

**COVID-19 RESPONSE LEGISLATION AMENDMENT
(EXTENSION OF EXPIRING PROVISIONS) BILL 2022**

Committee

Resumed from 17 May. The Deputy Chair of Committees (Hon Peter Foster) in the chair; Hon Stephen Dawson (Minister for Emergency Services) in charge of the bill.

Clause 1: Short title —

Progress was reported after the clause had been partly considered.

Hon TJORN SIBMA: I am bringing myself up to speed with where we left off last evening. From my recollection, we were talking about the advice the minister relied on to bring this submission to cabinet—and, obviously, cabinet-in-confidence has been invoked. Might I ask whether there was another note or perhaps another piece of advice that was not attached to that cabinet minute? I put this question to officials at the briefing. For example, was an overall risk assessment conducted by the Chief Health Officer or the State Emergency Management Committee that would allow us to contextualise the bill we are being asked to pass?

Hon STEPHEN DAWSON: Not that I am aware of.

Hon TJORN SIBMA: Relatedly, we are here to deal with the bill, but the bill's obvious connection to state of emergency declarations is worth some examination, but not an undue one in the time-limited debate we are operating under. If I recollect the advice the minister provided last evening, and I am also guided by an answer I received, helpfully, from the minister last week via the questions on notice system, it would be worthwhile for the chamber to comprehend the process or the deliberations the minister undertakes when he receives advice to the effect that a state of emergency declaration is the right and appropriate thing to do. If I am to recall the advice the minister provided to this chamber and I correctly recall the advice I received via the questions on notice system last week, principally speaking, at least in the period since December last year since the minister has held the portfolio, the minister has relied consistently on verbal briefings rather than a piece of written advice to the effect that an emergency declaration is warranted. Can I confirm that the minister's decision-making has been strictly informed by verbal advice, written advice or a combination of the two?

Hon STEPHEN DAWSON: As the member alluded to, first, the member is correct that I did become the minister in December last year; and, second, in my answer to a question I gave to the member some time ago, I said that every 14 days the Commissioner of Police, who happens to be the State Emergency Coordinator, provides me with a detailed verbal briefing on the current state of emergency and makes a recommendation. It is based on that advice and in accordance with section 58 of the Emergency Management Act that I have determined thus far that the extension was appropriate. I am also a member of the security and emergency management committee of cabinet and the State Disaster Council, which meets from time to time. So, being part of those meetings, together with the briefing I get from the State Emergency Coordinator, puts me in a position that I can make a decision on the extension or not of the state of emergency.

Hon TJORN SIBMA: This question might be more appropriate for me to put to the Western Australia Police Force should it be invited to participate in budget estimates hearings, because no doubt COVID-19 management will be a feature in some part of the police portfolio budget. I would assume, for probity sake, whether it be the commissioner or other senior officer in uniform providing the minister with that verbal advice, they are relying upon an aide-mémoire or a written document of some kind. I wonder to what degree those documents, which I will put to the minister now, should have been developed and are discoverable documents? That will help us understand how our officials conceive of a statewide state of emergency. My question is: are documents of that kind readily available and is the minister in a position to table them now? I assume the answer might be, no, but is that a course of inquiry I am better off taking through the estimates period, questions on notice or another process rather than at the table now?

Hon STEPHEN DAWSON: The member is best placed to ask that question during estimates.

Hon TJORN SIBMA: This is not intended to be speculative but is to help the chamber, through my own humble efforts, understand the decision-making process. As the minister said in the second reading speech, this is a responsibility he takes seriously, and I have no doubt about that, but, say, in the most recent two or three extensions that the minister has been advised to declare, what are the key factors that drove his decision-making? I want to ascertain what they are, because there are a number of factors but some would loom as being far more prominent and meaningful than other factors. I do this to invite an answer. Is it just the modelling of future overall case numbers of COVID, is it some informed view about the number of patients likely to require hospitalisation within a certain period of time or is it more precise? There has been slightly—I will not say competing, but there have been a number of variables cited by the minister and the Premier as principally driving the decision on not only this bill but the ongoing states of emergency. I want to understand, because these factors have changed over the last two years. Therefore, the

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factors that drove the decision initially in March 2020 would be completely different from the kinds of factors and issues the minister gives consideration to now. Are there particular regions of the state, for example, that cause the government more concern than others?

Are conditions in the Pilbara or the Kimberley driving this decision to perpetuate the state of emergency more than, for example, the underlying health issues or system capacity in Perth and Peel? I am just trying to understand first and foremost what the principal factors are and then I have one or two follow-up questions on this train of thought.

Hon STEPHEN DAWSON: As we have spoken about already, I have been the minister now for five or six months so I cannot comment on how earlier decisions were made. Certainly, I have taken the role very seriously since I have been in it. The Emergency Management Act 2005 defines an emergency as —

emergency means the occurrence or imminent occurrence of a hazard which is of such a nature or magnitude that it requires a significant and coordinated response;

The act states a “hazard” means a range of things including “a plague or an epidemic”. I am briefed by the State Emergency Coordinator on a weekly basis. I rely on the State Emergency Coordinator to first off tell me that the state of emergency is needed. That is that person’s statutory role. Then, in those briefings, the State Emergency Coordinator will talk me through the various issues of the moment—that is, the number of people in hospital and intensive care units, the number of cases in the community and the likelihood that the number of cases will grow or otherwise. The member will be aware that there are 10 current directions made in reliance to section 72A of the act for things like wearing face coverings during air travel, international borders, testing and isolation, cruise vessels, maritime crew members, proof of vaccination, regulated entry of high-risk vessels, remote Aboriginal communities and transiting aircraft passengers. They are the current directions in place. The State Emergency Coordinator will tell me whether we need to keep this or that; therefore, it is their recommendation that we need to continue the state of emergency. Based on that advice, I make a decision.

The DEPUTY CHAIR (Hon Peter Foster): Before I give the call to Hon Tjorn Sibma, I remind members about supplementary notice paper 70.

Hon TJORN SIBMA: Thank you, deputy chair, for that reminder.

I will not necessarily hold the minister strictly to this, but his advice to us is that he has weekly meetings with the State Emergency Coordinator —

Hon Stephen Dawson: Fortnightly.

Hon TJORN SIBMA: I am corrected; it is fortnightly. Presumably the State Emergency Coordinator relies upon a written document of some kind to guide the provision of their advice to the minister. Is that a fair assumption for me to make?

Hon STEPHEN DAWSON: The State Emergency Coordinator seeks advice from the Chief Health Officer. It is my understanding that on the day, or indeed the day before, the State Emergency Coordinator meets with me, they would have had a meeting with the CHO.

Hon TJORN SIBMA: The line of advice is Chief Health Officer, through the State Emergency Coordinator to the minister. Presumably those people cannot always be in the same place at the same time and there is likely to be the provision of written advice from one to another. Even if the State Emergency Coordinator does not provide written advice directly to the minister, they have some written document that guides their recommendation to the minister that a state of emergency declaration should be extended again. I just want to understand that. The question sounds very mechanical, but I just want to understand the process.

Hon STEPHEN DAWSON: I honestly cannot say whether a document is relied on or not. In my case, I have met with the State Emergency Coordinator face to face every 14 days, with the exception of one occasion when I was at home with COVID-19 and the State Emergency Coordinator was face to face with me on a screen. I am also advised that face-to-face meetings happen between the CHO and the State Emergency Coordinator. Both of these people are living this stuff not on a daily basis but minute by minute, so I am not aware of what documents they rely on or not.

Hon TJORN SIBMA: At the meetings undertaken with the State Emergency Coordinator, at which they advise the minister of their recommendation that a state of emergency be declared, is anyone else present, or is it exclusively between the minister and the State Emergency Coordinator? For example, is a member of the minister’s staff present at the meeting? Are file notes of the meetings kept?

