COVID-19 RESPONSE AND ECONOMIC RECOVERY OMNIBUS BILL 2020

Committee

Resumed from 20 August. The Chair of Committees (Hon Simon O'Brien) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

Clause 1: Short title —

Progress was reported after the clause had been partly considered.

Hon TJORN SIBMA: Minister, I think we will bring our clause 1 discussion to an abrupt end before we move on to other parts of the bill. Since we last adjourned, the minister undertook to do a number of things and answer a number of questions that had been posed. I recall, I think, an agreement that we had that I would seek clarification from the minister regarding the meeting that was held on 15 March immediately prior to the declaration of a state of emergency or at least the state of emergency coming into effect. Is the minister in a position to provide any details about that meeting during the course of this discussion?

Hon STEPHEN DAWSON: I can confirm that there was no meeting on that date to which this bill applies. I note that the honourable member has an amendment on the supplementary notice paper that deals with the issue of "immediately before". During the break, I had an amendment drafted to fix that but obviously I do not need to submit it because the member's amendment to the long title is on the supplementary notice paper and we will support it.

Hon TJORN SIBMA: I do not think I heard the minister correctly. Was there a meeting on 15 March?

Hon STEPHEN DAWSON: I have answered the question.

Hon TJORN SIBMA: Was there a meeting immediately prior to the state of emergency coming into effect to which the purposes of this bill apply?

Hon STEPHEN DAWSON: I am advised that it was missed in editing, honourable member. There was no meeting on 15 March to which this bill applies. Therefore, the "immediately before" does not apply and the amendment in the member's name is supported.

Hon TJORN SIBMA: Notwithstanding the complexities of managing this bill because, of course, it requires input from a range of departments and has a number of authors, without being unnecessarily critical, the minister has, and will make occasion of, I suppose, cycling his advisers through the course of this debate as he previously indicated. For the record, I want to establish very clearly that when the issue of prior or immediately prior was first raised, it was raised in the course of second reading speech of the minister or the minister in the other place. When I inquired about that and drew attention to how the long title was drafted, I was originally advised that there was a typo and there was no meeting. When I subsequently inquired further during Committee of the Whole, I was advised by the minister that, indeed, there was a meeting on 15 March and that he was not at that time in a position to provide me with any details about where the meeting was held, who attended, what decisions were made and the like. I was left with the sense that the minister had revised his earlier answer and confirmed that, indeed, a meeting was held on 15 March or at least a meeting held immediately prior to the state of emergency declaration coming into effect, which was conceived as an objective of the bill. The decision made at that meeting would be validated as a consequence of this bill. I am now in the position of being completely uncertain as to what did or did not occur on 15 March, and I do not think that that is my fault because the answer has now changed. I am now reassured that there was no meeting. This issue was originally explained away by the government as a mere typo; a typo that appears in the long title in the bill and in the second reading speech. It was identified by me as the lead speaker for the Liberal Party in my second reading contribution. In the minister's second reading reply speech, I was advised, "Don't worry about it. It was a typo." When I came around again just to double-check, I was advised that there was a meeting and now I am advised today that there was not a meeting. I do not know whether or not there was a meeting. I take the minister as a person of integrity. I am reassured by his assertion—he will have an opportunity to clarify these remarks for all time—that no meeting occurred on 15 March or at least immediately prior to the state of the emergency declaration coming into effect, which would require post facto validation by the passage of this bill. I find a measure of reassurance that that might be the case because the government has indicated that it is pleased to support my amendment to the long title of the bill that appears on supplementary notice paper issue 3. For the sake of clarity—this is important in terms of the tenor and the tone of the way that this committee discussion proceeds for the next few hours—can I get a simple declarative position about whether there was a meeting on 15 March and why has the official story changed?

Hon STEPHEN DAWSON: I state for the record that there was no meeting and we are not validating anything that happened before the state of the emergency. I apologise to the chamber for any error that I, the minister in the other place or the explanatory memorandum have provided. As I indicated, we are not validating anything that happened before the state of the emergency. Advice was sought during the debate from Parliamentary Counsel's Office.

PCO gave erroneous advice back to us but I can confirm that there was no meeting before the state of emergency and therefore there is no need for any validation before the state of emergency took place.

Hon TJORN SIBMA: I thank the minister for his answer.

