a perpetrator spitting at a police officer and stating that she had COVID-19. There are a number of reasons that comparing the sentence type and length under similar provisions against the minimum sentence available is not necessarily helpful. Firstly, in sentencing an offender, the court takes into consideration a number of factors pertaining to the individual offender, such as whether the offender pleaded guilty, whether they have a criminal record and whether there are mitigating factors such as cooperation with law enforcement and any attempt at restitution.

Secondly, maximum penalties serve a number of purposes, including providing a limit on judicial discretion when imposing a sentence.

Debate adjourned, pursuant to standing orders.