PROTECTION OF INFORMATION (ENTRY REGISTRATION INFORMATION RELATING TO COVID-19 AND OTHER INFECTIOUS DISEASES) BILL 2021

Second Reading

Resumed from an earlier stage of the sitting.

MS M.J. DAVIES (Central Wheatbelt — Leader of the Opposition) [7.00 pm]: I rise on behalf of the opposition to provide a contribution to the Protection of Information (Entry Registration Information Relating to COVID-19 and Other Infectious Diseases) Bill 2021. Not more than 20 minutes ago, we finished the briefing provided to the opposition on this bill. It is important to put on the record that we learnt of this legislation and another piece of legislation at around 10 o'clock this morning and had to find time to be briefed so the government could bring on this legislation in an urgent fashion.

The matter that we are dealing with is most concerning. I asked a question of the Premier in question time today because we have three things in our arsenal in our fight against COVID should it take hold in Western Australia. The first in the list is our vaccination program; the second is our quarantine program; and the third I suggest is contact tracing. When it was first introduced, the community had many questions about contact tracing: how would the data be collected, how effective would it be, and what does a "close contact" mean? These were all new matters that the community was trying to understand as we put mechanisms in place for the authorities to make sure we could be as safe as possible.

In the initial months, it became evident that should there be an outbreak, it was necessary to be able to follow a person's movements to understand where they had been, who they had come into contact with and whether there was a serious risk and whether we needed to go further into a complete lockdown after a short, sharp lockdown. Right around Australia, that became the number one thing to do in response to any kind of outbreak. Contact tracing relied heavily upon, or was improved by, the fact we had a number of different methodologies for collecting that information. When contact tracing was made mandatory in November, undoubtedly there were concerns in the community about the information being collected and hesitation about where that information was being stored. The opposition supported contact tracing. I diligently check in whenever I am out and about to make sure that I am doing the right thing, because I have made the decision that I actually want someone to call me if there has been a COVID outbreak. I want to make it as easy as possible for those contact tracing teams to pick up the phone and say, "We understand that you were there. You need to go and get tested." I have no hesitation in using that app. But I understood at the time that the community had concerns about how the data would be used and whether the data would be safe and secure. The Premier and the Minister for Health knew that, too, because they went to great pains to assure everyone that the data would be utilised only for the purposes of contact tracing and that it would be held secure by the Department of Health and the contractors charged with storing that data.

The government did all the things to try to build confidence in the community that contact tracing was something we should all try to adhere to. There was the media statement that I referred to today. The Premier also did a Facebook post. The media statement, "Maintaining contact registers, a requirement to keep WA safe", from 25 November states —

- Mandatory contact registers an extra safety measure as part of COVID safe principles
- Contact details will be recorded at relevant businesses and premises
- Mandating of registers to take effect from Saturday, December 5
- SafeWA, a free COVID-19 contact register app, now available for download
- Records kept for 28 days and not used for any other purpose

Those are the top five dot points of the media statement. It continues —

> Businesses or venues required to keep a contact register include:
>
> - food and licenced venues (restaurants, cafés, bars, pubs, taverns, nightclubs);
> - gyms, indoor sporting centres and pools;
> - places of worship and funeral parlours;
> - beauty and personal care services including hairdressers and barbers;
> - galleries and museums;
> - cinemas, theatres and other entertainment venues;
> - auction houses and real estate inspections;
> - community facilities, libraries and halls;
> - zoos and amusement parks;
> - function centres; and

- accommodation facilities that already have check-in arrangements in place …

…

Data will be encrypted at the point of capture, stored securely and only be accessible by authorised Department of Health contact tracing personnel, should COVID-19 contact tracing be necessary.

It is quite a lengthy statement. When communicating in times of stress or pressure, you need to be clear and provide concise information. The government anticipated some nervousness in the community in moving to a mandatory registration and it needed to assure people that their data would not be used for anything other than contact tracing. Therefore, it was slightly surprising and concerning to receive news that we were going to deal with this bill today, and that we would be briefed not more than half an hour or 20 minutes before we needed to stand up and make a contribution to it.

When I asked the Premier in the house today whether he believed that the WA Police Force accessing contact tracing data, as was revealed today, would make it more difficult to convince people to continue using the app, it would undermine our ability to collect data in good faith and it was a breach of trust with the Western Australian public, it was concerning that the Premier did not acknowledge that at all. I can neither understand nor believe him, because it will absolutely do that. Although it turns out that the purposes for which the WA police commissioner accessed that data were, of course, completely legal, I think that the Premier should acknowledge that allowing WA police to access that information after making a clear commitment that it would not was a breach of trust of the WA public. It will make it more difficult for us to continue to get people to use that app, and the task of making sure that we are safe in the event of a COVID outbreak just got that little bit more difficult. We have seen that people in some areas are hesitant to access the vaccinations. We do not want to have that hesitancy compounded by people being hesitant to use something that I think will serve a good purpose in keeping us safe should, heaven forbid, we face another outbreak.

I was concerned when the news was released. We asked a number of questions during the briefing. We found out that the Premier had found out in April that this request for information had been granted. That was in April; it is now mid-June. We know from a question answered in Parliament today that on two occasions WA police asked for that information and were granted it. It emerged in our briefing that there have actually been more incidents. There have been seven requests by WA police to access that data. Of the three requests that were granted, two related to the same incident. What was more concerning to me was that the number of requests being made was serious enough that it would appear that the WA Commissioner of Police or the WA Police Force—sorry, I do not know whether it was the WA commissioner, but it was WA police—set up a protocol for asking the Department of Health for that information. A number of requests were made to the Department of Health. As we understand it, those requests could come from any level of police officer, and under the Criminal Code—I am happy to be corrected—if they met a certain threshold of information or seriousness, that information could legally be provided. The Department of Health had no recourse to refuse. Seven requests were made directly to the Department of Health.

It also emerged during the briefing that police officers may well have sought permission from justices of the peace to approach individual businesses in the community to ask them to release their registers. I would think that if a small business person or a business owner was approached by a police officer and asked for that register, they would find it very difficult to say no to the police if they are seeking information to assist in solving a crime. Those instances are unknown. The people who provided the briefing confirmed that there were, indeed, seven requests formally made to the Department of Health, but they acknowledged that they could not provide information on how many requests were made by police officers directly to small businesses because, of course, that information would not be collected by the government. There could have been a large number of other instances.

My criticism and the opposition's criticism is not directed at WA police; they are simply doing their job. My criticism is that the government was very clear about this, because it knew that it was important to gain the trust of the WA public. I cannot understand why it was not known earlier, between December and April, given that I understand there were a multitude of meetings held as part of this emergency management response. I cannot understand why there were no briefings and no information provided to the Premier or the Minister for Health prior to that, or why it took from April to mid-June for us to see any action on this legislation. That seems to me to be a significant period. We would very much like that question to be answered. I asked the officers who were providing the briefing whether they could advise us when the instruction to draft was given. They were not confident that they would not be breaching cabinet-in-confidence, so they took it on notice; again, that is a question we would like answered. We are trying to understand the time line of when these requests were first made; when this became known by the Premier; when the protocol that we understand WA police put together was created and how many times it needed to be used. These are some of the questions we have. Given that the government absolutely would have known that this would cause concern in the community, I think it is relevant to ask why it was kept from the community for that period and why it could not have been remedied before now.

We requested that information during the briefing, which we finished just 20 minutes ago, so it will be interesting to see whether we have access to that information this evening or will have to wait until this goes through to the other house, because we understand that the government's intent is that this legislation will be dealt with tonight; is that correct?

Mr J.R. Quigley: That's the motion. That's what the chamber agreed to.

Ms M.J. DAVIES: Yes. I am just being clear that we may not have access to that information because there is an intent that this legislation goes through this house so that it can be dealt with in the Legislative Council before the winter recess. I would like it on record that the opposition, certainly in this house, may not have access to all the information that we think is pertinent. It may be forthcoming in the Legislative Council.

I think that that time line is important. When were those requests received from WA police? When was that data provided? When did the Department of Health advise the government and the minister and what progressed from there? What was the time line and how quickly was this progressed from being something we need to remedy to going to cabinet, briefing the drafters and getting on with the business of bringing it into the Legislative Assembly? I would also really like to understand the process of how WA police made those applications and who they were going to—at what level were they being received into the Department of Health and from where in the WA police—and were there any other requests?