Hon NICK GOIRAN: Minister, what has transpired since the last time that the chamber considered this bill is that the government has now conceded that there is an inconsistency between the long title of the bill and the other provisions, in particular clause 19, and it has now indicated that it will support the foreshadowed amendment by Hon Tjorn Sibma. What actions did the government take prior to 16 March this year that it was sufficiently concerned about that justified the inclusion of those words in the long title?

Hon STEPHEN DAWSON: I am advised that one of the 11 agencies involved in this legislation thought that there might have been a meeting on 15 March. The records have been checked; there was no meeting.

Hon NICK GOIRAN: Which agency was concerned about that?

Hon STEPHEN DAWSON: The advisers who I have before me cannot give me that information.

Hon NICK GOIRAN: Parliament has not been sitting for the last couple of weeks. It was made abundantly clear to the government when we last sat that this was a significant issue with this bill. The government has declared the bill to be an urgent bill—so urgent that it must take precedence over all other matters. Hon Tjorn Sibma had to foreshadow an amendment to change the long title because it was plainly inconsistent. The government knew that this was a problem because members like me raised this very point during the second reading debate. Now here we are, more than two weeks later, and the government is unable to tell us which of the 11 agencies had a concern that gave rise to the drafting of the bill. I have no doubt that when I ask the government what it has been doing for the last two weeks, we will get the trite response that it has been dealing with the COVID-19 emergency. No doubt that is the case and the government has been doing that, but there are people who are responsible for this bill—there are those who are responsible for drafting this bill, those who are responsible for instructing the drafters and those who are responsible for the conduct of the bill. It is wholly unsatisfactory for the government to have known that this was a significant area of concern and now not be in a position to provide the house with the information. It is not satisfactory in circumstances in which the government has limited time to prepare and provide this information, but to have had a full two weeks of non-sitting and to not be able to provide this information is not acceptable.

This is no small matter, because the government wants us to agree to retrospectively validate actions and decisions that it has taken. If the bill is passed in its current form, we will do that for decisions and actions that took place from 16 March onwards. It is now 8 September. A significant period of time has passed. The government would like this chamber to validate all those actions. At some point in time, we know that at least one agency was sufficiently concerned that actions might have taken place prior to the state of emergency, but here we are, two weeks after we asked that question, and the government says, "Sorry, we cannot help you." What is a member supposed to do in these circumstances? This is the only time that these questions can be asked. It is not like a bill that has been referred to a committee for inquiry, when there is the opportunity for questions on notice to be delivered and answered and for the committee to call back witnesses and get to the bottom of this information. We have only the next four hours and 22 minutes to get to the bottom of this. That is it. After that, it will be game over; the bill will pass in some form or another.

Despite all the time that the government has had to prepare, we cannot get information. It staggers me that advice could be provided to the chamber that the government knows that there were 11 agencies. The government is sufficiently across the detail of the bill to enumerate that 11 agencies were involved. The government is also sufficiently across the bill to say that one of the 11 had a problem, but it cannot tell us the name of that agency. It beggars belief that this is the situation in which we find ourselves. As I say, Mr Chair, what is a member supposed to do in this situation other than just throw up their hands and say, "Well, this is, once again, a bill of the government's making. This is, once again, the arrogant McGowan government, which does not provide information to Parliament."

I remind members that during the last sitting block last month, all seven non-government parties agreed to a motion expressing concern about the Attorney General's unwillingness and repeated failure to provide accurate information to the Parliament. It seems that it is not just the Attorney General; other people and other ministers with responsibility for these things also do not provide information to Parliament. This particular indiscretion and what is happening here today is not of the same magnitude as what the Attorney General has been responsible for over a significant period. Nevertheless, we are trying to make progress on this significant bill, which consists of 106 clauses. We are on clause 1. A matter was identified more than two weeks ago and the government has been unable to provide us with the name of the agency that thought it might or might not have had a meeting on 15 March this year.

I will move on to another matter. Minister, I understand that one of the issues arising from this bill is that it contains a provision that will allow an individual to be involuntarily detained for up to 144 hours under the Mental Health Act. This is a very significant set of circumstances. I note that it was of sufficient concern that the shadow Minister for

Health raised this matter on 11 August this year in the other place. Which clause in the bill gives effect to the capacity to detain a person for up to 144 hours under the Mental Health Act?

