

**COVID-19 RESPONSE LEGISLATION AMENDMENT
(EXTENSION OF EXPIRING PROVISIONS) BILL 2020**

Time Limits — Statement by Leader of the House

HON SUE ELLERY (South Metropolitan — Leader of the House) [9.03 pm]: I advise the house that the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill 2020 is a COVID-19-related bill. Accordingly, I have consulted with the party leaders and can advise that the maximum time limits for each stage of the bill pursuant to the temporary order made on 31 March 2020 are: second reading stage, 105 minutes; Committee of the Whole House stage, 90 minutes; and third reading stage, zero minutes. By way of explanation, there was an intention to debate the third reading, but no party indicated that they would seek to make a third reading contribution.

Second Reading

Resumed from 5 November.

HON NICK GOIRAN (South Metropolitan) [9.04 pm]: I indicate at the outset that I am not the lead speaker for the opposition on the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill 2020 brought on by the government. Is it not interesting that the government has decided once again to invoke its much-loved temporary order and dictate to the house of review, the Legislative Council, that thou shalt not speak for more than 105 minutes on the second reading debate of this bill? It is interesting that standing order 125 would normally mean that this bill would not be able to come on until Thursday this week at the absolute earliest, but the government has decided that this is a key priority, so it must be dealt with today, Tuesday, 10 November. We are entitled to ask why. What is so urgent and important about the bill currently brought on in the house at the request of the Leader of the House that we need to ditch the standing orders, apply the much-loved temporary order and ensure there is a guillotine to the role and process of the house of review? We are entitled to ask why. It is interesting to note that this bill is nine clauses in length, and about the only thing it does is extend the sunset clause on the emergency powers currently scheduled to expire on 4 April 2021. Is it not interesting that the Leader of the House and the McGowan government do not like it when the guillotine is applied to them? They say, “Hold off on the guillotine. We don’t want it to apply on 4 April. Please give us a bit more time”, and then they bring on this bill this evening and ensure that they use the guillotine.

How can this bill be considered urgent when the only thing it is doing is extending a date that does not arrive until 4 April? Why would we ditch the standing orders that say that this bill is not supposed to come on until Thursday when the whole thing is about 4 April? I look forward to the Leader of the House, who has responsibility for this bill, explaining to us —

Hon Sue Ellery: I don’t.

Hon NICK GOIRAN: She does not—who is dealing with it?

Hon Sue Ellery interjected.

Hon NICK GOIRAN: The absent minister is away on urgent parliamentary business, and I look forward to him providing an explanation about why this matter needs to be dealt with in this fashion.

As I say, the purpose of the bill is to extend the extraordinary powers available to government under its insertion by way of the Emergency Management Amendment (COVID-19 Response) Act 2020 of new section 72A into the Emergency Management Act. Members may recall that one of the bills we had to deal with earlier this year, again under the much-loved guillotining provisions that the government is obsessed with, was this legislation and section 72A, which allows relevant officers to take, or direct a person or a class of persons to take, any action that the relevant officers consider is reasonably necessary to prevent, control or abate risks associated with the emergency, such as directions for social distancing. It also allows the relevant officer to direct a person to provide certain types of information, such as travel information or whom someone has been in contact with. That is what the amendment in the Emergency Management Amendment (COVID-19 Response) Act 2020 to insert new section 72A into the Emergency Management Act does. This extraordinary provision in section 72A has a life and a death, and at the moment, its execution is scheduled for 4 April 2021. The McGowan government has decided that it would like these extraordinary powers to live on for another six months beyond the 12 months that it asked us to agree to earlier this year, and we are entitled to ask why.

What does the government say in its second reading speech about section 72A? Very interestingly, in its second reading speech, the government said —

The powers under section 72A have supported the closed borders and the issuing of directed presentations for health testing, isolation and hotel quarantining. They have been, and continue to be, critical to this strategy.

Critical to the strategy of supporting the closed borders! I may be mistaken, but I thought that the McGowan government was moving away from closed borders. I thought that it had decided that it wanted to move to controlled borders in four days' time, but not according to the second reading speech. In the second reading speech, it says that the powers under section 72A are critical to this strategy of closed borders. So what is it, McGowan government—is it closed borders or controlled borders? More mixed messages from the McGowan government? Surely not. Maybe that is why the Leader of the House needs to table documents later this week, which we look forward to reading, even though the Leader of the House is sceptical about whether members will do any reading. We look forward to reading those documents so that we can verify, consider and decide whether in fact the McGowan government is telling the truth. As we know, over the last three and a half years, the one thing it has done consistently is make sure that it hides information from Parliament and the people of Western Australia.