Another thing that concerned the opposition during the briefing was that we were advised that there has been a decline in compliant behaviour in people registering when they walk into businesses that require them to register. Although I understand it is difficult to get a baseline on those things, Attorney General, because we are operating in a new environment, we were advised that every time there was a scare or another state was perhaps experiencing a COVID outbreak, there was a peak. Everyone became slightly more vigilant and there was a higher level of compliance, so there is a high watermark to compare it to, then it declines again and again. That complacency is concerning because, again, I think the government has placed great importance on our ability to use contact tracing to minimise lockdowns and their impact on our economy and health. I understand that if people do not register electronically but rely on paper registrations, it hinders the people who are carrying out the contact tracing. If people do not use the registration system at all, I think that adds another level of complication. I would think that that decline in compliant behaviour would raise concerns from the government's perspective, and it would be interesting to know how the government is planning to address that, much as people's hesitancy in taking up the vaccination process needs to be addressed. But now, given that we have discovered that that data is being used and probably people's confidence in Western Australia has been somewhat shaken on that front, I would like to know the government's plan beyond this legislation to communicate and encourage people to continue to use the app. We asked a question in the briefing: how will the government educate the public on the changes that will result from this legislation? The point was made in the briefing that some of the penalties are quite high, and I think the Leader of the Liberal Party said that people will not want to be found in breach due to ignorance. I think most people generally want to do the right thing, and particularly those businesses that are required under law to have the register will want to be compliant, but there are some quite hefty penalties within the legislation.

My understanding is that the government will be taking an educational approach, which is heartening, but I would very much like to hear that directly from the Attorney General in his response. The government will not be going out with a big stick and penalising those businesses that might not be adhering to what is laid out in the legislation in the first instance. There is a willingness to work with the Small Business Development Corporation and those industry liaison mechanisms that have been set up to assist in communicating to the various different sectors that will be impacted by the legislation. Those are assurances that we welcome in terms of the government not taking a big-stick approach to applying the penalties contained within the legislation.

I think I have already raised this issue, but, Attorney General, I would like to understand where these matters were raised and when it first became evident that this was occurring. The government said that it has regular meetings with the State Emergency Management Committee about the management of the COVID response and that a raft of other meetings take place on a regular basis. Clearly in his response today, the Premier indicated that he tried to work with the Commissioner of Police on this issue but was unable to resolve it. The inability to resolve it has led us to this legislation today. I would like to understand why and how it took so long to get from the point of the Premier first being made aware of the issue in April to now. I think that is important, certainly from my perspective, because the government was aware of it and knew it would be contentious and now we are dealing with legislation in a manner that is, quite frankly, disliked by all of us in this place, whether they sit on this or the other side of the house. This is not the way to make good legislation. It should not be pushed through.

We had a briefing today and 20 minutes later, we were required to do our job appropriately. I need not draw to the attention of anyone in this place that as an opposition, we do not have enormous resources. We are dealing with two pieces of legislation, both with significant implications for the state, that have been brought on today. We will do our level best as an opposition to ask the questions that we think need to be asked, but we should have been given

a bit more time to digest what is in it because it is not quite as simple as the Corruption, Crime and Misconduct Amendment Bill 2021, which contains one clause. The Protection of Information (Entry Registration Information Relating to COVID-19 and Other Infectious Diseases) Bill 2021 has some detail in it. I do not think anyone would believe that we can go through it in any great detail and understand its implication and, further, understand how we got here. A cynical person would say that if we push it through, there will be fewer opportunities for us to ask how we got to this place and how the Premier and the government breached the trust of the public, and we would simply move on. I do not think that is acceptable. In fact, when we first came to this place, we made a number of points and said that the government, with its significant majority, needed to tread very carefully when flexing its muscles with legislation like this. It is disappointing that, once again, legislation of this nature is coming through and has taken this long. I would suggest that a number of other pieces of legislation that have been read in and are on the agenda are far less important than this bill, and we are dealing with it in one day. I cannot speak about the processes in the Legislative Council, but I am assuming that the intent is that this bill goes through before the break. I do not think that will be acceptable to the members in the Legislative Council in the opposition at the very least, and probably not those on the crossbenches, but they will have a little more time to digest what the Attorney General says this evening.

I want to go back to a point that was made during the briefing—that we should turn our mind to the issue of the greatest public interest, that we should be using the app. Today, the Premier made comments about what the data is used for. No-one in the opposition is going to argue that solving the committing of a serious crime is not important, but it was the Premier who made a pact with the public of Western Australia. In the press release, the Premier, the Minister for Police and the Minister for Health said quite clearly and unequivocally that the information would not be used for anything else. That was clearly stated so that people did not feel nervous about using the app and providing their personal details in an age in which there is significant concern about the collection of personal data and where it might end up. We are schooled on a regular basis how to keep safe when we provide information to those types of registers. It comes from the government. The government says, "It's safe; we won't use it for anything else", yet five or six months later, we find, unfortunately, that that is not the case. My criticism is not directed in any way at the Western Australia Police Force; they were simply doing their job under the law. The Premier needs to acknowledge that this was not done properly and, as a consequence, it will absolutely undermine the use of the app going forward. I would be very interested to know how the government plans to improve the app and increase its utilisation as we move forward, because the COVID app, the vaccination rollout and our quarantine system are the three most important things in our management of the response to the COVID pandemic.

When we get to consideration in detail, we will ask specific questions about police protocol, when the Premier knew, when the legislation was first briefed, how many of these requests were made and the kind of information that was provided to the government and when. Those things are in the public interest, especially given that the Premier made such unequivocal statements in the announcement of the app that there was no need to be worried about it. I reiterate to the Attorney General and the government that I am not levelling criticism at the police; they have done their job and they have done it within the law. It is time for the government to admit that it got this wrong. We need to move on and the government needs to take very swift action to make sure that there is no further decline in the use of the app because it is so very important.

Of course, the opposition will provide support for the bill, but we will be asking some questions during consideration in detail.

DR D.J. HONEY (Cottesloe — Leader of the Liberal Party) [7.28 pm]: I will make a reasonably brief contribution to the debate on the Protection of Information (Entry Registration Information Relating to COVID-19 and Other Infectious Diseases) Bill 2021. I certainly echo the Leader of the Opposition's comments on this matter. It concerns me that, once again, we are in this chamber dealing with a matter with only a short time to do so. As the Leader of the Opposition pointed out, we received a hasty briefing and, as much as we could scrutinise the bill in the briefing, we asked questions. I recognise the good efforts of the ministerial and departmental staff who gave the briefing. They were very helpful and cooperative, but we have not had the time to scrutinise the bill properly, and that is a shame given that it is important legislation. This is a significant bill and clearly it has taken some time to prepare, which begs the question as to how long the government was aware of this and why the community was not informed about it until now. What we saw last year in this Parliament was chaotic, but it was due to COVID. I cannot recall a day when I have come into this new Parliament and considered what was forecast the day before.

We would think this was a government that had just been elected, not a government that has been in power for four years that has ministerial offices staffed with 12 or more ministerial staff plus departmental staff. Every day we see a completely new situation and a new set of bills. As the Leader of the Opposition pointed out, we know that in this Parliament, one difficulty will be proper scrutiny of the government. I exhorted members of the Labor Party on the back bench to be a conscience to their own government and scrutinise legislation. It is very hard for us with the body of work that we have to do. The amount of work of the opposition has not changed in this chamber, but

having only six people to do that work puts a burden on us. We are prepared to work hard and we have a good hardworking core left on our side. We will do that, but it makes it hard to scrutinise legislation properly.

We saw the chaotic management of the chamber and 11 bills read into Parliament and then, all of a sudden, when the non-payment of contractors became apparent with the Pindan Group collapse, the Building and Construction Industry (Security of Payment) Bill was urgently read in. We then had to consider urgently that bill in this chamber when that matter had been around for a considerable period. That bill was read into the previous Parliament and not prioritised by the government, but then all of a sudden it is urgent when there is a catastrophe. I think that if we are going to have good scrutiny of legislation in this Parliament, it behoves the government to introduce bills in an orderly manner. I reinforce the point made by the Leader of the Opposition that it is incumbent on the government to explain the detail of the genesis of this bill.

We have been told that there were only two cases. Then, in interrogating officers during the briefing, it was made clear to us that that was two cases with the Department of Health database. In fact, in the election period a lady came up to me at a pre-poll voting centre and said, "Listen; I don't know whether you are aware, but I am really concerned. The police came to my business and demanded my COVID records because they were investigating a case." I suspect that is not related to the two cases. They were afraid to come forward formally because they thought it might harm their reputation in some way or there may be some comeback on them, and I suspect a lot of small business people would be in that position. Clearly, in that case, officers approached an individual business. It is not entirely clear whether a warrant was obtained or it was a request of just that business. I suspect that outside the seven applications that we just heard about, there have been many, many cases in which information has been acquired from individual businesses. It was apparent from the briefing that it could be done. There is no straightforward way of collecting the details of how many times the police have accessed information from the COVID database for particular cases.