Hon STEPHEN DAWSON: There are a number of clauses in part 4, division 2. What the bill will do is give the power to have an audiovisual consultation. The power to detain remains in the Mental Health Act. If the member has questions on this issue, as I indicated previously—I am not sure whether the honourable member was here or away on urgent parliamentary business—given that there are different advisers for different parts of the bill, it is more appropriate to ask this question at that stage.

Clause put and passed.

Clause 2: Commencement —

Hon NICK GOIRAN: Why will only part 1 commence on the day of assent?

Hon STEPHEN DAWSON: The advisers I have with me today tell me that it is their understanding that it is standard practice of the Parliamentary Counsel's Office. It is for no other reason than that. The government wants it to start as soon as possible.

Hon NICK GOIRAN: It would start as soon as possible if all provisions in the act started on the day that the act received royal assent. Rather than separating out the two, if everything started at the same time as part 1, that would meet the government's objective of starting as soon as possible. Why has that not been done?

Hon STEPHEN DAWSON: My advisers tell me that this is the specialist drafting provided by the Parliamentary Counsel's Office.

Hon NICK GOIRAN: I find this very interesting. I remind members of the bill that was recently passed relating to the Mineralogy state agreement. The government decided that all provisions of that bill were to commence on the day on which the act receives royal assent. Now we are told by this minister—admittedly a different minister from the minister handling the other bill—that this is standard drafting practice by Parliamentary Counsel. I would agree entirely with the comment made by Hon Stephen Dawson, the minister with the conduct of this bill, that this is, indeed, normal drafting convention by Parliamentary Counsel, yet the government insisted that a different approach had be taken with the other bill. Minister, if any member was inclined to move an amendment to this point on clause 2 to ensure that all provisions commence on the day on which the act receives royal assent, would there be any detriment to the bill?

Hon STEPHEN DAWSON: There would not, honourable member.

Clause put and passed.

Clause 3: Primary purposes of Act —

Hon NICK GOIRAN: Is the validation of certain actions taken by the government during the pandemic period one of the primary purposes of the act?

Hon STEPHEN DAWSON: I am told it is not a primary purpose, but it is one of the broader purposes of the act.

Hon NICK GOIRAN: I find that very interesting. I find it interesting whenever a government wants to hide what it is actually trying to do. The government wants the retrospective validation of certain actions it has taken—in other words, actions that the government is concerned might have been unlawful. To put it plainly, the McGowan government is concerned that it has broken the law of Western Australia. The government is a law-breaker, and it is now coming to the Parliament and asking it to validate those actions and say, "It's okay, we let you off the hook. It's okay, McGowan government, that you are a law-breaker. We will let you off the hook; we will validate the actions you have taken. On the occasions in which you have broken the law, we will validate those actions." In my view, for the government to then pretend that that is not a primary purpose of this act and to use some other language to try to hide the significance of that is yet another example of this government's ongoing agenda to mislead people. It is plain that it is a primary purpose of the act, yet the government wants to hide it and bury it in the long title of the bill rather than in clause 3 and the primary purposes.

That said, I have a number of questions on what actions the government says it would like validated. I am quite happy to ask those questions here at clause 3, but I appreciate the minister might say that he does not think it is one of the primary purposes of the act. Can I ask this question: if not clause 3, under which clause would the minister be in a position to itemise to the house which actions the government is seeking to have validated?

Hon STEPHEN DAWSON: I touched on some of these things in my second reading reply, but I am happy to go over it again. On the licence fee waivers: during the second reading debate, I was able to provide details of the volume and quantum of fees to which clause 11 will apply. In particular, I received advice from the Department of Mines, Industry Regulation and Safety, which explained that the Premier announced on 31 March 2020 that $100.4 million has been allocated to waive a wide range of licence fees for small and medium-sized businesses in

COVID-19-impacted industries for the next 12 months. This includes licences for building services, plumbers and electricians. The DMIRS share of this allocation of $100.4 million totals $17 579 291. I will find the honourable member more on that in a second. There is a lot of information. I am conscious that I have only four hours left, and I do not want to read lots of stuff that is not necessarily relevant.

Hon Nick Goiran: Would the minister take an interjection?

Hon STEPHEN DAWSON: Sure.

Hon NICK GOIRAN: Basically, I want an itemisation of the actions that the government is seeking to have validated.