I note that the government refers to hotel quarantining in its second reading speech. Let us remember that the McGowan government decided that it would be appropriate to keep people in a hotel room not much bigger than a prison cell and without the capacity to open the window or exercise, yet it is asking for this to continue under section 72A because it says that it is critical to its strategy. Somehow in all of this, it is critical to its strategy to make sure that when people do 14 days of hotel quarantine, the window is closed at all times. It is critical to its strategy that under no circumstances would people be able to have any fresh air. I have said it once and I will say it again: it is an inhumane approach by the McGowan government. I and others have supported its approach to quarantining, including the period of 14 days. Why? It is in accordance with the health advice. I find it very difficult to believe that it has ever received advice from the Chief Health Officer that says that when we put somebody in hotel quarantine, we should make sure that they cannot open a window. I find it very difficult to believe. We will see what documents get tabled later this week.

In the second reading speech, the McGowan government went on to say —

Section 72A has also supported the government's implementation of social distancing measures that has been appropriate to the health advice. It has supported the gradual easing of restrictions for social venues—such as theatres, concert halls and cinemas—to reopen. It has been used to facilitate Western Australia hosting the Australian Football League at Optus Stadium.

I pause there to note that although the McGowan government may beat its chest about hosting the AFL at Optus Stadium and its so-called use of the section 72A powers to facilitate that, I remind members that what actually transpired on that day when there was the AFL final was nothing short of a farce. I know that the Leader of the House is as passionate about the West Coast Eagles and AFL as I am, but we had a situation in which people had to leave every second row empty, as though the coronavirus moves only backwards and forwards, not sideways! That is the kind of mentality that we are dealing with in the McGowan government. It talks about social distancing, yet it allows people to go outside the stadium and be on top of each other at the train station and while they are queuing up. The McGowan government wants to beat its chest about section 72A and how it has supported it to facilitate Western Australia hosting the AFL at Optus Stadium. It takes only one or two moments of reflection to see just how farcical that situation was.

The McGowan government also feels very proud of itself about the so-called easing. It says that it is now easing the restrictions and allowing certain social venues, such as theatres, concert halls and cinemas, to reopen. I look forward to us going into Committee of the Whole House and perhaps the minister with responsibility for this matter explaining to me why it is okay to ease the restrictions on theatres, but it cannot ease any restrictions on churches, because of course those people need to have extra protections from the coronavirus. Coronavirus runs rampant in churches, but not in a theatre or a cinema as there is some immunity there from coronavirus! It is these types of inconsistencies that have been applied consistently by the McGowan government that continue to annoy Western Australians. The vast majority of Western Australians have been prepared to accept restrictions on their freedoms and liberties, and the trade-off for that is that they expect transparency from the McGowan government, but what they have received is exactly the opposite. Most Western Australians are prepared to accept some restrictions on their freedoms and liberties, but they expect the rules to be applied consistently. That has not happened. That is the history. The McGowan government is now saying to us, "Quick, it's urgent. We'd like an extension to these extraordinary powers", because, according to the government, it has used them so well, despite the examples that I have just given, and it wants these powers for an extra six months.

When we are dealing with a matter like this—extraordinary powers being provided by Parliament to the government to allow it to restrict the freedoms and liberties of the people who vote us in—it is appropriate for us to ask the questions: Is this necessary? Is it appropriate? In my view, this request is necessary, and the reason for that is that we have an election on 13 March and the death of these extraordinary powers is scheduled to occur on 4 April.

I agree with the government that between 13 March and 4 April next year is an inadequate time, for whichever side wins government—hopefully, it will be my team—to do something about these extraordinary powers; that is, to get a briefing to find out whether they need to continue and to get the legislation through both houses of Parliament

to seek an extension. I agree with the government that this request is necessary for those reasons. Of course, the question that I ask—I hope other members will ask it as well—is why this was not factored in during the drafting of the bill earlier this year. The government knew earlier this year that the election would be held on 13 March and the government told us that the date had to be 4 April. The government was not interested in any scrutiny or review of the legislation. It was the government's way or the highway, and we had to accept it and the famous guillotine that the government has loved to use so frequently this year. That is the history of the matter. I would like an explanation about why the McGowan government was so incompetent that it did not factor in the 13 March election—the fixed terms that were brought in by the Barnett government—and why it has to have the legislation come in at this time. Nevertheless, I agree that the request is necessary; the question is whether it is appropriate. Is it appropriate for this house to grant the McGowan government an extension of these extraordinary powers for another six months? It is necessary to have an extension, but is it appropriate for the powers to be extended until 4 October next year? My view is that it is not appropriate to allow an extension to 4 October. I found the response provided by the minister in the other place very interesting. I will quote from the uncorrected *Hansard* of 5 November this year, in which Hon Fran Logan said —