There is a real consequence to the community. I was reading *The West* online news article on this matter; it was published online at 3.10 this afternoon. Josh Zimmerman and Charlotte Elton authored the article and they made it clear in the article that the Premier became aware of this in at least April, but, of course, this was mandated in December. The article quotes the Attorney General. I assume they have quoted him faithfully. The Attorney General said at his press conference that a wide range of people could access the data—the police, the Corruption and Crime Commission, private citizens making FOI applications, civil litigants and even people who were prosecuting Family Court matters. Maybe those people could have potentially obtained, for example, residential information or phone numbers. Members here would know that in Family Court matters that could be life-threatening for some people or at least certainly threaten people's mental wellbeing or their comfort.

Mr J.R. Quigley: That's not the full quote.

Dr D.J. HONEY: I am just paraphrasing. I am always happy for the Attorney General to fill that out. I guess that the point I got out of that article was that we had a bill brought before this Parliament to justify the collection of this data. We were told by the Premier, as the Leader of the Opposition quoted, that it was safe and rock solid, but then we discovered that the legislation seemed to allow almost anyone to access that data—certainly, the ones who fell within that class. As I said, the Attorney General is quoted as saying that private citizens could make FOI applications for that data. It is really concerning that in the way the initial legislation was brought in, there was no review of it and the data could have been exposed to a wide range of people. It has a real impact.

The Leader of the Opposition made this point earlier today: when we have this sort of breach of trust and security, it makes people less likely to use the app. I looked a little further on in that online article, and I think this comment reflects the views of a lot of people out there. I have seen various comments from people who are perhaps conspiracy theorists and others who never had the app in the first place and think they are being tracked, but I think a lot of other people are concerned about the misuse of this data. One of the comments on the online article is from Jason F. He said —

> Tag I'm Out, App deleted, How short sighted

I think that exemplifies a lot of people's concerns. I appreciate that the government has brought in this legislation to close this loophole, if you like, or at least to prevent people in that group I mentioned before from obtaining this sort of data, so that it is used only for the purpose for which it is intended—that is, contact tracing. But I suspect a lot of people are going to say, "Hang on; now I don't trust this anymore." We know that contact tracing is at the core of the effective management of COVID. We know that New South Wales has been remarkably successful with contact tracing and that having good data and everyone participating in the scheme is critical if our community is going to be kept safe from COVID. Despite the vaccine rollout and the like, we could have a serious outbreak here and, if that is the case, we would rely on this information.

I want to go through a few points in the bill to get clarity. We had feedback from the officers in the briefing, but I would like the Attorney General to confirm that. I refer to clause 3, "Terms used". Paragraph (b) under "entry registration information" refers to the difference between information that is recorded only for the purposes of COVID and

information that is recorded in the normal course of events, such as a gymnasium where people go in and they tag in every day. It makes it clear that that information would still be available to the police. One of the things I have noted in a number of establishments is that people have extended the use of the existing system. They may have a log-in system for contractors, but they have extended that system to all visitors. The question I asked was whether the information collected using a standard system that exists normally would be available. I was reassured that that information would not fall into the definition of information that was collected in the ordinary course of business and, therefore, that information would not be collected. It did not occur to me at the time, but if we think about that sort of information, that register would include information that a business has to retain and information that it does not have to retain or is legally obliged to destroy. I think that could be a complication, particularly for smaller businesses that use paper-based systems. I am not seeking to confound this matter, but I think that is a risk.

I will go through this in pretty short order. When we look at the storage of entry registration records, we see that the penalties are extremely stiff. We were reassured in the briefing that the officers carrying out the inspections are reasonable people and will not belt people over the head, but we should recognise that we can only suppose that. We do not know what will happen in individual circumstances. An officer may take a particularly harsh line and someone may end up in front of a magistrate who also takes a particularly harsh line. A penalty of 12 months' imprisonment and a fine of $20 000 is certainly very stiff. That reinforces that this Protection of Information (Entry Registration Information Relating to COVID-19 and Other Infectious Diseases) Bill 2021 should be very clear, and that people need to understand the requirements very clearly.

We heard, as was commented on again by the Leader of the Opposition, that there has been a significant decline in the use of the SafeWA app. As I have already stated and given the reference to *The West*'s online article, I suspect there will be more not less hesitancy around the app because of this legislation, not because it is not adequate legislation but because it will raise concern in people's minds. If I recall the figures correctly, at something like the peak of people's concerns about COVID, there were around two million registrations on the app a day and now it is sitting at around 500 000. I am happy to be corrected on those numbers, but that is what I recorded.

Although it does not relate to the bill, I think this is a very important point about the collection of information. I am sure that the Western Australian app is very good in the way it records data. It is certainly very easy to use and it is very easy to add another person onto our registration when going into a place. I like all those things, but the app reader is a very poor reader. When I do the household shopping every weekend, I shop in the Claremont Quarter. Most people who go into the two supermarkets put up the app. A fair number of people walk straight through and ignore it, I will say, but a good number of people want to do the right thing. As a member of Parliament, I make sure that I do the right thing. I sometimes have to be there for a minute or more waving the app around, up and down and backwards and forwards before it eventually works. However, pretty well everyone who comes into those supermarkets has exactly the same experience. I will say that the majority of them give up and walk in.

When I went to Canberra for a conference a couple of weeks ago, I was pleasantly surprised because every single time I used that app on the QR code it worked instantly. I think there is a technical problem with our app. I was originally blaming my cheap phone that I was forced to purchase, being an impecunious member of Parliament, but I discovered that it is this app. I am sure in many ways, with the storage of data and all those things, it may work fine, but it does not read properly. In fact, I have observed in many establishments that because it does not read the QR code easily or for the first time, people give up. I observe that regularly, particularly when I am at the supermarket, and that discourages people. It is imperative that the app work well and the collection of this information is imperative. As I say, I fear that people will be deterred because of what has happened.

I asked about the initial storage period, and I thought 28 days sounded a little short, but we were reassured. In fact, the person in charge of contact tracing was in the briefing and they said that they were comforted that 28 days gave them enough time to utilise the data or request an extension of time for that data to be maintained. I take it that person is the expert in that, so if they are happy, I guess I should be happy as well.

At the briefing, given the potential severity of the penalties, I expressed concern that businesses might not know about this. Although we were told that officers would apply discretion, I think we should always be cognisant that the maximum penalty is there for a reason and it can be applied. How will people know about these requirements? We were informed that the Small Business Development Corporation would work with small businesses.

[Member's time extended.]

Dr D.J. HONEY: We were told that industry associations would also help with the rollout. The Australian Hotels Association in particular has been outstanding in the way it has helped its members work their way through the COVID restrictions, lockdowns and all those things. I guess I am more concerned about the small mum-and-dad businesses that are not members of associations and the like. How will they know about this? I hope the government will embark upon a thorough advertising process to ensure that all small businesses will be aware of this legislation. With that, I will sit down. Thank you.

MR J.R. QUIGLEY (Butler — Attorney General) [7.46 pm] — in reply: I would like to briefly reply to the second reading contributions of honourable members because I know they will want to ask some questions in consideration in detail. I am also mindful of the resolution of this chamber that all remaining questions will be put by 9.15 pm, so I do not want to take up too much time.

I also want to be moderate in my criticism of the contributions to the debate on the Protection of Information (Entry Registration Information Relating to COVID-19 and Other Infectious Diseases) Bill 2021 thus far. I do not know how many Western Australians are following us this evening on the internet—I dare say that on a cold night like tonight, relatively few—to hear our remarks, but we are at a unique point in the fight against COVID with this development. It is recognised by the Leader of the Opposition and the member for Cottesloe that contact tracing is a very important part of containing any outbreak of the pandemic in Western Australia. Of course, if the virus enters Western Australia, particularly the Delta variant, which we are told is a beast that is 100 per cent more transmissible, it will affect all our constituents in the country, in the cities or anywhere anyone travels. We have seen that in the eastern states with the couple who broke from lockdown in Melbourne and travelled through country New South Wales up the northern coast, I think, into Queensland.

So far, members' contributions have been directed at criticism of the government for not getting on top of this problem earlier or they have asked: when did the government first know; who knew what when; and why has it taken this long? I can give the short answers to that. The Premier said he first found out in April. I am not part of the State Emergency Management Committee, so I did not find out personally until sometime after that when a staff member came to me with a briefing note from the State Solicitor informing that Health had sought advice from the State Solicitor about notices that had been served upon Health to produce. I was asked earlier today at a press conference what I said when I was told about this. I responded exactly as I did in my office, "I need a cup of tea!" This is a serious situation and we have to think this through.