Hon STEPHEN DAWSON: The things that I have are easy; I can give them to the member now. These are the meetings that have been validated. Under the Aboriginal Heritage Act 1972, the Aboriginal Cultural Material Committee has met four times since April, using Zoom to accommodate regional interstate members, with metro members and Department of Planning, Lands and Heritage staff attending in person in the office. Under the Conservation and Land Management Act 1984, the Western Australian Conservation and Parks Commission has met four times since 16 March 2020. Under the Environmental Protection Act 1986, the Environmental Protection Authority has held four meetings via Teams. EPA meetings commenced back in person at Prime House with social distancing on 23 July. Under the Litter Act 1979, Keep Australia Beautiful WA held two meetings by electronic means on 2 April and 11 June, and the 13 August meeting was going to be held in person. Under the Planning and Development Act 2005, I am advised that there were 80 audiovisual meetings held by development assessment panels, with 86 decisions made. On 13 July, in-person meetings resumed where local governments have the capacity to meet social distancing requirements. Under the Rottnest Island Authority Act 1987, the Rottnest Island Authority board has met six times, and there have been four meetings of subcommittees associated with the board.

On the Department of Mines, Industry Regulation and Safety types of licences to which clause 11 can apply, I have a list of 75 types of licence. I do not propose to read it out; I am happy to table it. I will ask the attendants to give me a copy back in case I am asked a question later on; it is a helpful list.

[See paper 4167.]

Hon STEPHEN DAWSON: Let me see what else I have on that earlier point.

The CHAIR: That document is tabled and copies will be made available presently for members who need to access it.

Hon STEPHEN DAWSON: Sorry; I am still answering Hon Nick Goiran's question, so if you do not mind staying there.

The CHAIR: We will pause there.

Hon STEPHEN DAWSON: That was the Department of Mines, Industry Regulation and Safety fees, and I advised earlier that I would give that list of licences.

I return to transport fees. I am advised that the waiver of vessel accommodation for the Department of Transport maritime facilities for commercial fishing and chartered tourism vessels for one year is estimated to provide $3 million in fee relief to those industries. This waiver will be given effect using both clauses 8 and 11 of the bill as follows. The vessel accommodation fee waiver was one of the fee waivers announced by government on 31 March 2020 to provide fee relief for small and medium-sized businesses in COVID-19-impacted industries for 12 months, and vessel accommodation fees are charged under both the Jetties Act 1926 for boat pen and berthing fees and the Shipping and Pilotage Act 1967 for mooring fees. Neither enactment has an express power to waive fees. Both predate the Interpretation Act 1984. Clause 11 will validate the fee waiver made from 1 April 2020 until six months after clause 11 comes into operation. Clause 8 will enable the transport CEO to make an order to waive the vessel accommodation fees for the remaining duration—that is, until 31 March 2021.

In addition, the daily parking fee at metropolitan train stations has been waived since 14 April 2020. So far, as at this date, they have been waived for over four months and that is ongoing. The Public Transport Authority advises that the amount is now estimated at approximately $3.58 million. This type of fee is levied under the Public Transport Authority Act 2003 and the Government Railways Act 1904. The continued waiver of fees is under constant review by the Public Transport Authority. Further, I am told in regard to clause 22 that there is often a requirement for availability of documents, so in a library, for example, they need to be made available. Clause 22 deals with the issue of allowing those documents to be available on a website rather than a physical location if that physical location is closed due to COVID-19.

Hon TJORN SIBMA: I have a question about clause 3(b), one of the three primary purposes of the act elaborated upon in the bill. I have a question about lines 18 and 19—namely, the words —

> … or the risk of an outbreak, of COVID-19 in the State …

The reason I have that question is that immediately prior to that it states that the express primary purpose of the act will be —

> … to provide for the amelioration of problems arising from the emergency response to an outbreak …

Why is the phrase beginning with "or the risk of an outbreak" required, when, effectively, after the excision of part 7 of an earlier iteration of the bill it is now largely retrospective? This provision seems to be either a vestige from an earlier iteration of the bill or it forecasts an action or a series of actions beyond its scope. Strictly speaking, are the words "or the risk of an outbreak, of COVID-19 in the State" required for inclusion? Could they be excised from this bill? I think there is a deviation in the primary purpose of the act as it is presented to us in the bill now from what it actually contains.