Hon STEPHEN DAWSON: My chief of staff attends the meetings with me. When my chief of staff is not available, another staff member will attend. I do not believe file notes are kept. The State Emergency Coordinator often has—I am just trying to remember whether it is every time—another officer with them. Certainly, my most recent meetings have been with the acting Commissioner of Police and therefore the acting State Emergency Coordinator. In that case, an officer is present, but I am not sure whether file notes are kept on their side of the conversation.

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Hon TJORN SIBMA: Another member might want to take up that line of questioning because I want to limit my contribution to contemplating clause 1. As I understand it, the state of emergency powers under section 58 of the act—I think other sections allow for the rescinding and extension of the powers—provide for a state of emergency declaration to be made either statewide or localised to deal with particular prominent local circumstances. I think it is fair to assume, as a member who has taken an interest in the overall issues of the last two years, that the capacity of the health system, for example, or the underlying community health profile of certain sections of this state, is not equally distributed. I will put it to members this way. The state of emergency declarations that have been made consistently every fortnight for the last two years have applied across the entire state, and that largely suggests there is a risk profile that is universally shared across the state. In what circumstances—this is more hypothetical—would it be appropriate for a statewide emergency declaration to be rescinded and perhaps more particularised to a regional community? Are there a set of factors, for example, that would drive that kind of differentiation? If there are those key attributes—I might be phrasing this wrongly, but I think I am getting across the gist of it—what would they be and how would that determination be made? For example, could a state of emergency exist in Perth and Peel and in the Kimberley coincidentally or, to the contrary—this is where I am going—could there be one for COVID-19 management of, say, various Aboriginal communities in the Pilbara that requires these special powers and directions but that would not reasonably apply in Perth and Peel? How would that determination be made if, indeed, that is a determination the government is likely to make?

Hon STEPHEN DAWSON: During this pandemic we have already had directions focused on particular locations. The member would recall when we had restrictions on Perth and Peel, for example, earlier in the pandemic, or the Kimberley or whatever. I will not get into the hypotheticals, but certainly back to an earlier point the member made, there are 15 500 to 16 000 cases reported today, and there are still hundreds in the different regions of regional Western Australia. The virus does not know regional boundaries, and so the virus can spread, it has spread and it does spread across those boundaries. Is it conceivable in the future that we would potentially move to focus on a localised declaration? It is conceivable. At this stage, though, given the information that I get from the State Emergency Coordinator about the prevalence of COVID-19 around the state; the impacts of COVID-19 on people who live in the regions as well as the city; and the number of people with COVID-19 who are either dying, who have got it, who are in ICU and hospital beds, all those pieces of information are taken on board by me at this stage and will continue to be so. Could I conceive a change in the future? Potentially.

Hon TJORN SIBMA: This is my last question on this theme, minister. Rather than being briefing specific, I suppose, over the course of the last five or six months, has there been discussion from the Chief Health Officer, emanating from the State Emergency Coordinator or more broadly with the minister's colleagues about when and under what circumstances a state of emergency declaration would be no longer valid or appropriate? I appreciate that no government wants to get into hypotheticals, but, for example, I think within the second reading speech and certainly within the media statement that attended the introduction of this bill, the point was made very explicitly that even though the bill is proposed to be in effect for a six-month period, one should not automatically assume that there will still be a state of emergency in six months. Perhaps, if it is possible to elaborate at all, because I think it will be useful, under what circumstances would it be determined that a state of emergency declaration is no longer appropriate for the management of COVID-19 in Western Australia? I am trying to understand what the drivers are and factors would be that would drive that outcome.

Hon STEPHEN DAWSON: The short answer is: when it no longer meets the definition of emergency and when the powers are no longer required. The member is quite right; we said that this bill does not guarantee there will be a state of emergency for the next six months. This is the framework that allows it to happen, but I make the decision every 14 days based on the information at hand and the information and advice given to me by the State Emergency Coordinator. It is on a 14-day basis. Given how COVID-19 has evolved over the past two years, I cannot and I will not hypothesise on what might and might not happen. I take it from meeting to meeting, and I take the decision I have to make very seriously.

Hon MARTIN ALDRIDGE: On this issue of advice, I just want to get some clarity from the minister. He has stressed the point that every 14 days he has to make an informed decision. If I look at the relevant sections of the Emergency Management Act, being sections 56 and 58, section 56 provides a power that the minister may make a state of emergency declaration.

I want to quote particularly subsection (2), which states —

The Minister must not make a declaration under this section unless the Minister —

- (a) has considered the advice of the State Emergency Coordinator; and
- (b) is satisfied that an emergency has occurred, is occurring or is imminent; and
- (c) is satisfied that extraordinary measures are required to prevent or minimise —
 - (i) loss of life, prejudice to the safety, or harm to the health, of persons or animals; or

- (ii) destruction of, or damage to, property; or
- (iii) destruction of, or damage to, any part of the environment.

Those are, obviously, the terms of the minister's powers under section 56 to make a declaration. Obviously, what Hon Tjorn Sibma has been pursuing is more relevantly found in section 58, "Extension of state of emergency declaration", which is what the minister has been canvassing with the member about this 14-day requirement. Is it the case that under section 58 the minister is not required to consider any person's advice, receive any information or even form a view in utilising powers granted to the minister under section 58 in extending a state of emergency?

Hon STEPHEN DAWSON: It is at my discretion if it is extended, but it is inferred that I would base my decision on section 56 of the act. As the member pointed out, section 56(2) says —

The Minister must not make a declaration under this section unless the Minister —

- (a) has considered the advice of the State Emergency Coordinator; —

Which I do on a fortnightly basis —

and

- (b) is satisfied that an emergency has occurred, is occurring or is imminent; —

Which I am —

and

- (c) is satisfied that extraordinary measures are required to prevent or minimise —

- (i) loss of life, prejudice to the safety, or harm to the health, of persons or animals ...

Which I am. The latest figures I have at hand are 15 600 cases, with 300-odd people in hospital yesterday, 11 in ICU and we are up to 201 deaths; that is current and ongoing. I am confident that my decision aligns with the act and, as I said numerous times—I have to stress it again—I do not make the decision lightly, but I can sleep at night because I know it is the decision that I should be making as the minister.

Hon MARTIN ALDRIDGE: I think the minister might have missed my point—that is, the distinction between sections 56 and 58 of the EMA. Unless I am mistaken, the minister has never exercised the power under section 56 because it was Hon Fran Logan, as the then Minister for Emergency Services, who exercised for the power afforded to the Minister for Emergency Services to make a declaration of a state of emergency. I do not believe the minister nor his predecessor Reece Whitby has ever made a declaration of a state of emergency. What he has made, however, is a decision pursuant to section 58, which is an extension of a state of emergency. My question was, in doing so, my reading of the EMA is that the minister is not required, as he would be under section 56, to consider the advice of the State Emergency Coordinator, receive information or be satisfied that certain things are occurring in informing a view that a state of emergency should be extended. I hope I have clarified that question to make a distinction between those two points.

Hon STEPHEN DAWSON: The honourable member is correct. Section 58 does not say that; however, the actions that have been taken by me and my predecessors over the past two and a bit years have aligned with section 56. The decision was made at the outset, the member is correct, by Hon Fran Logan, and has subsequently been made by other ministers, including Minister Whitby and myself. When we make a decision on the extension of the state of emergency, we take into consideration section 56(2) and make sure that it aligns with that.