When this was mandated by the State Emergency Coordinator, who happens to be the Commissioner of Police, the government undertook that none of this information would be released other than according to law. That assurance was given to the public. The commissioner and others said at the time that this would be used only for contact tracing. When the information was first given to me, I asked what other legal avenue, besides the police using the Criminal Investigation Act, could there be. Of course, when we sit down and think about it, a whole raft of avenues are available. The member for Cottesloe referred to my media statement earlier today. There could be a subpoena, although there has not been one. There could be an application under the Freedom of Information Act or a notice to produce by the Corruption and Crime Commission. None of this has happened, and if those applications had been made, the government would have vigorously opposed them.

The reason for the time lag between when the Premier first knew, which was well in advance of me knowing, and the matter coming to me and, ultimately, to the cabinet as draft legislation was that the Premier, quite rightly, entered into discussions with the Commissioner of Police to see whether the commissioner could issue a directive to all officers not to do this. As the Commissioner of Police explained, each constable holds a separate independent office. They are not employees; they are sworn officeholders of the office of constable of police and, as such, have their own statutory authority and can make applications under the Criminal Investigation Act. As these discussions unfolded, it became apparent that a legislative measure would have to be introduced, because if the information could be provided according to law, there needed to be a change in the law.

I am not on bended knee; I am not pleading with nor am I challenging the opposition, but I am saying that this is one of those times in this Parliament's history when we should unite. I am not trying to avoid scrutiny of the government's actions in any manner. That is an opposition's task. The opposition leader asked me what I can do to assure the community going forward. I invite the Leader of the Opposition, the member for Cottesloe and other members of the opposition and its alliance, to join with the government to reassure the community that this legislation will keep sacrosanct that information. That is up to the opposition. No doubt tomorrow morning talkback radio will reach out to either me or members of the opposition for comment on this. The opposition has two choices. The first is that it can get stuck into the government and criticise the government for what has happened—that is, there have been two disseminations of information—or it cannot go to the default position of an opposition but say that opposition members have sat in Parliament, and although it was short notice, they have been briefed and as far as they can see, because they have supported this legislation, this bill's passage through the Assembly tonight will ring-fence that information. We will build a steel fence around that information and it will not be further disseminated. When the opposition asks the government what we are doing to reassure the public, I throw the challenge back to the opposition: what is the opposition doing to join us in reassuring the public? It is all about constituents being at risk if the pandemic comes here. This is not a matter of party ideology. I accept that when electoral reform eventually comes before the Parliament, there will be a clash of ideals; however, this is not one of those occasions. This is not a matter of ideology; this is a matter of the health and safety of all our constituents. When we go into consideration in detail, I hope it will not be, as has been hinted at least, questions of who knew

what, when and why, but, rather, questions directed at the clauses of the legislation to test their sufficiency at protecting the opposition's constituency from the pandemic.

Tomorrow morning, when approached by the media, I implore the opposition, the member for Cottesloe, the Leader of the Opposition and other members opposite, to seek to reassure the public that as far as they have been able to scrutinise the bill in the short time available that their constituents' data, when they check in at the Merredin or the Northam supermarkets, will be protected and held sacrosanct by the Department of Health. They will be able to say that this bill that the government has brought before the Parliament achieves that, as far as they can determine after the briefing. In the briefing, the opposition learnt that there have been seven applications. I said there have been two occasions upon which information has been disseminated. Sure, there have been more applications, but those applications were not satisfied by the dissemination of information, so the public should not be misled into thinking that there was greater leakage or greater dissemination of information than these two particular cases. The opposition will be able to say that they have seen the clause in the bill that says that even if this information was hacked, it will not be admissible in any court of law. The opposition will be able to say that it has seen the clause which says that if any venue or business holder disseminates that information, they are liable to a $25 000 fine and 12 months' imprisonment, and that it has seen the clause that says if it is a corporation like Coles or similar that has disseminated the information, officers of the business, who knew or should have known, are up for a $250 000 fine and two years' imprisonment.

I throw out the gentle challenge to the opposition to join with the government in reassuring the community that in the time available, as far as they are able to determine from this bill, their constituents' information will be protected going forward. It is quite another thing to spend time here this evening to attack the government. I am not trying to avoid scrutiny. I have gone out to a press conference that went for an hour. I answered every question the media put to me, and I am happy to do the same tonight with members. But where is the profit in that? The opposition should be going to clauses of the bill and asking whether those clauses are sufficient to protect their constituents.

The member for Cottesloe made the comment that he was approached at a polling booth by someone who said that he was approached by the police to give them their whereabouts. He did not say that it was a business and he did not say that it was a venue, and he has never raised it before in Parliament as a concern. I join with the Leader of the Opposition and share her concern about community confidence, but we can join together to build that community trust, not to let the government off the hook. That is not the issue here. The issue is the protection of our constituents going forward, and that is best protected if the community has trust in this application.

Mr R.S. Love: You failed to do it. You failed to protect their information. You brought the original bill in here. It didn't protect their information.

Mr J.R. QUIGLEY: The member for Moore can go out and do this and further try to undermine community confidence.

Several members interjected.

The ACTING SPEAKER: Minister for Finance! Member for Moore! The Attorney General has the call.

Mr J.R. QUIGLEY: This discourse is sad.

Mr R.S. Love: Don't try to attribute to us particular motivations that are actually inaccurate.

The ACTING SPEAKER: Member for Moore, the Attorney General has the call and I will hear from the Attorney General in silence to finish the second reading debate.

Mr J.R. QUIGLEY: In answer to the interjection, as the Leader of the Opposition knows, I have not tried to attribute to the opposition any slump in confidence in this application. I have appealed to the opposition to join with the government and —

Mr R.S. Love: That is directly what you said.

The ACTING SPEAKER: I call the member for Moore to order for the first time.

Mr J.R. QUIGLEY: As the Leader of the Opposition knows—she is not interjecting—at no time have I said —

Mr R.S. Love: But I'm a member of Parliament and I can interject if I wish.

The ACTING SPEAKER: I call the member for Moore to order for the second time.

Mr J.R. QUIGLEY: At no time have I said, and nor will the Leader of the Opposition accuse me of saying, that the opposition has been involved in the undermining of confidence in this application. What I have said is that the opposition has two choices with the media tomorrow: criticise the government, which will have the result of undermining it going forward, or join with the government and say that this legislation —

Mr R.S. Love interjected.

The ACTING SPEAKER: Member for Moore, you are on about two-and-a-half calls at the moment. I will hear from the Attorney General, thank you. The Attorney General has the call. There will be no debate entered into.

Mr J.R. QUIGLEY: It can join with the government. I will be interested to hear what the member for Moore concentrates on during consideration in detail, and whether it is to ensure that this bill delivers for his constituents in Moore and he is prepared to help build confidence in the application for his constituents in Moore, because if contact tracing is compromised by a slump in community confidence and he does not help in a positive way to shore up public confidence, he will bear responsibility.

Point of Order

Mr R.S. LOVE: Acting Speaker, if I am going to be called to order for interjecting, surely you must also protect me from deliberate attack from the Attorney General when I am doing nothing except sitting here.

The ACTING SPEAKER (Mr D.A.E. Scaife): I have heard from the member for Moore. There is no point of order, but I do encourage the Attorney General to conclude his remarks.

Debate Resumed

Mr J.R. QUIGLEY: I would have more to say in this regard, but I want to give members of the opposition, in view of the chamber's resolution earlier today, sufficient time this evening during consideration in detail to satisfy itself clause by clause that this bill will deliver what they and their constituents want. I suggest that what their constituents want at this point in time is reassurance that this bill will deliver security for the information supplied under the SafeWA app and, as the legislation refers to, in entry registration, because it can be in hard copy.

I do not shy away from the task that is before me at the ministerial table this evening. I hope not to avoid questioning about what happened in April, but to ensure what the public expects of this Parliament, of us combined—that is, to deliver legislation that will shore up confidence in the application, not for the benefit of Labor or the opposition, but for the benefit of the public, for heaven's sake. That is what the task should be about this evening. I shall resume my seat with that request of the opposition; whether it will be accepted, I do not know.

Question put and passed.

Bill read a second time.

[Leave denied to proceed forthwith to third reading.]

