

COVID-19 RESPONSE AND ECONOMIC RECOVERY OMNIBUS BILL 2020

Second Reading

Resumed from 18 August.

The DEPUTY PRESIDENT: I draw to members' attention a statement by the Leader of the House previously that the time allocation for this bill is 255 minutes for the second reading, 310 minutes for Committee of the Whole, five minutes for the adoption of the report and 15 minutes for the third reading. I remind members of those restrictions.

HON TJORN SIBMA (North Metropolitan) [4.01 pm]: At the outset, I am pleased to confirm that I am the lead speaker for the opposition on the COVID-19 Response and Economic Recovery Omnibus Bill 2020. In keeping with the opposition's facilitation of the government's legislative response to the issues we face in the wake of the COVID-19 global pandemic, we will facilitate the passage of this bill in a constructive manner. I draw to members' attention supplementary notice paper, issue 2, which contains at least 12 amendments from yours truly. At another stage of this contribution, I will give an indication of the thematic link connecting those amendments and my justification for them. I might also take the opportunity to seek, at an early stage, some information additional to that already provided to me by the office of the Minister for Planning from the minister representing that minister in this place. Notwithstanding our occasional rebukes of one another between the chambers, I found the quality of information helpful and the staff to be somewhat obliging. Again, that is a credit to not only the staff in ministerial offices, but also our public servants who have been working assiduously under obvious pressure to deliver on the government's policy and legislative agenda. Of course, that does not obviate me or anybody else in this chamber from casting a critical eye over the details of the proposed legislation, calling into question some of the facts and motivations, seeking to interrogate the government, calling for more information when appropriate, and calling into question motivations and future intent when appropriate.

The title of the bill is indicative of the situation we find ourselves in. When I dealt with the earlier environmental protection amendment bills, which are still on the notice paper, I was comforted by the fact that the government did not see the necessity to apply the appellation "COVID-19" to expedite that legislation more quickly than it deserved. I make the observation about that legislation, and I do so for a number of reasons, that, substantively, I think it is genuinely an economic management bill insofar as it deals with improved environmental processes and outcomes. I do so because the Minister for Environment is in the chamber representing the Minister for Planning who, through some strange confluence of events, finds herself the minister managing this omnibus whole-of-government bill, which touches on and effects changes to I think 75 acts. It is not an insubstantial piece of legislation.

I also want to place the legislation in its appropriate context and make a quick observation about the title of the bill, which is not to say that I am jumping into the clause 1 debate prematurely. In all honesty, I do not think that the title of the bill adequately nor accurately represents what the bill intends to do. The motivation for the bill is probably more clearly articulated in the explanatory memorandum and other documents. I will quote very briefly from the EM because it will focus our collective minds—it certainly focused my mind—to scrutinise the bill clause by clause. The explanatory memorandum states —

The Bill also operates to validate many actions taken, which may not have been in strict compliance with statutory requirements, but were necessary to enable business or Government processes to continue in an environment that was suddenly affected by disruptive measures such as travel restrictions, social distancing or self-isolation requirements.

That is what the bill is about. It is a retrospective validation, or justification, bill that seeks to regularise and normalise decisions made and processes undertaken to arrive at certain decisions in the wake of the peculiarities of the COVID-19 pandemic and our response to it. The opening sentence of the EM should serve to chill just a little bit the blood of any attentive member in the upper house. Reading the phrase "which may not have been in strict compliance with statutory requirements" is probably cause to be certainly alert and potentially very alarmed. As a euphemism, it is a masterstroke. But it deserves our close scrutiny, which is why I have proposed amendments. We are being asked to retrospectively validate a lot of government decision-making and government processes that, quite frankly, we have had no insight into and are unlikely to get a very good handle on. I will get to those concerns a little later.

I want to begin by explaining the process by which the opposition was briefed on this bill. It is my understanding, and I am prepared to be corrected—I have it on reasonable authority—that permission to draft and print this bill was provided prior to the winter recess. I mention that because it is a claim that can be proved or disproved. I am genuinely interested in the timing of how this bill came to be and why, because we are being asked to expedite the bill under the temporary order made on 31 March that circumscribes or limits the amount of time we have to deal with it.

We are also motivated, I suppose, by the implied sense of urgency that attends to every COVID-19 piece of legislation that the government brings into this house. Sometimes it is a claim or an assumption that should be tested. During

the briefing that the Liberal Party received—we have received two separate lots on the same day via Microsoft Teams, Zoom or one of the platforms—the following questions were put to the officers responsible for providing the briefing: What is the urgency? Is this a genuinely urgent piece of legislation to the degree that, for example, should this bill not pass in a timely way, and you define the time, would there be a corrosion of public health responsiveness outcomes? Would there be an undermining of the upholding of community safety and order? Would economic recovery be imperilled? They are my three key tests. If the government cannot demonstrate that something is absolutely urgent and tie that urgency to the performance of one or all of the three criteria that I just mentioned, I will be a little cynical about the urgency that is ascribed to this bill. That is not to reflect on the people who put the hard work into drafting the thing. In the order of government priority, frankly, I do not see the urgency of this bill. For the life of me, I cannot fathom why this bill has been prioritised over the environmental protection amendment bills. I genuinely believe that they are substantial economic pieces of legislation, and we have a narrowing window of opportunity to get them right. I would have hoped that we could dedicate this week to consideration of those bills.

As I said, there was no answer to my question about the genuine urgency of this legislation. In fact, there cannot be urgency in any genuine sense because insofar as the explanatory memorandum explains the purpose of this bill, there has been a burying of the lead—it is to validate decisions already made or processes already undertaken, largely for pragmatic and genuine reasons. This is a retroactive, retrospective bill. I am not certain that there is a great deal of urgency to make amendments across that broad sweep of about 75 acts today or even in the September sittings, to be perfectly honest. I draw members' attention to the fact that we have an agreement to deal with this bill within a limited period.

I also draw attention to the wideranging briefing. The bill that was provided to us for our consideration and contemplation was a consultation draft. In my very limited experience, I have not seen consultation drafts denoted as such and circulated to non-government parties as a standard course of interaction. Normally, we get a bill that cabinet agrees to print and if we want to change the bill, we put amendments on the supplementary notice paper. There has always been this sort of ephemeral quality to the nature of the bill and whether the government was attempting at some stage to dissociate itself from certain elements of it. My first question, which I suspect I have a partial answer to, is: how does the bill under contemplation here differ from the bill that was consulted upon at that briefing at the beginning of August? I suspect there has been a partial change, a not insignificant change, but an important change.

Members here may have seen in *The West Australian* on Monday an article by Peter Law that referred to the earlier version of this bill, in particular part 7, "Powers that may be exercised during emergency periods". For reasons that I will go into, this exercised the attention of the virtual rooms for reasons that I think will become clear to members present for this debate.

Debate interrupted, pursuant to standing orders.

[Continued on page 5211.]

Sitting suspended from 4.15 to 4.30 pm