Hon MARTIN ALDRIDGE: I might just conclude making this point, because I know my colleagues to the left are also seeking the call. On the last occasion that we considered this extension, one of the points I made is that we ought to get on with reviewing the EMA. The statutory review is overdue and this is one aspect. If I go to Hon Tjorn Sibma's point in his contribution to the second reading, it was an act that was designed, I am sure, without considerable, if any, contemplation of the management of a pandemic or indeed any type of emergency that has extended into its third year. This is a case in point whereby the minister is compelled under section 56 to have undertaken and given consideration to certain factors, but once that decision occurs, the minister, one person in Western Australia, the Minister for Emergency Services alone, has the power without any significant constraint, if any constraint at all, to perpetually extend a state of emergency. It is satisfying to hear that the minister has utilised the spirit of section 56 in making an informed decision every 14 days, but it still remains that he is nevertheless not bound to. What concerns me is that these decisions may well seem routine in nature, but the consequences of the decisions and the directions that are often then formed from the utilisation of these emergency powers come back to these routine decisions. Once again we are standing in the Parliament, trying to get an understanding of this decision-making process—who is advised, how is it given, who keeps a record—and what is the decision-making matrix that says at this point in time it is our view that it is likely that we will not need a state of emergency. Are we still pursuing a zero-case goal? When we no longer have COVID-19 in Western Australia or there is no such thing as COVID, we

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will no longer need to have a state of emergency declared or extended for that matter. It is a comment, not a question, minister, and an encouragement for the government that a statutory review of the Emergency Management Act is overdue. It would be timely to review that act in the context of the ongoing use of that act for a purpose that I am pretty sure was not contemplated at the time of its passage in 2005.

Hon STEPHEN DAWSON: The honourable member's comments are noted. He is technically incorrect in that a statutory review of the act took place in 2013. My advisers tell me that there is no requirement to undertake a review of the act. However, we have had lots of learnings over the past two and a half years and those learnings will be taken on board, but they will not be reviewed during the pandemic. In my view, those learnings should be taken on board post-pandemic. I want to put on the record that the act itself was formulated with the best of intentions, but the member may be correct in that potentially people could not foresee the need for a state of emergency for a number of years to deal with anything like what we have seen over the last while. The learnings will be taken on board at some stage. There are lots of learnings to have because, who knows, this may not be the last pandemic for 100 years so we need to be ready for the next one.

Hon Dr BRIAN WALKER: I am taking on board the evident care of the government in ensuring that the best needs of the community are indeed met. The questions I have are to basically help my understanding. Under the definitions of the Emergency Management Act 2005, "emergency" means —

... the occurrence or imminent occurrence of a hazard which is of such a nature or magnitude that it requires a significant and coordinated response;

Is it true to say that when using these criteria, the definition of an emergency would very much be in the eye of the beholder? For example, if it were a matter of a fire, those of us who have never experienced a fire would think that it is an emergency, whereas those who are experienced firefighters would think that it is a minor thing that can be fixed quite quickly. The degree to which a state of emergency exists would depend to a large extent upon the comfort of the person making that declaration about whether it can be managed quickly or it is going to a problem. Am I correct in that thinking?

Hon STEPHEN DAWSON: I am not quite sure that the honourable member is. If we are to use the member's language, under the act I am the beholder. I am the Minister for Emergency Services and so the buck stops with me in terms of the state of emergency. The member might have a different view, notwithstanding that Hon Martin Aldridge has pointed out that I do not need to take into consideration section 56 of the act when I make my decision under section 58. However, I do take it into consideration and I am confident and comfortable that my decision lines up with section 56.

Hon Dr BRIAN WALKER: Thank you for that assurance. I am comforted by that. It does point out, however, that there could be differing opinions of that. The second aspect of this is that if a state of emergency has been declared, at what point do we move from the declaration of an emergency—recognising the problem—to actually having control of the tools that we need to manage the emergency? Declaring an emergency again and again would imply that we do not have the controls that we need. We need to modify those controls again and again, rather than use the tools that we have at our disposal, having an emergency declared and then letting us run because the people who should manage it are indeed managing it.

Hon STEPHEN DAWSON: We have continued to learn as we have progressed through this pandemic. It is on the record now that 573 directions have been made. At the moment, we are essentially living under 10 directions. We continue to move and evolve. I cannot say at what stage we will no longer need to extend, but I continue to rely on the advice that I get from the State Emergency Coordinator on a fortnightly basis. If the person in that position tells me, based on their advice and knowledge, that an extension is required, I am at liberty to consider that. If I am confident in the information that they have told me, and I have been this far, then I extend. As to when it might stop, if the State Emergency Coordinator tells me that an extension is no longer required, that is plain and simple for me.

Hon Dr BRIAN WALKER: Again, I am very comforted. I have read through—albeit with the eyes of a layperson—the Emergency Management Act 2005, the COVID-19 Response and Economic Recovery Omnibus Act 2020 and the Public Health Act 2016—awesome powers in there. What I have failed to find is any justification for section 72A in the Emergency Management Act. I fail to see how that would enhance the awesome powers that the minister already wields.

Hon STEPHEN DAWSON: Section 72A allows us to apply the powers to a class of people, whether that be for things like borders or contact tracing. That is not enabled under the Public Health Act. I will say it again, and I kind of said it yesterday, that I am not an expert on the Public Health Act. It is not my act and it is not for me to suggest the merits or otherwise of that act or the changes that might be needed. What is before us is my act and a decision has been made by cabinet that an extension of the provisions that we passed previously are required under this act.

Hon SOPHIA MOERMOND: I appreciate the considered responses and questions that are being discussed here. I would like to comment about possible future pandemics. When we are thinking about the future, climate change

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will be a huge contributing factor, especially when we look at flooded areas and a variety of pathogenic bugs. The other factor within that is that currently we are experiencing a defrosting of the permafrost and we have no idea what will necessarily be released by that process. In my substantive contribution yesterday, I spoke about how the government might consider pandemic-specific legislation so that Western Australia does not have to always be living under a state of emergency. After having raised pandemic-specific legislation and a number of other issues with the minister, his entire response has been rather dismissive of me. I would really like to see us have pandemic-specific legislation for the future, because that is a big concern.

At this stage, I would like to move amendment 1 standing in my name —

Page 2, line 4 — To insert before “*Extension*” the word “*Final*”.

This is an opportunity for the government. It is practical and it is clear. It will send a message to the public that this will be the final extension of this kind. It will provide clarity to the public and allow the government to move towards a situation in which it can draw up pandemic-specific legislation for the chamber to debate, and we can move on from dealing with this so-called emergency.

I listened with interest to my colleague Hon Wilson Tucker last night. I have to say I do not have the same type of trust that he has that this government will simply do away with these powerful laws the moment it does not need them. What is the bet that we will be back here in another six months? There has to be an end point. We have to move on. We must learn to live with COVID. I urge the government to work with us and pass this simple amendment to ensure that Western Australia can move out of the state of emergency and we can get on with life in this beautiful state.

Hon STEPHEN DAWSON: I am not in a position to support the member’s amendment. I am disappointed that the member thinks I have been dismissive of her, because that is not how I operate as a member of Parliament. Every member in this place is entitled to their opinion. I might not like the member’s opinion but I recognise that she has the right to have it. Please do not see me as being dismissive. I have a different point of view from the member, but the member is entitled to have her view.

We are not supporting this amendment at the moment. I wish I had the member’s confidence that this will all go away, and it will go away soon. The member’s amendment seeks to insert the word “Final”. I hope I will not need to use my powers under the act to keep extending the state of emergency. However, I am not going to soothsay and say that later this year, on 20 November, the pandemic will be over, because I am not confident that will be the case. We are not supporting the amendment.

Hon MARTIN ALDRIDGE: A number of the proposed amendments on the supplementary notice paper are related. We are now dealing with the proposed amendment to clause 1. We have further proposed amendments to clauses 4, 5, 7 and 9, and the long title. The intended purpose of these collective amendments is to amend the date of the proposed extension from 3 January 2023 to 20 November 2022. I will make some comments about the package rather than this amendment alone, because they are related. This proposed amendment to clause 1 is probably more symbolic than anything else. The real change would occur at clauses 4, 5, 7 and 9 with respect to the dates, and the dates vary, which we may come to if the member moves those amendments in time.