Consideration in Detail

Clause 1: Short title —

Ms M.J. DAVIES: I thank the Attorney General for his response to the second reading debate. I understand very clearly the point that he was trying to make, but I also think it is incumbent on the opposition to try to understand how we have arrived at this situation. Although we will do our best, the cut-off time is 9.15 pm, so I think the Attorney General's call for us to walk out of here with the confidence to assure our constituents that this piece of legislation will actually do as it says is optimistic. When we had the briefing not less than an hour ago, there were, at my count, probably eight advisers in the room who have no doubt been working with the government for some time—at least since April—and we have had an hour and a half to think about this with no access to any kind of legal counsel. I want to be very clear about this. The government has the numbers in this house and the other house. It has the opportunity to make sure that it gets this right this time around.

For the record, I was asked today whether I would continue using the app and my answer was yes, but I think it is important that we understand how we got here. Rather than indignant responses from the Premier and the Attorney General imploring that we focus on the detail of the bill, which we will get to, we would like to understand how it got to this point and why it took this long to get here. A number of undertakings were provided during the briefing on this bill to help us understand how we arrived at this position, including the number of requests that were made by the police to the Department of Health, an understanding of what type of protocol was put in place, when this issue was first brought to the attention of the government and what the time line was for when it was first brought to the government's attention to when the Attorney General came to a position to be asking for legislation to be drafted. I raised all these issues during the second reading debate. I understand that there was probably not time to provide answers to the questions that were asked during the briefing and I assume that if they are not provided here, they will be provided in due course at some point during the debate in the other house, but it would be good to have some enlightenment on these issues as we move into the detail of the bill, to understand how we remedy the situation that has arisen.

Mr J.R. QUIGLEY: I just move that clause 1 be accepted as the short title of the bill.

Dr D.J. HONEY: I share similar concerns as the Leader of the Opposition on this matter. The Attorney General has been deliberately offensive to members on this side. He does this periodically. He was deliberately offensive

to the member for Moore. I believe he was deliberately offensive to me in his reply to the second reading debate. We have approached this good-naturedly.

Mr P. Papalia interjected.

Dr D.J. HONEY: We have approached this, Minister for Police, with concern that we will not have time to scrutinise this bill properly. We have done that with good intentions and I reinforce the questions of the Leader of the Opposition. One of the things that we were concerned about with this government was that we would see hubris and arrogance coming into this chamber. I believe we are seeing exactly that now. The Attorney General refused to answer an extraordinarily reasonable request for information from the Leader of the Opposition. There is this ridiculous contention that somehow it is our job to sell this legislation because the government failed to put in place proper checks and balances in the first bill. I ask whether the Attorney General will be able to provide that other information that the Leader of the Opposition has asked for. They are very reasonable requests and we have approached this whole debate and this whole matter in a very reasonable way.

The ACTING SPEAKER: The question is that clause 1 stand as printed.

Dr D.J. HONEY: I want it noted in *Hansard* that the Attorney General is simply refusing to answer the question. We are about to see worse tomorrow, but what we are seeing here is the worst behaviour I have seen in the chamber and, I suspect, that the Leader of the Opposition has seen in this chamber. What a disgrace!

Mr J.R. QUIGLEY: Madam Acting Speaker, we are debating the short title of the bill, "Protection of Information (Entry Registration Information Relating to COVID-19 and Other Infectious Diseases) Bill 2021". There has been no comment made in relation to the short title. I have no further comment.

Dr D.J. HONEY: I have been in this chamber for only a short time, but I can say that for every bill I have debated in this chamber, which is a considerable number, this has been the opportunity to ask questions of a general nature. I can say that every other minister that I, or my colleagues, have ever asked these questions of a general nature to has had the common decency and courtesy to answer them. I believe it is not unreasonable for the Attorney General to answer the questions that were put to him. They were very simple, reasonable questions and the short title debate is the appropriate time to ask questions of a general nature.

Mr J.R. QUIGLEY: I have no further comment in relation to the short title of the bill.

Ms M.J. DAVIES: Attorney General, this is quite extraordinary. It is not unreasonable for us to ask questions that we asked during the briefing and were given an undertaking that we would be provided information on. We are now going to consider the detail of the bill without access to that information. I do not think it is unreasonable that we understand how it is that we arrived in this situation. I can rephrase and break down the questions if it makes it easier. We requested a time line for when the requests from the police were first made. What was put in place and how was it dealt with from that point forward in the government's response? At what point did the government seek to take action to have a piece of legislation drafted to respond to this? A number of questions were raised in the briefing. I am not sure why we would have been provided the briefing and given an undertaking if we cannot actually have access to that information. To me, that is not transparency and I think that the people of Western Australia expect, at the very least when something like this happens, that we understand how it happened and why we are now debating a piece of legislation that has been rushed into this chamber, which the government has had some time to consider. The government has had plenty of advice on how to deal with this, so it is extraordinary to me that the Attorney General cannot answer these questions and that they could not be answered during the briefing that we had not less than an hour ago.

Mr J.R. QUIGLEY: I have no further comment to make on the short title of the bill.

Clause put and passed.

Clause 2 put and passed.

Clause 3: Terms used —

Ms M.J. DAVIES: Under clause 3, "Terms used", can the Attorney General explain the term "entry registration information" and how it applies? My understanding from the briefing is that this is a delineation as to whether —

Mr J.R. Quigley: Thank you, Leader of the Opposition.

Ms M.J. DAVIES: The Attorney General does not need any further information; righty-ho, I will not ask a question.

Mr J.R. QUIGLEY: Thank you. We are now getting down to the business of the bill. The term "entry registration information" means relevant information about the presence of persons at a place, obtained, on the occasion of their entry to the place, for the purposes of contact tracing in relation to an infectious disease emergency by the use of the mobile application known as SafeWA, or by some other contact tracing register or system, whether or not obtained under the Emergency Management Act 2005 or under the Public Health Act. This means, for example, that the

relevant information provided by individuals upon their attendance or entry at a place, because they are required to provide this under a direction issued by the State Emergency Coordinator for the purposes of contact tracing, is entry registration information. Likewise, when individuals are not obliged to provide relevant information but voluntarily provide relevant information upon entry or attendance, this will also be entry registration information. Voluntary provision of relevant information for contact tracing purposes would occur, for example, when a business or private venue has a policy of requesting relevant information for contact tracing.

Entry registration information does not include information obtained in the ordinary course of carrying on a business or undertaking if the information would have been attained even if not for the purposes of contact tracing. This means that when a business or workplace possesses records of attendance—for example, airline manifests; workplace swipe cards, as used in Dumas House or here in Parliament; or booking records for health services—and these records are subsequently provided for contact tracing purposes, these ordinary business records are not entry registration records. Entry registration information does not include statistical or summary information. Statistical or summary information is de-identified information. This means that the relevant information, such as an individual's name, phone number or address, and the name and contact details of persons accompanying an individual, is removed to derive statistical or summary information. The term "entry registration record" means any record of entry registration information, including a record in the form of data, text, images or sound. Images or sound have been included in the definition of "entry registration record" in case any future contact registration methods—not the ones currently used—employ the use of images or sound for the registration of relevant information.

Dr D.J. HONEY: At line 17 on page 3, under "entry registration information", paragraph (b) defines that information collected in the ordinary course of business is not subject to this legislation. In my contribution to the second reading debate, I gave the example of a number of establishments that I have been to—I have been to a good number of them—that record contractor details when they come into a location. Those establishments have now extended that to a general registration for all people who come on site as part of their requirements for contact tracing registration. I was told by the Attorney General's officers that those records would not be defined as information collected in the ordinary course of business. Can the Attorney General confirm that that would be the case? The other practical part of that is, in most cases, that information is collected in a booklet or some form of paperwork, so it is a mixture of contractor information and other visitor information. What is the expectation around destroying that information? It would seem that the only way that could be done would be for a proprietor to go through with a thick pen or to have some other way to determine whether the information collected was for contact tracing or for a contractor coming on site.

Mr J.R. QUIGLEY: Each case and each entry will depend upon its facts. If the information is being collected for the purposes of contact tracing, it will be defined as entry registration information and it will be captured and protected by this legislation. If, however, it is entry information in the normal course of business, it will not be captured by this legislation.

I can refer only to my life's experience. A swipe card that I regularly use, three or four times a week, is for the Marmion Angling and Aquatic Club. It has a membership swipe card and it also has a QR code. When I enter with my swipe card, that is not entry registration information because it is in the normal course of business of that club that I have to swipe to enter. That information is not being collected for the purposes of contact tracing. A QR code is also on the glass door and I am required to scan the QR code. That information is being collected for contact tracing. If the WA Police Force or any other authority or subpoena wishes to make a request or a demand of the Marmion Angling and Aquatic Club, that information transmitted to the club by my swipe card to open the door will be available under the Criminal Investigation Act or civil subpoena, but the information from scanning the QR code will not be available because that will be entry registration information. The difference is that when I open the door with the swipe card, I can take visitors in and I do not have to notify the club of all those visitors. I just swipe the card and open the door. However, when I do the QR code scanning, I have to either add another person or have that person separately scan themselves in, all of which is entry registration information and will be protected. If a tradesperson wants to come onto the premises, the club might want to record which tradesperson is coming onto the premises. That is not for contact tracing. But if it is for contact tracing, and if it is for compliance with the emergency management order issued by the State Emergency Coordinator, it is protected by this legislation as entry registration information.