Let us just run through the time frame, which is basically what the member has highlighted and really is the basis of the amendment proposed by the Nationals WA. The election is on 13 March 2021, and the member, as a former minister, knows that it will take some time for the government to appoint new ministers and for those ministers to be sworn in and to get to grips with their portfolios. The sunset clause is literally in place from 4 April. That really does not give us any time between the election and 4 April, so something has to be done. The amendment to be moved by the Nationals effectively says, “Why can't we just take it up to 4 July?” As the member knows, we will not be here on 4 July. I will not be here anyway, but the member will not be here either because he will be on his winter break, which concludes in the last week of July. The Nationals have also indicated that a review should be undertaken during that time. Let us be sensible about this. We all know that a parliamentary review, which is what the Nationals are proposing, would not be completed between 4 April and 4 July.

That is according to the minister with overall responsibility for this matter. That is the explanation that was provided and the case put forward by the government about why an extension is needed to 4 October. Why 4 October? What is so special about 4 October that Premier Mark McGowan is asking for these extraordinary powers—which he, at one point in time, if my memory serves me correctly, referred to as draconian earlier in the year—to be extended to then? Why does he choose to have them until 4 October? Is it a special day in his calendar? The government needs to provide an explanation to the Parliament for why it has chosen 4 October. The response that was provided by Hon Fran Logan is no explanation whatsoever. All he did was spend more time talking about the Nationals WA. That is not an explanation for why the date should be 4 October. Why is it 4 October? The government chose that date on purpose. Tell us the reason. It fascinates me that the minister with the overall carriage of this matter is more concerned about the winter recess and people being on holidays than he is about providing a cogent explanation about the sunset date for the extraordinary powers. Maybe Hon Fran Logan and his colleagues need to be less concerned about holidays and booking their flights to wherever they want to go in July and be more concerned about the freedoms and liberties of Western Australians. It seems to me that the proposal put forward by the Nationals—I note there is an amendment on the supplementary notice paper—is eminently sensible.

I said earlier that I agree with the government that between 13 March and 4 April is an unreasonable time for whoever wins the election on 13 March next year to get a briefing, prepare the legislation and get it through both houses of Parliament. I agree that that is an unreasonable time. However, for the government to resist amending the date to 4 July shows that it is obsessed with these extraordinary powers. It loves them so much. There is more than enough time between 13 March and 4 July next year for the government to get a briefing and prepare the bill if it needs it at that point. That is the point. It is not just an automatic thing. According to Hon Fran Logan, we need to be more concerned about the bigger priorities, which are the winter recess and members going on holidays. I distance myself from those remarks by Hon Fran Logan. He might be more concerned about holidays in July; I am more concerned about the freedoms and liberties of Western Australians.

I said to my colleagues that I would not speak for too long on this bill, because we know that the government is very keen to make sure that it passes through expeditiously, for reasons that it will provide an explanation for in due course, one would hope. I still fail to see why it could not have been dealt with on Thursday this week or, indeed, in the final scheduled sitting week of this year. Nevertheless, the government has its reasons for why it has decided to bring it on today, and I hope it is for reasons other than its obsession with the use of the guillotine.

I will conclude on this point: I think it is fair for us to say that it has become clear to us over the course of this year that the favourite royal of Hon Mark McGowan, the Premier of Western Australia, is Henry VIII. We know that from the experience of many debates that we have had this year. What has now become clear to me as a result of this bill is that the Premier's favourite movie character is Supreme Chancellor Palpatine. Members who are familiar with the *Star Wars* series will know that that individual loved and was obsessed with extraordinary powers. It seems to me

that Premier Mark McGowan's hunger and thirst for these extraordinary powers has no end, and that concerns me. Thank goodness there is a Legislative Council. Can members imagine if we were in Queensland and Hon Mark McGowan, the member for Rockingham, had no Legislative Council to restrain his hunger and thirst to be every day more and more like Henry VIII and more and more like Supreme Chancellor Palpatine? Can members imagine that? Thank goodness we have the Legislative Council in Western Australia.

I commend the Nationals for the amendment that it has foreshadowed it would like to move. It can be assured of my support for it. I think that the government's insistence for this and the complete lack of explanation in the other house by the minister with overall responsibility for this matter is a shameful and disgraceful example of the overreach that this government continues to exercise day after day. The government should be restrained and I ask members to give serious consideration to the amendment on the supplementary notice paper when we get to it.