The opposition’s position is to oppose the bill. We have not been convinced by the government that the emergency powers need to be extended beyond 4 July of this year, nor have we been convinced that there are no other forms of making and enforcing directions pursuant to other acts. We will come to that matter in more detail later during this time-limited consideration stage of the bill. Having said that, the intent of the mover of the amendment is to effectively reduce the time to which these expiring provisions will be extended. We support the spirit of that, but note that our preference is that the bill be opposed, unless the government can justify the reasons that these section 72A powers in particular ought to be extended beyond 4 July this year.

Hon Dr BRIAN WALKER: I have to say out front that I support what the government has been doing and continues to do. The government is doing a reasonable job as far as can be expected, but it could be better. I also believe that the public, who are expecting from us good support and good leadership, would also be looking with great interest at what happens in our chamber today. The extension of these emergency powers on a continual rolling basis is creating a perception of fear in the community. We ought to come to terms with the fact that there has been a problem, it has been managed and it continues to be managed, and it needs to now be formalised in the form of, as suggested, a pandemic organisation or committee. This pandemic will continue. The minister is quite right. It will continue for a considerable time, and other infections and plagues are going to come along, and, indeed, other problems of a similar nature. It would be helpful if the government would focus on this, rather than continuing what it has been doing. This is an opportunity. Over the next six months the government could very well bring in very reasonable pandemic-specific legislation that would enable us to work in the future to the same high degree that we have been working now, without this continual state of fear. Yes, there is an infection, yes, people are dying, and, yes, it is frightening, but we are dealing with it. In the words of World War II, we need to have a stiff upper lip and carry on. We are not going to be beaten by this. We are not going to be cowered by some invisible thing that can strike out

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of nowhere. That is not who we are. We are strong. We are resilient. We are not going to be covered into a corner and worried about a virus that may well kill me—who knows? Carry on.

The government will not have time to create such suitable legislation if it continues with the repetition of these emergency powers. We would support the government in this. I would be prepared to support the government in an extension of this legislation until the end of this year, not into 2023, to give it time to create suitable legislation that would enable future developments for managing pandemics. That would be a sensible thing to do. It has happened in Victoria; it has passed that law already. That is an example that we could follow. South Australia is also an example that we could follow. We need to be on the front foot here. This proposed amendment is an attempt to support the government in the excellent work it has been doing, but to enable it to do it better, and to serve the population better. I support the amendment and hope that the government will support it as well.

Hon STEPHEN DAWSON: A number of people in this place are being a bit disingenuous. They chose at the second reading of the bill to vote against the legislation, and they lost that. They are now trying to have a second bite of the cherry. We have made a decision as a government that we believe a six-month extension is warranted. We stand by that decision. We will not be supporting the amendment in Hon Sophia Moermond's name.

Amendment put and negatived.

Hon MARTIN ALDRIDGE: Yesterday, in the brief time that we had to debate clause 1, I talked about the advice that the minister had received as part of the cabinet process. The State Emergency Coordinator had taken advice from the Chief Health Officer, and we were told that that advice to the government about whether these powers should or should not be extended was cabinet-in-confidence. I do not suppose that position has changed overnight. Notwithstanding that the government has changed the position that it took in 2021, when the minister's predecessor did provide that advice to the Parliament, did we establish yesterday whether the advice that the State Emergency Coordinator had provided to the government was that he supported an extension of these powers for six months, or was it something else?

Hon STEPHEN DAWSON: I do not propose to go over ground that we covered yesterday, honourable member. *Hansard* is available for people to read. I will just say that the State Emergency Coordinator has given me advice that the extension should happen for six months. I have acted on the advice. I am not going to go back over yesterday. Deputy chair, I do not believe it is appropriate to go back over old ground that was debated in this place yesterday. This is a time-limited debate. There are a number of other amendments on the supplementary notice paper that we need to get through, so I will not be answering questions that I answered yesterday.

Hon MARTIN ALDRIDGE: I will take up the minister on his offer of checking the uncorrected *Hansard*. The minister said yesterday that activating the Emergency Management Act rather than the Public Health Act provides the appropriate framework and was designed for a significant and coordinated multiagency emergency response. He said declaring a state of emergency under the Emergency Management Act has the benefit of establishing a comprehensive emergency management framework. That was a more nuanced position than perhaps what was put to us in our briefing, which was that the government opted to use the Emergency Management Act in this situation because the Commissioner of Police has a role to play and it was more appropriate. Effectively, the government took a position that it wanted the police in charge of the pandemic response so therefore the EM act was the appropriate vehicle. My question is about a press conference I listened to that occurred just a short while ago in relation to ambulances with the Premier, the Minister for Health, the acting Commissioner of Police, and the director general of the Department of Health. Acting Commissioner Col Blanch said that on a daily basis, roughly 400 to 500 police officers are furloughed as a result COVID-19. He also said part of the reason that that is not so much of an issue is we have brought back 450 officers from Operation Tide. My understanding is that 450 officers is probably about the entire Operation Tide. Is anyone from the Western Australia Police Force still managing the COVID-19 response; and, if so, how many are there?

Hon STEPHEN DAWSON: I am told that Operation Tide has essentially been completed. There are three officers who are still tidying up, if I can use that phrase. The directions have been transferred to the regional offices to be undertaken as business as usual. That is managed through the state operation centre of WA Police.

Hon Martin Aldridge: To what—regional officers?

Hon STEPHEN DAWSON: To the police as regional operations.

Hon Dr BRIAN WALKER: I have one final question. There has been a lot of activity on the part of the emergency management teams but I have yet to see any chance for the Legislative Council to do its due diligence to review what is going on and to ensure that the advice given to government is suitable. There is quite a lot of potential for us doing our duty as servants of the state to investigate how things could be done and maybe offer our advice for the ongoing management of this emergency. Where in the act, if anywhere, is there potential for the leadership in government in this chamber to play a role in reviewing and revising?

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Hon STEPHEN DAWSON: The Legislative Council does not feature in the act if that is what the honourable member is talking about. As I alluded to earlier on, there have been many learnings over the course of the last two and half years in relation to the act and the pandemic more specifically. At some stage, consideration will be given to the types of changes that we may want to look at in the future to make the act as up-to-date as possible. Obviously, all in good time there will be opportunities for the community or members of this place to participate at that stage.

Hon MARTIN ALDRIDGE: Minister, thanks for your advice earlier on Operation Tide; it was useful. The minister's comment about the policing function now being regionalised, is that more to do with matters of compliance? Obviously, if someone is not isolating or if there are other aspects of noncompliance with directions, is that why it would be a regional policing issue, as opposed to some centralised COVID-19 unit within Western Australia police?

Hon STEPHEN DAWSON: As I have mentioned earlier and I am happy to mention it again, only 10 directions exist currently made in reliance on section 72A. They are things like face coverings and the international border directions. We no longer have borders at the airport, for example, or the contact tracing that went on previously. There is no longer the body or breadth of work that was needed during the height of the pandemic. Because the directions are limited now, that work can be done regionally; whether it is a metro or regional operation, it is part of police.

Hon MARTIN ALDRIDGE: Thanks for that clarification. It is more the operationalisation of the directions—not strictly compliance but obviously compliance is an aspect. On the directions, it is probably a matter best explored at clauses 8 and 9 when we are actually dealing with the relevant EMA clauses, but we were given a list on Tuesday of the 10 active directions that rely on section 72A. We were also given quite a long list of 563 redundant directions, which I think I made comment on in my contribution to the second reading debate which, in and of itself, demonstrates the point that we are at in the pandemic if we took a very simplistic assessment of the number of directions that are in force, notwithstanding some of them are still significant. Has that list changed since last Tuesday? If so, is the minister in a position to present the current information to the Legislative Council?