It is probably the same when the member goes down to the Weld Club. I have never been in the Weld Club myself. But when the member goes to the Weld Club, he probably has to register his entry. There is probably also a QR code. But when a member enters the Weld Club, their entry is not entry registration information but scanning the QR code is. There is a difference and that is the best that I can explain it. Each case will turn upon the purpose for which the information was gathered.

Dr D.J. HONEY: I understand the difference between the examples that the Attorney General gave, but that was not the question that I asked. I am not trying to make an obscure point. Trades-type businesses have a system in which they collect information on contractors coming into their location and they have extended that to be a general register

that they use to capture the information for contact tracing. Those registers are physical. It has the information of contractors that come on site, which is what is collected in the ordinary course of business, but it also has information that is being collected from visitors only because the business is now required to collect that additional detail, that additional information, for the purposes of contact tracing. What I am trying to elicit from the Attorney General is how that will be dealt with.

Mr J.R. Quigley: I can give you the short answer.

Dr D.J. HONEY: As the Attorney General knows, when we are interrogating legislation, the intent is usually pretty straightforward and agreed by both sides. The difficulty we have is at the edges, but people can get into trouble and people's lives can be made a misery because of that, and we want to avoid that. I would appreciate an answer. Perhaps, if it were difficult for a business to separate that data, if it then stored that data, would that fit within the definition of "as soon as reasonably possible", as it may not be reasonably possible for the business to remove that data from the other data that it safely stores?

Mr J.R. QUIGLEY: It will be the business's legal obligation to do so because, in the example cited, it has extended the requirement for registration upon entry for contact tracing. That is what the member specified in his question. The business used to collect this data simply to record who was coming onto the premises; now it has extended it for the purpose of compliance with the mandated emergency management order. Therefore, it is entry registration information. The business will be required to keep the data for 28 days and required to destroy it as soon as reasonably practicable thereafter.

Dr D.J. HONEY: I thank the Attorney General. During the campaign period, I went to locations I do not commonly go to—certainly not the esteemed exclusive fishing club that the Attorney General referred to—and I observed that a number of those businesses, particularly engineering businesses and the like, had indeed done that. They are required to keep their contractor information because that is part of their other essential record keeping, but it would seem that those organisations would need to, in fact, implement two separate systems, if this is not going to be onerous.

Mr J.R. QUIGLEY: That is up to the business. If it is collecting information for the purposes of contact tracing, once this bill commences operation, it will have a legal obligation to keep the information that it is required to keep and that people are mandated to provide upon entry to those venues. The task before both the opposition and the government is to ensure that this provision means that that information is kept secure for 28 days and is destroyed thereafter.

Clause put and passed.

Clause 4 put and passed.

Clause 5: Relationship of this Act to other written laws —

Ms M.J. DAVIES: I understand this is one of the key clauses in the bill on how the act will interact with the Freedom of Information Act and the State Records Act, which relates to the disposal of records. Could the Attorney General perhaps provide some greater detail to the chamber on how this interacts with those particular pieces of legislation, and why it is important that that is included in the legislation?

Mr J.R. QUIGLEY: I welcome the question from the Leader of the Opposition and I welcome this interrogation of the bill. I welcome it because it is important for the public to understand, and it is an important question that the Leader of the Opposition asks.

Both the Freedom of Information Act and the State Records Act relate to access to and retention and destruction of information or records, and their effects are inconsistent with the policy objectives of this bill, which is to protect personal information provided by an individual for the purposes of contact tracing and related purposes and provide for the destruction of records. As the Leader of the Opposition knows, the State Records Act requires information to be retained. This legislation will override the Freedom of Information Act and the State Records Act. The explanatory memorandum states —

> Clause 5(1) makes it clear that access under the FOI Act and retention under the SR Act is overridden by the provisions of this Bill.
>
> An example of a provision where an Act has effect despite the FOI Act is section 585 of the *Mental Health Act 2014*.
>
> Clause 5(2) provides that to the extent that there is an inconsistency between a provision of this Bill and a provision of the *Criminal Investigation Act 2006*, the *Emergency Management Act 2005*, the *Public Health Act 2016* or any other written law, the provision of this Bill prevails. This means that these Acts will continue to apply and be read together with the provisions of the Bill except where there is any inconsistency.

> An example of the approach taken to the relationship with other written laws in this Bill, that is, where an Act has effect despite the FOI Act and where the Act also prevails despite inconsistency with other written laws, is section 5 of the *Health Services (Quality Improvement) Act 1994*.

This legislation will override all the other provisions in written law in Western Australia concerning access to information. When the information falls within the category that we have already discussed when we were debating clause 3—that is, when the information is entry registration information—then this legislation will override all other written law so that that information is kept secure and sacrosanct.

Ms M.J. DAVIES: Thank you, Attorney General. Just so I am very clear, this is really the crux of the legislation in trying to remedy the fact that the police have been able to access this information. This is the clause that will prevent the police from accessing the information that they are currently able to access; am I correct in saying that?

Mr J.R. QUIGLEY: Without criticism, partially. Yes, and the next clause, clause 6, which is what the information can be used for. When we read clauses 5 and 6 together, that is what I would call the crux of the bill. Clause 5 overrides all other laws for access to entry registration information, and clause 6, which we will discuss in a moment, deals with what the information can be used for. There is also another proposed section in the legislation that will prohibit its admission into evidence in any proceeding, but clauses 5 and 6 together could be fairly described as the crux. I was not trying to diminish the Leader of the Opposition's question in any way, but I would not say that clause 5 on its own is the crux.

Ms M.J. Davies: I'm not a lawyer; I'm here to take advice.

Mr J.R. QUIGLEY: No, and I am not here to argue an ideological point. I was just trying to make it clear that I would regard clauses 5 and 6 read together as the crux of the legislation, as the Leader of the Opposition framed it. We will interrogate clause 6; it is very important.

Clause put and passed.

Clause 6: Protection of entry registration information —

Ms M.J. DAVIES: The Attorney General foreshadowed that clauses 5 and 6 together will essentially, to my understanding, remedy the issue that has resulted in us arriving here today; that is, the Western Australia Police Force lawfully accessing information collected as part of the SafeWA COVID app. We understand that a number of requests have been made, seven at least, directly to the Department of Health, but only three reached a sufficient level of—I do not know what the right word is—relevance or threshold that allowed information to be shared with them.

Mr J.R. Quigley: In relation to two cases.

Ms M.J. DAVIES: Two cases; I understand. I did say that in my second reading contribution. The briefing was very clear on that. Seven requests have been made to the Department of Health. I do not understand whether they were all made by the same officers or whether they came from different parts of the department and whether or not at that stage the protocol was in place with Western Australia police. I am trying to understand, essentially, how we got to that point without flags being raised earlier. Perhaps the Attorney General can explain to us now how clauses 5 and 6 work together to prevent the further sharing of that information.

Mr J.R. QUIGLEY: Certainly. Of course, clause 6 deals with the problem that the government is confronted with; that is, the lawful way for police to access entry registration information. When we talk about there being a protocol, it was a protocol put forward by the police, not by government, and it did not provide a solution that the government would accept or was comfortable with in any way. This was part of the delay, with the police saying, "We'll do this" and that is why the other five applications were never dealt with. We were going to stand them up; and, if warrants were issued, we would have challenged them on behalf of the community. But that was not going to deal with the problem overall so there was a period when requests were coming in but they were not being complied with. The protocol that was put forward by the police was not an acceptable solution for the government, and that protocol involved going to higher officers or a superintendent and the superintendent authorising the officer to make the application under the Criminal Investigation Act 2006 to triage any small requests and only have the information for certain cases. That was not acceptable to the government on behalf of the community. This information is information that people are not just voluntarily writing in and giving; this information is information that citizens are required to provide by law and a penalty is applied if they do not provide it. That sort of information that is taken from a citizen under mandated law has to be held sacrosanct. We did not accept the solution put forward by way of a protocol. It was not acceptable. I cannot imagine that it would be acceptable to the Leader of the Opposition, the member for Cottesloe or the member for Moore, for the police to have an internal protocol. Clause 6 was drafted to have wide prohibition on the use of the information. It can be used only in accordance with the provisions laid out in clause 6(1) to (6).