HON COLIN de GRUSSA (Agricultural) [9.30 pm]: I rise as the lead speaker for the Nationals WA on the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill 2020. As members are well aware, this bill is being debated under the temporary orders for urgent COVID-related legislation. However, as Hon Nick Goiran has pointed out, perhaps the urgency is not quite there yet, as we effectively have quite a few weeks of sitting left in which we could debate this bill and give it due scrutiny, although I note that this is a relatively small bill in form. The Nationals are supportive of the aspects of this bill—that is, the need to extend the extraordinary powers that we agreed to earlier this year—given that those provisions will obviously expire not long after the election next year. As members are well aware, that will leave us with little time in which to convene and review the need for these powers to continue, if they do. We hope, of course, that they will not need to continue.

Before I go into too much detail, I want to take the opportunity to thank our emergency services workers and our police and health and other frontline staff who have been dealing with COVID at the coalface so to speak and keeping us safe. I would like to acknowledge the work they have done, hopefully under the protections provided by some of the powers that we granted through the amendments that were made to legislation earlier in the year, particularly to the Criminal Code, and under section 72A of the Emergency Management Act. I would like to thank those people. They have done a great job in keeping us safe, as well as in the decisions that they have made.

In late March and early April this year, we debated two bills—the Emergency Management Amendment (COVID-19 Response) Bill 2020 and the Criminal Code Amendment (COVID-19 Response) Bill 2020. Those bills, which are now acts, introduced what are extraordinary powers in a democracy such as ours. That was at what can only be described as the height of the COVID-19 pandemic and the fears that it created. We were unsure at that stage what impact COVID would have on our state and nation. We were very much dealing day by day with decisions that ordinarily we would have liked to have considered over a longer period of time. We had to make those decisions quite quickly. We took the opportunity in those bills to introduce these extraordinary powers and extend them for a period of 12 months, which as members are aware will expire on 4 April next year. We did our best at that time to scrutinise that legislation under the temporary orders that we are also operating under today.

The Minister for Environment in his second reading speech on the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill referred to the extraordinary powers that were implemented through those amendment bills. He stated, in part —

The Emergency Management Amendment (COVID-19 Response) Act 2020, among other things, introduced new section 72A into the Emergency Management Act 2005. This provides a catch-all power that enables a hazard management officer or authorised officer to effectively manage the response to the emergency. It includes being able to direct a person or a class of persons to take any action the officer considers to be reasonably necessary to prevent, control or abate risks associated with the emergency. Section 72A also contains important information-gathering powers. Several directions have been made in reliance, or partial reliance, on this section.

The minister goes on to say that those directions include quarantine directions, presentation for testing directions, isolation directions, and remote Aboriginal communities directions. The sunset provisions that were built into that bill at the time it was debated will expire on 4 April next year.

The other amendment bill that we dealt with at that time was the Criminal Code Amendment (COVID-19 Response) Bill 2020. That bill sought to amend the Criminal Code to increase the maximum penalties for offences such as serious assaults and threats committed in the context of COVID-19. Those provisions are very important. Certain members of the public at the time were committing assaults and disgraceful behaviour towards our frontline workers. We needed to ensure that those workers were able to respond to the unfolding emergency without threats or intimidation. Those amendments were not only very necessary, but also very extraordinary.

Again, those amendments to the Criminal Code will expire on 4 April. We hoped at the time that there would not need to be an extension. In fact, if I go to the Leader of the House's second reading speech in this house on the Criminal Code Amendment (COVID-19 Response) Bill 2020, I see that she talked about the sunset clause and said —

Finally, these amendments are COVID-19-specific. The bill includes sunset provisions that provide that the amendments will cease to have effect 12 months after commencement, at a point in time we all hope COVID-19 is well behind us.

We still hope that, but that time is getting very, very close—4 April. Parliament will not have the ability between early December and 4 April to scrutinise any necessary legislation, so, understandably, we need to do that now. The COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill 2020 seeks to extend the powers we granted earlier in the year for an additional period of six months, bringing them to 18 months in total.

Hon Nick Goiran pointed out some of the commentary from the Minister for Emergency Services in the other place around the need for these provisions to be extended. I agree that the minister did not provide any real, intelligent reasons for these extensions. In fact, during debate on the bill on the amendments proposed to tighten the time frame, he stated —

I do not have to prove anything to the member. All I have to do is say no, we are not supporting it.

This is the minister's justification: "I don't have to prove anything. I'm just going to say no. I don't have to justify the extension of these extraordinary powers for an additional six months from the original 12 months." I do not think that is a good enough explanation from the responsible minister for extending those extraordinary powers.