Hon STEPHEN DAWSON: The list has not changed since the member's briefing last week. The directions remain current at 10 and the 563 non-current directions remain the same my advisers tell me.

Hon MARTIN ALDRIDGE: Perhaps this is something the minister could take on notice before we get to clauses 8 and 9. The thing that drew my attention was that I looked at the COVID transition testing and isolation directions, number 13. I understand that that has been revoked and a new direction has been issued. I think that occurred on 13 May, some days ago. I wonder whether the minister could check the current validity of the list of directions and, if it is dated, whether a new list could be presented when we get to clauses 8 and 9.

Hon STEPHEN DAWSON: I am happy to answer that now. The directions remain the same. There may well have been minor amendments. The one that the member just pointed out was called number 13; it is now called number 14 but, essentially, the list of the 10 remain current, albeit with minor changes.

Hon MARTIN ALDRIDGE: That is fine. One of the questions I want to ask I raised during my response to the second reading speech and the minister may have missed it in his reply. It is on the annual report of the State Emergency Management Committee in the last reporting period. I draw the minister's attention particularly to pages 23 and 24 of the annual report where specific reference is made to the Department of Fire and Emergency Services providing analysis of the use of the Emergency Management Act 2005 and Public Health Act 2016 to assist with the management of the COVID-19 response. Is the minister aware of this analysis that occurred approximately one year ago? It is a matter that directly relates to the issues before us, so is the minister in a position to provide that analysis to the chamber in considering this bill?

Hon STEPHEN DAWSON: I am aware of page 23 of the report that the member referred to. The annual report of the State Emergency Management Committee has been brought to my attention. It mentions that DFES provides analysis of the use of the EM act and the Public Health Act to assist with the management of the COVID-19 response, and was dated 7 May 2021. I have not seen it. I understand that either Hon Martin Aldridge or one of his colleagues asked a parliamentary question on this issue. In that question, he may well have asked for a copy of the document. That is the appropriate way. I do not have access to it here. If it has been asked for under that process, that answer will be provided at the appropriate time. I have not seen it and I do not have it.

Hon MARTIN ALDRIDGE: That is interesting. This advice to the State Emergency Management Committee on the operation of these two acts in the management of COVID-19 was provided over a year ago. It is a matter of direct relevance and interest in my view in contemplating this bill. I would have thought it would be a matter of relevance and interest to the cabinet in contemplating a cabinet submission from the minister with respect to the ongoing section 72A powers. I must express some disappointment but also some surprise that, again, in the interests of understanding the government's position and the operation of two acts concurrently with respect to two concurrent states of emergency, it appears we are going to make progress on this bill without knowing what this expert analysis

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was or, indeed, whether it was contemplated by government in deciding whether these temporary powers ought to be extended, or indeed some other approach. It could well have been the expert analysis of DFES. We are now into our third year of the pandemic. The Emergency Management Act was never designed for this purpose. We are still dealing with temporary extensions every six months. How about we put in place a set of arrangements now that futureproofs our state against future pandemics, which I know many members have spoken of so far in this debate? Again, it surprises me that this is another piece of relevant information relating to this bill that the Legislative Council is not able to access.

The minister made a couple of references—I think he was probably warming up to some stronger points—about not being in a position to make comments on the Public Health Act. When contemplating whether these temporary powers needed extending or when contemplating the advice he received from the State Emergency Coordinator, was that a matter of relevance? The government has argued this exact point: the emergency powers in the Public Health Act are comparable to the Emergency Management Act. As far as I am aware, that matter is not in dispute and has been recognised by the government on previous occasions. Were the merits of amending the Public Health Act in favour of seeking a short-term extension, albeit six months, to the Emergency Management Act contemplated by the minister or the person advising him?

Hon STEPHEN DAWSON: As the member would be aware, I am not responsible for the Public Health Act; I am responsible for the Emergency Management Act. However, my adviser, as I have indicated previously, is the State Emergency Coordinator. He indicated to me that it was his belief that the provisions before us should be extended by six months. My decision was based on that. I took a document to cabinet as a result. I am not responsible for that other act. That was not a consideration of mine.

Hon MARTIN ALDRIDGE: This is the problem with the government operating in silos like this: “This is not my responsibility; this is another minister’s responsibility.” Even though we have two states of emergencies invoked by two ministers and extended by two ministers, there does not seem to be a committee meeting of these people to say, “How about we contemplate a different way of moving forward into our third year of a state of emergency?” I will use this point. Three things were identified in the second reading speech but also in the briefing as being essential to the extension of these section 72A powers; firstly, face covering directions; secondly, test, trace, isolate and quarantine directions; and, thirdly, border unvaccinated travel directions. The point that I made in the briefing to the first one is that if our Public Health Act is deficient in requiring face coverings in certain circumstances, which I am not sure is the case, then we have a real problem and why are we not turning our minds to that? The second question that I put to the isolation TTIQ example related to the fact that surely the Public Health Act provides provisions for quarantine. The claim being made was that this direction could only exist with the section 72A powers. That may well be true if we are looking at the Emergency Management Act in isolation. I am sure the minister will get up in a moment and say that he is the Minister for Emergency Services, not the Minister for Health, and he cannot comment on the Public Health Act. This is exactly the problem. When I challenged that assertion during the briefing, it was made quite obvious that the Public Health Act does have provisions that are relevant to quarantine.

This is what concerns me with the government’s approach on the fifth occasion, entering the third year—we seem to still be operating in silos with concurrent states of emergency and concurrent directions. Surely there is some coordination but, of course, that coordination is occurring in the State Disaster Council, which sits concurrently with the State Emergency Committee of cabinet. Not only are we in a state of emergency, but we are also in a state of secrecy because never shall we know what the State Disaster Council considers or what decisions it makes. For the fifth time, we are facing this problem of making an informed decision. The minister talks about making informed decisions. I want to make an informed decision about whether this six-month extension is warranted or whether there is a better way of doing business. As I said in my second reading contribution, the minister will have the full support of the opposition in considering the deficiencies of the Public Health Act and correcting them prior to the sunset clause of 4 July.

Hon STEPHEN DAWSON: The member’s comments are noted. The decision on which act will be utilised to give a direction is made having regard to operational and legal considerations. The decision to use one act or the other does not mean the other act is deficient. As I have indicated previously, the government made a decision to bring this bill before us today. The member may have a view on the Public Health Act, and that is his right as an honourable member. He has also made it clear to me, by voting against the second reading of the bill, that he is against the bill before us now. I will take his comments as being issues of interest to him, but this is the act that we intend to amend to keep the state of emergency in play for the time being. Whether one act is better than the other is for other people to decide. I will not be giving legal interpretations or opinions this afternoon, as I believe section 105 of our standing orders does not want me to.

Clause put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Section 318 amended —

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Hon TJORN SIBMA: I had questions on this clause and on clause 5, which I addressed last evening, but I do not recall the reply to them. I want to reflect upon two issues that were raised: one was in the second reading speech, which is the more relevant source document, and the other was in the media statement of 10 May.

I draw the minister's attention to the second reading speech and its reference to the Criminal Code amendments that are embedded in the bill. The minister said —

I now turn to the Criminal Code amendments contained in this bill. The Criminal Code Amendment (COVID-19 Response) Act 2020 amended the Criminal Code to increase the maximum penalties for the offences of serious assault and threats committed in the context of COVID-19. The increased penalties sought to reflect the seriousness of assaults against public officers such as frontline workers ...

Hon Stephen Dawson: Honourable member, do you mind.

Hon TJORN SIBMA: I will get to where I am going —

Hon Stephen Dawson: No, I am not being obtuse. Can I just take the floor for a second?

Hon TJORN SIBMA: Sure.

Hon STEPHEN DAWSON: Deputy chair, I do not have an adviser from the Department of Justice at the table at the moment. Is it okay to swap out an adviser for this part and then the appropriate person can be here to give me advice and, hopefully, answer the question?