Ms M.J. DAVIES: My next question goes to something that the Attorney General raised in his response. Perhaps the Attorney General can shed some light on this and perhaps he cannot. This is simply an observation of mine. The Commissioner of Police is in charge of the response to the COVID-19 pandemic; he is the officer in charge.

Mr J.R. Quigley: He is the State Emergency Coordinator.

Ms M.J. DAVIES: Correct. Sorry, that was the wrong language, but the Attorney General knew where I was going. It is an interesting challenge for the Commissioner of Police to be in charge of the emergency response coordination, building people's confidence in using the app and acquitting his role as police commissioner. I imagine there was quite a conflict about that proposal. There was clearly a difference of opinion between the Premier and the Western Australian Commissioner of Police on this front. We have made it clear that we understand that the Commissioner of Police was acting well within the law, but the police commissioner is also responsible, as part of the government's response, for building confidence in our processes and protocols. Has the government considered whether, in the longer term, the Commissioner of Police should continue in the role of State Emergency Coordinator? It is a genuine question. I know there was debate earlier on about whether or not such a role should come under the purview of public health or the Emergency Management Act 2005. We have now come across a problem. We are not right in the middle of the emergency as such, like we were in the very early days. Does the Attorney General envisage that other issues might come up as a result of conflicts between the way the police commissioner acquits his role in policing and his role in building community confidence? The Premier, the Department of Health and everyone else have no doubt set out to build people's confidence to continue to use this type of app. Whether or not this has happened inadvertently, we find ourselves now debating legislation at short notice to deal with the problem. Perhaps it comes back to whether we need to consider whether that role is the correct one going forward. Has the government contemplated this at any point?

Mr J.R. QUIGLEY: I thank the Leader of the Opposition for the question. I will start with the end of my answer and go backwards. There is no conflict of interest with the State Emergency Coordinator being the Commissioner of Police; in fact, the emergency management framework in a number of jurisdictions assigns responsibility of the state emergency coordinator or similar roles to the Commissioner of Police or other police force personnel. In this particular case, it was pursuant to, from memory, section 56 of the Emergency Management Act 2005 that the police commissioner had the authority to make directions. As the Premier said, this was an evolving situation. At the time the direction was made, it was a direction that information was mandated to be collected and would be used only in accordance with the law that it was given for contact tracing. Subsequently, some investigator has come up with the Criminal Investigation Act 2006; "Whoa; there's another law that is now being used." I do not think it was the Commissioner of Police sitting behind his desk who did this. As reported in today's *The West Australian* online—I did not release the information—it first came to consideration during the Perth Motorplex assassination case during which some investigator used all efforts and every avenue of inquiry to come up with this, which is within the law under the Criminal Investigation Act. Someone asked me during the press conference whether passing this law and not allowing the police to access information will impede future investigations like that. We took advice and looked at it all on balance. At the end of the day, the SafeWA app only locates a person. It does not tell us what they were doing, like CCTV cameras can. People can be located through the triangulation of a phone. It is extremely unlikely that a person going about the business of an assassination would first of all check themselves in with a QR code going in the gate.

Mr R.S. Love: They do not want to break the law.

Mr J.R. QUIGLEY: They do not want to break the law, and then go in and shoot someone dead?

Mr R.S. Love: Apparently not. Otherwise, why would the police commissioner seek to use that information?

Mr J.R. QUIGLEY: I take that as a hypothetical question. If the police wanted to locate me now, they could do so in a flash by triangulating my mobile phone, which is sitting over there on the chair, just the same as they could locate the member.

On the question of the balancing of public interests—are we impeding police investigations or are we protecting the public?—we do not believe that we are impeding police investigations. The Commissioner of Police has not raised an objection to this legislation and has not asked the government to stop proceeding with this legislation. At all times, the Commissioner of Police has said, to his credit, that the police will operate in accordance with the written law, and this will be written law once it passes this chamber and the other place. We hope that tomorrow the opposition will be able to say, "Well, after reading clauses 5 and 6 of the legislation, as far as we can determine, the public's information will be protected and used in a very, very limited circumstance as set out in clause 6", which we are currently considering.

Ms M.J. DAVIES: My question then becomes: have other jurisdictions come across this issue? Various apps have been introduced. I know that the Leader of the Liberal Party talked about one in Canberra. I understand that there is different legislation in different jurisdictions, but we have at all times been told by the government that it is taking learnings from other jurisdictions. I wonder whether this issue has been raised and how it has been remedied;

whether other jurisdictions have the Commissioner of Police in charge or whether the Public Health Act is being used; and whether this needs to be revisited.

Mr J.R. QUIGLEY: I thank the Leader of the Opposition for the question. There are differences between the jurisdictions. Some jurisdictions already have privacy legislation and a privacy commissioner, which goes some way to addressing the problem of entry registration information. The commonwealth privacy legislation legislated some of the provisions that we have now included here, and we looked at that when we drafted this bill. But the situation applies only to the commonwealth app, and the commonwealth app does not work properly anyway. Our SafeWA app seems to be the most effective contact tracing app in the nation. Some other states have tried to protect the information by directions given by the emergency management coordinator, but none of them go as far as this legislation in protecting the information. Other jurisdictions could learn off us. But, as I said, it is hard to compare because in some other jurisdictions there is general privacy legislation, which we do not yet have, with a privacy commissioner.

Ms M.J. DAVIES: We have been told the legislation has been complex to draft. When this became a known issue, could the Commissioner of Police have issued a direction that would have sent a clear message to the police to get the same effect in the intervening period before the legislation was introduced, to shore up the confidence of the public that the information was not being used inappropriately?

Mr J.R. QUIGLEY: I understand the question and that is the very question that I asked myself, and it has been part of the delay in this process, but the Commissioner of Police took this stand. I believe yes, but I am not the Commissioner of Police. The Commissioner of Police would dissent from my view and say that each officer has a sworn statutory duty and is not his employee. There is case law that a constable and the commissioner do not have an employer–employee relationship. They can issue regulations for the administration of the force, what uniform they are going to wear et cetera, but when it comes to enforcing statutory law, each constable has his own sworn office. The commissioner would say, "I cannot direct a sworn officer not to use a written law. It is beyond my jurisdiction to direct a constable not to avail himself of a written law when investigating a criminal offence. I cannot do that as the commissioner." Therefore, there was an impasse. The commissioner said he cannot direct it. I am with the member. I said, "Well, why not?" I am with the Leader of the Opposition, but the commissioner would dissent from both of us and say that no, as long as it is within the law, his officers proceed and he is not going to tell them not to use a written law. Therefore, we have to change the law.

Ms M.J. DAVIES: Just help me understand. The commissioner has the powers under the state of emergency to issue directions that essentially can direct everyone to do what we need them to do in an emergency for the safety of Western Australia, but the view is that he is not able to issue a direction that could prevent WA police from using that legislation under the laws that he is afforded under the Emergency Management Act?

Mr J.R. QUIGLEY: Under the Emergency Management Act, the commissioner can issue a direction that overrides other laws and requires people to provide information. The commissioner said that he cannot, and now this has cropped up. I do not think this was embraced at the time by the commissioner or anybody else until this terrible case happened at the Motorplex. The startling case happened at the Motorplex and he said, "We will throw everything at this." Then some investigator, I assume, said, "Well, what about the Criminal Investigation Act?" Then he said that he did not have the authority as Commissioner of Police to tell another sworn officer not to obey the law and avail themselves of the law. I do not criticise the Commissioner of Police for that. He has a different view from what the member and I hope for, but he is the Commissioner of Police and he knows his function better than I know his function. If he says his officers are going to proceed in accordance with the written law, we say fair enough; we will change the law and put a prohibition on it. He could not, for example, issue a direction that the Information Commissioner could not pursue an application or the Corruption and Crime Commissioner could not issue a notice; it is beyond his jurisdiction. We therefore wanted to ensure that this could not happen. Various statutes established power to require or permit information to be disclosed. There is significant legal difficulty in restricting the use of this information completely under an emergency management direction. Enshrining these requirements in legislation rather than imposing the requirements via direction also means that these protections cannot be weakened or in any way amended without parliamentary scrutiny. It is not up to the commissioner to amend them. If it were by the commissioner's direction, he could amend it at any time.

Ms M.J. Davies: I am not suggesting it is not the right avenue; I am just saying that in the short term there might have been an avenue for that.

Mr J.R. QUIGLEY: I wish! The Leader of the Opposition has been a minister and she knows that to pass legislation we first have to get approval from cabinet to draft the legislation. We have to take to cabinet what we intend to draft and then we have to get the parliamentary draftsman to draft it and then, as the Leader of the Opposition knows, we have go back to cabinet.