I know that the representative minister in this house will not stoop to the level of his counterpart in the other place. I hold the representative minister in this house in very high regard and I am sure that if he is able to provide us with a decent reason about why those provisions need to be extended until October, he will do his best to do so. However, I have my doubts that he will be able to do that, because I do not think there is a good enough reason. In fact, in his reply to the second reading debate in the other place, the responsible minister stated —

The proposition for a six-month extension was arrived at on the basis that people might be concerned were we to extend the provisions of the declaration of a state of emergency for one year. It might have concerned them that we would be pushing out provisions that are onerous and not usual in a democracy for far too far.

In other words, "We didn't want to go for a year because we thought that'd be too hard to justify, so we picked six months." But that is not a reason. That does not provide us with a decent reason about why an additional six months is now required. It is not unreasonable to expect the Parliament to have scrutiny over these extraordinary powers and to bring those orders back to this house for scrutiny. After the election, when the government is sworn in, we will have a new Minister for Emergency Services and I am sure, whoever that minister is, they will be able to get their head around the provisions applied and bring amending legislation, if necessary, to this place for debate.

We understand the challenging circumstances under which we have had to debate the various measures that we have put in place during the COVID pandemic. Again, the justification is based largely on the fact that the election is on 13 March 2021. Fair enough; I understand that. But we do not believe it is unreasonable to ask for that extension to be for three months rather than six months, and therefore bring it back to early July. That would mean that the Parliament would have a chance during the sittings that are likely to begin in April or May to scrutinise the legislation and make any amendments if they are necessary, or to let the sunset clauses take effect and allow these provisions to fall away.

We certainly hope that the government will no longer need those extraordinary powers. Members should be aware that there are a number of amendments in my name on issue 1 of supplementary notice paper 213. They give effect to tightening up that time frame from the 18 months proposed by the government to 15 months, meaning that those provisions will expire in early July. In the next Parliament, we will have the opportunity to scrutinise and assess the need for those provisions to remain in place. I think those amendments provide an opportunity for us to revisit those provisions in a sensible way to make sure that we will not grant these extraordinary powers if we do not need to.

Given that other Parliaments in our nation have established what are, essentially, oversight committees to monitor the implementation of the various COVID-19 provisions made in those jurisdictions, I encourage this government to do the same thing. I think it is absolutely necessary that we learn from the actions that have been taken and that an independent committee has oversight over those. In the absence of that, it falls to us in the Parliament to keep a good eye on what is being done. The only way that we can do that is to make sure that these provisions come back to the Parliament to be reviewed, scrutinised and tested. If they are necessary and need to be extended again, I have every confidence that this Parliament will do that, provided that an adequate justification is given by whoever is in government. I will leave it at that point because I know that other members might want to make a contribution and that, given the COVID order, we are on limited time.

HON TJORN SIBMA (North Metropolitan) [9.41 pm]: Given the time available, my contribution on the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill 2020 might be in two parts. Obviously, under the obligations imposed by our temporary order, it will, nevertheless, be a small contribution.

I thank my colleague Hon Nick Goiran for standing up while I was absent. I was disobliging myself of the contents of the previous bill. I am the lead speaker for the opposition on this bill and I indicate at the outset that we support it. We support it for entirely the same reasons that we supported the initial bill when it came to us in April, and we have supported every COVID-19 response measure put by this government. We have conducted ourselves as a responsible and constructive opposition. We have not, however, jettisoned our obligations to scrutinise government legislation, question certain assumptions and, when appropriate, modify excesses, particularly in terms of regulation-making powers. This bill represents the extraordinary exercise of power and, indeed, the extension of those provisions.

It has yet to be demonstrated, in the context of our overall COVID-19 response, that the state is in any way better prepared than it was in March and April to deal with what I will not call a second-wave outbreak, because we have not yet seen a first-wave outbreak in this state. We need to be reminded of that fact. We have benefited from government policymaking at both the commonwealth and state levels, but we have benefited most profitably from geographic realities that cannot be ignored. The fact is that we are far away from everyone and everything and there are limited points of entry into the state. We were always going to be advantaged by a competitive, natural attribute that probably magnifies any policy prescription that we can add to it.

My issue is not so much the contents of this bill—they are sensible and necessary—but that, for the very reason that Hon Colin de Grussa has indicated, they require the application of commonsense and scrutiny. I think that the extension dimension of this bears reflection because there has been on occasion an unfortunate element of discussion in that the Parliament is an encumbrance to government or to the exercise of executive power, and that it is an unfortunate obligation that we need to go to the Parliament, almost as supplicants, to seek its approval.

Debate adjourned, pursuant to standing orders.