Hon TJORN SIBMA: To ensure that I am an equal opportunity employer, are there any other advisers from other agencies that have not joined us at the table yet that I might ask questions of just to ensure that everybody gets value for their day?

Hon Stephen Dawson: Maybe Health.

Hon TJORN SIBMA: I can only try.

I had begun to read from the second reading speech. It continues —

The increased penalties sought to reflect the seriousness of assaults against public officers such as frontline workers, particularly in the context of the pandemic. The amendments to the offences under sections 318 and 338B of the code were made in response to several distressing reports of people across the country and internationally claiming they had COVID-19 and deliberately coughing or spitting on innocent people who were just trying to do their jobs. This was particularly occurring, or at risk of occurring, in the context of frontline essential staff ...

On that point, the first iteration of this legislation was made on the basis of reports of people who were attempting to weaponise their COVID-19 status, or their purported COVID-19 status, in a malicious and threatening way against other people. To the best of our knowledge here in Western Australia, how many occurrences have been recorded of individuals making those threats, claiming that they had COVID-19 and deliberately coughing or spitting at somebody? Can the minister point out the number of those in the Western Australian jurisdiction in the past two years?

Hon STEPHEN DAWSON: The honourable member was correct in his contribution last night in the sense that this is an omnibus bill, because this part of the portfolio relates to the Attorney General, but it is in one bill.

I go now to how many charges have been laid under section 318. From assent on 1 April 2020 to 1 April 2022, 23 persons were charged under section 318(1A) provisions, with a total of 30 charges. Between 1 October 2021 to 1 April 2022, a six-month period, seven persons were charged under section 318(1A) provisions with a total of seven charges. Since the COVID-19 Omicron infection entered WA, so very late December 2021 to 1 April 2022—that is the last four-month period—six persons were charged under section 318(1A), with six charges. In relation to section 338, from assent to 1 April 2022, one person was charged under section 338B. Where the offence description specifically refers to COVID-19 with one charge, that incident occurred in December 2021. The Western Australia Police Force advises that after 1 April 2022 one person was charged under section 338B where the offence description specifically refers to COVID-19 and the threat was against a public officer. Despite there being three public officer victims, the offender was charged with one charge.

I have been advised that there has been an increase in incidents in the last few months, particularly in relation to the whole COVID-19 period. In the last few months since Omicron came to Western Australia there have been more threats and incidents against police officers or public officers.

Hon TJORN SIBMA: That is an exceptionally helpful advice that helps to contextualise my earlier question. The clause 4 reference is section 318(1A), so I will try to keep my remarks focused on that issue. So, 23 persons have been charged with 30 charges; is that right? I want to make sure that is correct.

Hon Stephen Dawson: That is correct.

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Hon TJORN SIBMA: In terms of contextualisation, I will take as read the reported increase in incidents directed against public officers over the last two months. But of those 23 persons, and the 30 charges that have been laid as a consequence, how many of those victims were public officers and how many were just ordinary persons?

Hon STEPHEN DAWSON: This section relates only to public officers, so they all relate to public officers.

Hon TJORN SIBMA: How many of those charges were withdrawn?

Hon STEPHEN DAWSON: My adviser tells me that none were withdrawn.

Hon TJORN SIBMA: How many of those charges were sustained and resulted in a custodial sentence?

Hon STEPHEN DAWSON: I do not have a list, but I will give the member an answer to his question. There was an incident on 5 April 2020 and the court outcome was seven months' imprisonment, which was suspended for eight months. On 6 April 2020, the court outcome was two months' imprisonment. On 7 April 2020, the outcome was five months' imprisonment. For the offence on 26 April 2020, there was a \$300 fine and \$800 paid in compensation. For the offence on 28 April 2020, there was an eight-month conditional suspended imprisonment order, which was suspended for 12 months. For the offence on 28 April 2020, the outcome was three months' imprisonment. For the offence on 28 April 2020, a person is due to appear in court quite soon. For the 29 April 2020 offence, the outcome was 12 months' imprisonment. For the 4 May 2020 offence, it was six months' imprisonment. For the offence on 7 May 2020, a \$2 000 fine; on 11 May 2020, a \$300 fine; on 20 June 2020, three months' imprisonment; on 16 February 2021, a trial hearing has been set for early in the new year; on 27 April 2021, six months and 21 days' imprisonment; on 14 August 2021, six months' imprisonment suspended for eight months; and on 27 August 2020, a four months' intensive youth supervision order. Most of the offences since October 2021 have upcoming court cases. In some cases, first appearance has happened. In one case they were ordered to pay a \$1 000 fine and in another a \$1 500 fine. Essentially, they are the cases. I am told that eight offenders received terms of imprisonment ranging from two to 12 months.

Hon TJORN SIBMA: I state quite obviously what an odious kind of offending this is and how well deserved custodial sentences are in this regard. I want to clarify whether at the first iteration of this sort of bill in 2020 we agreed at that point to extend the maximum sentence for this kind of offending to seven years? Am I correct there or am I slightly ahead of the minister?

Hon STEPHEN DAWSON: We decided to extend it from seven to 10 years.

Hon TJORN SIBMA: Thank you; I just wanted to clarify that. Is it correct that the maximum sentence provided in the course of the last two years has been 12 months? From the minister's list, the longest sentence was 12 months.

Hon Stephen Dawson: Yes.

Hon TJORN SIBMA: My question as a regular member is that if we are seeking to send a signal to the community about the seriousness of this kind of offending, and we have agreed to extend the penalty by virtue of the extension of these kinds of bills, are we somewhat missing the mark in providing disincentives if the actual sentences handed down by the courts nowhere near approximate a 10-year sentence, let alone a seven-year sentence? I ask genuinely what additional protections are we providing to frontline officers by getting a little hairy-chested about the kinds of sentences that might be available relevant to this kind of offending if indeed that has not been the inclination of the courts?

Hon STEPHEN DAWSON: Far be it for me to comment on how the courts operate. It is important to note that a charge under temporary section 318(1A) of the Criminal Code can be dealt with summarily; it is an either way offence. The summary conviction penalty is imprisonment for three years and a fine of \$36 000. Further, these are not mandatory sentencing provisions and the court has discretion over the sentence handed down to an individual offender in each case. The court obviously weighs up a number of factors, as courts are required to do under the Sentencing Act, including things like whether the offender pled guilty, whether the offender has a criminal record, whether there are mitigating factors such as cooperation with law enforcement and any attempts at restitution, and whether there are aggravating factors. This bill sends a message to the community that we believe public officers should not be assaulted, threatened or treated in this sickening way, as has been the case a number of times in the past two and a half years. We are sending a message that the penalty is stronger as a result of it. We are asking people in the community not to do it. The bill sets down increased penalties, but it is for the court to decide what it thinks is appropriate in each case.

Hon TJORN SIBMA: I agree with all that the minister has said, but the case is that the increased penalty is simply not being applied by the courts. Although the government is quite justified in attempting to send this kind of message and we as a legislature are exceptionally justified in attempting to send this kind of message to the community, for reasons far beyond my understanding, the judiciary has taken an alternate view. This bill is going to pass, but if it did not for some strange reason, what would be the implication for the safety of frontline police officers if these increased maxima were not passed?

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Hon STEPHEN DAWSON: This provision sends a stronger message of support to public officers in the community. It also lists the different issues like spitting et cetera. By removing it, we are doing the opposite and potentially we are sending a weaker message to officers. We are trying to acknowledge that we are in unprecedented times. All of us, including people in this place, have played a significant role over the past two and a half years with legislation and decision-making and it is important that this issue continues to be treated appropriately, so by removing it we send a message that we are back to square one.