Ms M.J. Davies: A direction would have been handy.

Mr J.R. QUIGLEY: It would have been handy, member. Then we have to go back to cabinet to get permission to print, as the Leader of the Opposition knows, and once we have permission to print, we can bring it into the Parliament. I have had to do all that because the commissioner has a divergent opinion from what I think, and, obviously, what the Leader of the Opposition thinks, would have been handy.

Ms M.J. Davies: I'm just asking the question. I will keep asking the questions. That is what I was asking during my second reading contribution.

Mr J.R. QUIGLEY: I think it is a good question. The community deserves an answer to the question and I hope I have provided a sufficient answer.

The DEPUTY SPEAKER: Members, there are 12 clauses and we have 15 minutes left.

Dr D.J. HONEY: Thank you very much.

Clause 6(1) states in part —

> Entry registration information cannot be used or disclosed for any purpose other than —

It lists those purposes. Subclause (3) indicates that there are very substantial penalties for individuals, bodies corporate and the like. An excellent member of the fourth estate, who is clearly watching the proceedings this evening, was kind enough to furnish me with some information. For example, a shop owner had some material stolen from their shop. As they knew the person had come in, they used the register to identify that person so they could retrieve the goods or at least get recompense for them. In that situation, would the shop owner who has said they have done that, be subject to the penalties outlined in this law if they used the information in that way?

Mr J.R. QUIGLEY: They would be liable to prosecution if they used the entry registration in that way. Furthermore, the information could not be used in court in any event. It would be an arid exercise that bore no fruit because the information could not be used. If the police are operating according to law—I have faith that they do—they know that they could not use that information coming from entry registration information because subclause (2), the one above, states —

> Without limiting subsection (1), entry registration information is not admissible in evidence in any criminal or civil proceedings other than proceedings in relation to an offence referred to in subsection (4).

That is, misusing the information. As most businesses do now, they would have to rely on their own CCTV.

Dr D.J. HONEY: Thank you, Attorney General. I was certainly aware of the issue about the police but it may be that that shop owner decided on their own cognisance to pursue the individual rather than go through the police. If the owner did that, I assume the Attorney General is saying that they would still be subject to those penalties.

Mr J.R. QUIGLEY: Without question. If the owner is using the entry registration information for any other purpose than giving it to an authorised officer under the Health Act for the purposes of contact tracing, it will be an offence.

Dr D.J. HONEY: I know the Attorney General does not want it, but one of the things we always worry about in laws is unintended consequences. On the information register of many of the establishments I have attended, particularly clubs—not that I frequent many, but I do occasionally—are all the names, addresses and telephone numbers for the world to see. We heard earlier tonight an example of someone who did not go into a venue because they looked at the register and saw an ex-boyfriend was there whom they did not want to see, and they used that information. Clause 6(1) states that entry registration information cannot be used or disclosed for any purpose. I want to elicit a little detail about what is meant by "disclosed". If someone comes in and sees the register, as I have—I have seen a whole list of people, with phone numbers and other contact information, because it is a register that contains multiple entries and everyone adds to the end of the list—is that disclosing that information? As another person coming in, I can clearly see all that information. As I say, Attorney General, I am not nitpicking; I am trying to make sure there is no unintended consequence for an owner of an establishment, given the way they utilise their register.

Mr J.R. QUIGLEY: The definition of disclosure is "ordinary disclosure", which requires an intent by the shopkeeper or the venue provider to disclose the information to another person in the ordinary meaning of the term "to disclose". If I go to an IGA store that has a QR code or a clipboard where I register, there is no disclosure by the IGA manager on the registration form. He is not disclosing that to anyone; it is there for people to register. To disclose requires an act and an intention by the manager of the store to publish that information. By just maintaining a register, he or she is not disclosing.

Dr D.J. HONEY: Thank you very much, Attorney General. To burrow into that point a little more, is it possible to disclose by omission; that is, the owner has omitted to protect the information and thereby disclosed it? If someone obtained that information and used it for some other purpose, such as a nefarious purpose or whatever, could they have disclosed because they omitted to keep that information confidential?

Mr J.R. QUIGLEY: That is right. The venue proprietor, be it a corporation, an officer of a corporation or an individual, has an obligation to keep that confidential. Each case obviously will turn upon its facts. If the person puts that information in the bin out the back, with all the names and addresses on it, they will be liable. I will take the member to clause 7, "Storage of entry registration records"—I am mindful of the time—which states —

> The responsible person for an entry registration record must, so far as reasonably practicable, ensure that the record is stored in a secure manner until it is destroyed.

There is an obligation to keep it secure. Under clause 8, "Destruction of entry registration records", the person has an obligation to keep it for 28 days and destroy it as soon as practicable after the expiration of the 28 days. Clause 8(8), which goes to carelessness, states —

> An entry registration record must be destroyed either —
>
> (a) in the manner approved by the CEO; or
>
> (b) if no approval under paragraph (a) applies to the record — by taking all reasonable steps to ensure that the entry registration information contained in the record cannot be retrieved.

It can be burnt, shredded or whatever, but it cannot be done in such a manner that it can be retrieved, so there is another obligation upon the record holder.

Dr D.J. HONEY: Thank you, Attorney General. I understood those points. My concern is about the record that is viewable on the table at a venue and if the owner has not hidden the existing entries, those entries are available for other people to see. I am not saying someone would do this intentionally, but I do not want the unintended consequence to be that someone is guilty of disclosing information because they did not prevent that information from being observed by other people.

Mr J.R. QUIGLEY: The bill requires that all that is reasonable and practicable is done to keep that information secure. It states —

> The responsible person for an entry registration record must, so far as reasonably practicable, ensure that the record is stored in a secure manner until it is destroyed.

It would not be reasonably practicable for the venue owner to hide the record line by line. That would not be reasonably practicable. We have to be sensible about this. Both the opposition and the government have to join together to reassure the community that all reasonable steps have been taken with this legislation under clauses 5, 6, 7 and 8 to keep that information sacrosanct and secure. That is why we want to get this bill through quickly, to not allow this to go on—to not lay it before the chamber for the required 21 days under standing orders and have a further delay—given that the Commissioner of Police takes the view that he cannot issue what the Leader of the Opposition characterised as a "helpful direction". That is not available.

Clause put and passed.

Clause 7 put and passed.

Clause 8: Destruction of entry registration records —

Dr D.J. HONEY: I covered this point in my second reading contribution, but I would like the Attorney General to confirm that 28 days is an adequate period. I know that in this state we have not had too many examples to worry about, but certainly in New South Wales, and in Victoria in particular, there have been a lot of cases. Is that 28-day period a sufficient length to ensure that we do not lose necessary information for contact tracing?

Mr J.R. QUIGLEY: The Chief Health Officer advises that 28 days is the appropriate period because it is two incubation periods. We are told that the incubation period is 14 days, hence the 14 days' quarantine, so 28 days is appropriate. If a person was infectious on day 14 when he visited a store, the incubation period for a close contact would be a further 14 days, hence making up the 28 days. I draw the chamber's attention to subclause (3) which states that under the Public Health Act or the Emergency Management Act, the period can be extended. If there was a sudden blowout of the Delta variant and the contact tracers were working overtime, they might say that they needed the records held for a little longer and that direction could then be issued. But we believe, on health advice, that 28 days is the appropriate time.

Clause put and passed.

Clauses 9 to 11 put and passed.

Clause 12: Regulations —

Dr D.J. HONEY: We were given an answer to this in the briefing, but I want to clarify this because clause 12 provides that the Governor may make regulations. Does the Attorney General anticipate any regulations for this matter or that in the future there might be a requirement for regulations to be developed for this particular bill?

Mr J.R. QUIGLEY: Clause 12 contains a regulation-making power, and states —

> The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

No regulations are required before the commencement of the act. The only matter that may be required to be prescribed under the bill in the future is in relation to clause 8(1), whereby an initial storage period different from the current 28-day initial storage period may be prescribed. However, this relates to potential future infectious diseases; it is not necessary to make any regulations currently. When this bill becomes law, it will not be limited to just the COVID-19 pandemic; there may be a disease in the future that requires a longer period to hold entry registration. The bill will stand on its own without any regulations. We have no intention at this point to introduce them.

The DEPUTY SPEAKER: Pursuant to the order of the house, the time has arrived for me to put the following questions necessary to complete the stages of the bill with no amendment or further debate allowed. The question is that all remaining clauses—that is, clause 12—and the long title be agreed to.

Clause put and passed.

Title put and passed.

Third Reading

The DEPUTY SPEAKER: The question is that the bill be now read a third time.

Question put and passed.

Bill read a third time and transmitted to the Council.