Hon TJORN SIBMA: The minister might have to take some advice from his justice adviser. I ask this genuinely. If the circumstances are that we are attempting to signal the desire of this chamber to provide additional protection to officers as they undertake their duty, and we look at this through the COVID context, but, for example, if there was an incident in which a member of the public was threatening a police officer with the transmission of another communicable disease, let us say tuberculosis or HIV through spitting blood or whatever, what would be the maximum penalty that would apply in those circumstances? My assumption is that it would be a seven-year maximum? Is that a correct appreciation of the circumstances?

Hon STEPHEN DAWSON: I am told simple provisions in the act could be applied. My advisers do not have a copy of the Criminal Code with them, but I am told the penalties before us are higher than the penalties that exist.

Hon TJORN SIBMA: I made that assumption and perhaps that might be information provided at some other stage as it is probably not likely today given the time.

I might just make an observation. We are asked to accept the government's argument that this is a very important provision because the section of the act provides additional protection to officers and sends a signal to the community. This is not intended to be hypothetical but it is germane to the omnibus nature of this bill; why does the government not just make a permanent change to the Criminal Code, saying that threats of this nature, which might pertain to COVID-19, or might more broadly be threats of individual weaponisation of transmission of contagious diseases, are worthy of a 10-year sentence? Why not make a permanent fix rather than going through this process on an iterative six-monthly basis?

Hon STEPHEN DAWSON: Obviously, this is a temporary provision. COVID-19 was not around a few years ago, essentially. As such, it is truly novel and front of mind for many people. As COVID becomes commonplace and better tolerated in our community in the future, offenders will cease using the virus against our frontline officers, but we do not believe now is the time to change that provision. I cannot say what changes might happen to the Criminal Code in the future, but we think this is the appropriate mechanism to deal with these threats at the moment.

Hon MARTIN ALDRIDGE: I have only one question on this clause. I think I heard the minister say three times during the course of questioning from Hon Tjorn Sibma that it is about sending a message. My concern is that the types of people who are likely to participate in such despicable acts that should be punished subject to the Criminal Code probably do not tune in to the live broadcast of the Legislative Council at 4.00 pm on a Wednesday. How is the government sending a message to those persons potentially considering participating in such behaviour? Has there been an information campaign or an advertising campaign? Other than with the statute book, how are we sending a message?

Hon STEPHEN DAWSON: I cannot be sure about what kind of campaign there has been. It has certainly been talked about by the Premier and ministers at various times throughout the pandemic. I should say that this legislation sends a message to those frontline officers that we respect them. Police know that the powers have increased. I do not think the honourable member's assumption earlier that these people might not be listening to the debate this afternoon is correct, because there probably are. These people are different from people who might go out and commit a crime on Friday and Saturday night in Northbridge, for example. During the course of the pandemic, we have seen people come out of the woodwork who would not necessarily normally go out to cause chaos in Northbridge or wherever on the weekend. We have seen women with kids—all sorts of people—educated people as well as others participate in foul occurrences. I have had people screaming at me. The Premier has had people screaming at him. Threats have been made to our houses, our families and our offices. These are people who over time and until now may not have committed crimes. We have seen COVID bring some different people out of the woodwork over the past few months and they are committing foul things.

Hon SOPHIA MOERMOND: On people becoming radicalised, when people are under a lot of stress, they are angry and upset, those sorts of behaviours come out. I do not condone it, by the way; I just understand it.

At this stage I would like to move amendment 2/4 standing in my name on supplementary notice paper. I move —

Page 3, line 9 — To delete “3 January 2023,” and insert —

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The amendment seeks to bring the sunset date forward to 20 November this year. I say at the outset that I will use this amendment as a test for the three similar amendments standing in my name on the supplementary notice paper. If this amendment is unsuccessful, I will not move those amendments for debate, as I do not wish to waste time.

In Victoria, standalone pandemic-specific legislation has been passed by both houses of Parliament. Yesterday, the South Australian Premier announced that he had agreed with the crossbench in that state to end the state of emergency by June. Amendments to legislation in South Australia will include the creation of a COVID oversight committee that will operate for the next six months to assist with any new restrictions to be put in place for people with the virus or close contacts. They are both Labor states, by the way.

No longer having a state of emergency will sedate some of those people who have come out of the woodwork, provide security for people who live here and who run businesses, and provide confidence to the tourism industry. Here is an opportunity for the government that is sensible and clear. This extension will give the government time to consider what pandemic-specific legislation might look like and bring it to Parliament by year's end. The government does not have to reinvent the wheel; Labor mates in other states are already doing that for them. I urge members to vote for this amendment. Thank you.

Hon STEPHEN DAWSON: As I indicated earlier, I am not in a position to support any of the honourable member's amendments on the supplementary notice paper.

On the member's earlier comment about stress, there has been a heightened level of stress throughout the community over the past few years. Every decision that the government has made, has not been made lightly. We have taken rights and liberties away from people, we have made them wear masks and we have stopped people from visiting Western Australia, but it has all been about keeping people alive. If we compare the figures—in Western Australia there have been 201 tragic deaths compared with thousands in other jurisdictions—I think we got it right. It is also not a case of comparing apples with apples, because the statute books in each state and territory in Australia are different. We have different laws—emergency management acts and public health acts—and some say one thing and some say another. We believe that we are taking the appropriate course of action, so we have made the decision to continue to deal with these issues under the Emergency Management Act. Other states have decided to do things differently, and that is their wont. We have decided on this course of action. As I indicated, we will not be supporting this amendment. Cabinet has made a decision to extend the state of emergency to 3 January 2023.

Amendment put and negated.

The DEPUTY CHAIR (Hon Jackie Jarvis): Members, I note that we will not be dealing with any further amendments on supplementary notice paper 70. Is that correct, Hon Sophia Moermond? Can you confirm you will not be moving the other amendments?

Hon Sophia Moermond: That is correct.

The DEPUTY CHAIR: Thank you for that.

Clause put and passed.

Clause 5: Section 338B amended —

Hon TJORN SIBMA: This is to recap on a very similar issue to one discussed at clause 4. I do not intend to go over the same ground; I just want to ascertain the numbers the minister provided in his comprehensive answer to my previous question and whether I am correct in assuming that there has been only one charge laid under section 338B of the act during the last two years.

Hon STEPHEN DAWSON: There has been only one.

Hon TJORN SIBMA: Is the minister in a position to de-identify, as appropriate, the circumstances of that particular interaction?

Hon STEPHEN DAWSON: I am told a person coughed over three police officers, but it was one action and was therefore treated as one charge.

Hon TJORN SIBMA: When did that incident occur? Is it a historical incident or a recent one?

Hon STEPHEN DAWSON: I am told it was on 6 April, so weeks ago.

Hon TJORN SIBMA: There is probably no further question to ask on that. If that has not gone before the courts yet, there is probably little value in me attempting to determine what might happen. Since there has only been one charge of this type laid over the prior two years—it is a good outcome, to be perfectly honest—what is the utility of the proposed amendment? Is there not provision elsewhere in the Criminal Code to charge an offender with behaviour that would potentially eventuate in a commensurate sentence?

Hon STEPHEN DAWSON: Without saying where this took place, for certain communities there has not been COVID in the community until fairly recently; it has not been an issue in those communities throughout the whole of the pandemic. We believe that this sends a message that people cannot cough in police officers' or public officers'

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faces and say they have got COVID-19. That should not be happening to people. We stand by this clause because we think it sends the right message to people. The fact that only one charge has been laid under section 338B(2) does not indicate that it might not happen again. We cannot say one way whether this has been a deterrent or otherwise, but it certainly sends a strong message.

Hon TJORN SIBMA: Probably the final question on this clause, but consistent with the advice the minister provided when we were considering clause 4, is that in recent months there has been an increase relating to offences under section 318(1A). We have had, Thankfully, only one offence of this nature under section 338B, but is there any intelligence or advice that would indicate an increased threat profile to officers, which is germane to this section and this particular clause? If there is any written advice to that effect, that would be appreciated.

Hon STEPHEN DAWSON: No, there is not, but also, my earlier comment stands. This has happened in the last few months, as has the increase in other assaults.

Clause put and passed.

Clauses 6 to 8 put and passed.

Clause 9: Section 2 amended —

Hon MARTIN ALDRIDGE: Clause 9 is really the substantive amendment to the Emergency Management Act that amends section 2 of the Emergency Management Amendment (COVID-19 Response) Act 2020, which in turn amends the Emergency Management Act 2005. The clause states —

In section 2(c) delete “4 July 2022;” and insert:

4 January 2023;

That is the issue of the six months that we have been talking about. I am hopeful that through the course of this debate we may well be convincing some members on the minister’s side of the chamber, because I heard a member vote on the voices on one of the earlier questions put to the chamber with regard to the amendment, so we may well be winning some support from his side.

Hon Stephen Dawson: I am not sure there is any proof of that.

Hon MARTIN ALDRIDGE: I will have to go back and listen to the audio; I am sure we could identify the member.

I think we did canvass this quite a lot at clause 1, so I do not expect to spend a lot of time here, but this is when I want to bring in the directions. We have the 10 directions that remain in force. The minister has obviously canvassed many of them, but they are: the air travel face covering directions; the COVID transition face covering directions; the COVID transition international border directions; the COVID transition testing and isolation directions; the cruise vessel directions; the maritime crew member directions; the proof of vaccination directions; the regulated entry high risk vessels directions; the remote Aboriginal communities directions; and the transiting aircraft passengers directions. This is a list of 10 that rely on section 72A.

Are there other current directions that rely on the Emergency Management Act in a state of emergency that do not necessarily rely on section 72A, or is this the entire list of directions currently in force under the Emergency Management Act?

Hon STEPHEN DAWSON: No; other provisions of the act are being used for directions. I do not have a list in front of me. I am told that they are all public, but I only have before me those that relate to section 72A.

Hon MARTIN ALDRIDGE: These are the relevant ones, are they not? It is because if this clause does not pass, these are the ones that would no longer exist once either 4 July comes along or the bill receives royal assent. of these directions, how many of them could be made pursuant to another act?

Hon STEPHEN DAWSON: The honourable member is asking me for a legal opinion.

Hon Martin Aldridge interjected.

Hon STEPHEN DAWSON: Section 105 of our standing orders state —

Questions shall —

...

(b) not seek an opinion or a legal interpretation or opinion.

I do not know the answer, but I think the honourable member would fall foul of standing order 105.

Hon MARTIN ALDRIDGE: A point of order has not been raised yet, Deputy Chair, but standing order 105 relates to rules for questions under preceding standard order 104, “Questions to ministers and members”. This relates to questions in the course of question time, which we are rapidly approaching. This is not a standing order in my view that applies generally to the operations of the Legislative Council. In fact, when considering the detail of a bill, it

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is pretty ordinary and normal for members to understand the legal basis of a matter of a clause under consideration. I do not accept the minister's argument that somehow standing orders 104 and 105 are extended to every matter that is before the Legislative Council, otherwise it could significantly constrain the consideration of bills if we were not able to ask questions around the legal basis of the clauses.

In the government's contemplation of this amendment bill, if this bill were to not pass today—as I said, I heard a voice from the government earlier supporting a private member; there could be more when we get to the next division—what would be the practical impact of section 72A falling away? How many of these directions could not be issued pursuant to another act?

Hon STEPHEN DAWSON: I am told that some of them could be issued pursuant to another act, but WA police cannot enforce them under the Public Health Act 2016, for example. Why would we change something that currently works and has worked over the past two years? Obviously it is not just the honourable member in this place; the opposition in the other place has a level of fascination with the Public Health Act and what it may or may not do. We believe the course of action we are taking is the right course. It has served us well for the past just over two years. We believe it is the right course of action to continue to take, and it will serve Western Australians well.

Hon MARTIN ALDRIDGE: In the course of my briefing I asked a similar question to the one I asked a moment ago to try to understand the practical deficiencies that exist between the Public Health Act and why the Emergency Management Act 2005 is superior, at least with respect to the very limited number, the 10 directions, that rely on section 72A. I was given one example in the briefing and I believe a commitment was made during that briefing that the opposition would be provided with a more fulsome understanding of the practical constraints that would be faced by the Public Health Act issuing directions in the nature of the 10 that exist under the Emergency Management Act. Notwithstanding that we are on the third day of consideration of this bill—it obviously did not occur prior to the consideration of the bill in the other place—is the minister in a position to now provide the practical implications or practical restrictions of not being able to issue a direction to wear a face covering during air travel, for example?

Hon STEPHEN DAWSON: Given that the Chief Health Officer is the main operational authority for the Public Health Act, holistic COVID-19 coordination, management and enforcement by the WA Police Force under the Emergency Management Act is preferable so that the Chief Health Officer may focus on underlying public health considerations and individual COVID-19 cases. The Chief Health Officer cannot direct WA police under the Public Health Act who have been essential to enforcing a number of measures during the emergency.

Hon MARTIN ALDRIDGE: The minister said a moment ago that one of the issues was that the police could not enforce directions pursuant to the Public Health Act. If that is the case, who does? A significant number of directions are issued pursuant to the emergency powers of the Public Health Act. Who is responsible for the compliance regime attached to them?

Hon STEPHEN DAWSON: That is a proper question to ask of the Minister for Health, but I can certainly give an example. It may well be environmental health officers of council. It may well be health department officials depending on what it relates to. However, I am told that it is not the job of police.

Hon MARTIN ALDRIDGE: Given that one of the advisers at the table is a senior police officer, has the WA Police Force or any officer of the WA Police Force been authorised as an officer pursuant to any of the directions issued by the Public Health Act?

Hon STEPHEN DAWSON: I am told, no.

Hon MARTIN ALDRIDGE: Could they be?

Hon STEPHEN DAWSON: We do not want a case of another agency directing WA police. It would open a real can of worms if that were the case. I think what the member has just suggested would be a difficult process to do, but would also put us in a position in which another agency was directing police, and I do not think we want that in a modern democracy.

Hon MARTIN ALDRIDGE: I think we might be a bit confused here. I am pretty sure that some of the public health directions apply to police officers. The minister gave an example of another agency directing officers. I am pretty sure there would be circumstances if we contemplate things such as mandatory vaccination requirements or entry requirements. There may well be carve-outs for police officers. I am interested to know whether that stands true in that context. The other issue is that in this context we are not talking about police officers being directed by the Chief Health Officer, but it would be police officers being authorised by the Chief Health Officer to ensure compliance with public health directions. I do not know whether that helps to clarify the question.

Hon STEPHEN DAWSON: The CHO can request assistance in an individual instance but cannot in relation to a group of people. The Emergency Management Act allows us to make directions that relate to a class of people.

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Hon MARTIN ALDRIDGE: Is the minister able to respond further to my assertion, which may well be wrong, that public health directions would apply to police officers in the course of their work? I will give an example. A police officer is assisting with the management of a mental health patient at a public hospital and the directions that apply to public hospitals under the Public Health Act may require them to wear a face covering. The minister has just said to me that we could not possibly have the circumstance in which a police officer was directed by another agency because that would be improper. However, it seems to me that a number of public health directions would apply to police officers in the ordinary course of their work. I mention potentially vaccination and other requirements also.

Hon STEPHEN DAWSON: Police do not enforce the mandatory vaccination directions; that is done by a part of Health.

Hon Martin Aldridge: Does it apply to them?

Hon STEPHEN DAWSON: They are required to be mandatorily vaccinated, but they do not investigate the matters. Enforcement of the restriction of access directions are managed by public health officers authorised by the CHO and not by WA police.

Committee interrupted, pursuant to standing orders.

[Continued on page 2427.]