Hon STEPHEN DAWSON: I am told that the provision was included initially to deal with part 7, which is gone from the bill; however, my advisers tell me it does not cause any problems. When changes were made to the bill by Parliamentary Counsel's Office, it advised that it was appropriate to leave this line in the bill.

Hon TJORN SIBMA: That is an answer I have trouble accepting with confidence, given previous advice provided to the minister by PCO about whether there was a meeting on 15 March. That anchored my view of the tone and the content of this bill. This provision seems quite clearly to intimate or point to the earlier Henry VIII provisions in part 7 of the first iteration of this bill. The primary purpose of the legislation is—expressed by euphemism—the amelioration of certain problems arising that would impede one's strict compliance with statutory requirements. It is an artful expression, and compliments to the person who devised it. I say in good faith that this bill is here to validate ex post facto and to legitimise processes established in the first few days and weeks after the declaration of the state of emergency. I do not see why the inclusion of those words is strictly required. I have not received an answer, actually, to this question. Would the deletion of those words undermine this bill or detract from its objects?

Hon STEPHEN DAWSON: In answer to the member's last question, no, they would not. I am told nothing turns on this in the bill. It caters for a factual scenario that could arise in the future. I also want to make the point that the honourable member used words to the effect that this is largely a retrospective bill. It is also a prospective bill and helps us deal with things, should they happen in the future.

Hon TJORN SIBMA: I will not make more of this, because I do not think it causes that much of a material concern, given that we are all operating under a perpetual state of emergency in any event. I see this as a vestige of the political intention that drove this bill. I will leave it there. Suffice to say that I am not satisfied with the quality of that response. No doubt this was a complex bill to put together, but so early on in this bill—in the long title and in the primary purposes of the act at clause 3—there are errors of some substance. They might not be of great magnitude and effect but they are substantial errors. Frankly, in a time-limited debate, I am sure that this bill will be replete with more errors, more grey areas and more levels of opacity than we have the capacity to penetrate, but I just want to use this opportunity to clearly express my disappointment that on page 2 of the bill, which runs to many pages and many clauses, we are encountering these forms of errors. I also want to just use this to foreshadow a question that I have on clause 4. I think that the government is including issues that we do not need and it is excluding matters that require some clarification, which we absolutely need. I will use that as a foreshadowing of a clause 4 question.

Hon NICK GOIRAN: I totally agree with Hon Tjorn Sibma. In fact, I think he is being very charitable, because when we were on the long title he identified problems on page 1, let alone now that we are on page 2. Nevertheless, as the minister is aware, one of my primary concerns is the decision of the government to ask the Parliament to validate decisions that it has made that it is concerned are outside the scope of the existing Western Australian law. The minister drew my attention to clauses 11, 19 and 22. I am happy to pick up these issues at those clauses, but for the purpose of wrapping up this line of inquiry, can the minister confirm that when, in the long title, the government refers to validating certain actions, are those actions, in terms of them being grouped, either reductions, waivers and refunds under clause 11, or meetings and decisions under clause 19, or things done under clause 22, or assessments and examinations under clause 44? I want to be clear that they are the four groups that the government is seeking validation for. If they are not the four groups and if there are more groups, can the minister identify what those groups are?

Hon STEPHEN DAWSON: The honourable member is correct: there are reductions and waivers in clause 11; meetings and decisions in clause 19; things done, clause 22; and assessments, clause 44. There is a further one at clause 33 that relates to planning issues.

Clause put and passed.

Clause 4: Terms used —

Hon TJORN SIBMA: As is standard practice in all bills, clause 4 explains meaningful terms and provides their definitions so that one might navigate one's way with some measure of accuracy and certainty through the bill. However, a definition seems to have been omitted. I am not doing this to be painful or obstreperous, but in a later

clause, at least as early as clause 19 of the bill, if not earlier, when the minister speaks to the validation of certain meetings and decisions, a particularly—I will use the word again—euphemistic form of expression is used. It relates to meetings "purportedly" held or decisions "purportedly" made or things "purportedly" done. The ordinary English definition or a synonym of purported is "alleged". I am curious as to whether the bill provides a clinical definition of what a "purported meeting" is or what a "purported decision" is. I find it problematic that we are introducing words like that when I am unaware of whether there is a definition or an accepted view of it in perhaps the Interpretation Act or wherever. I just do not know where one might find a solid foundation to comprehend the word "purportedly". We will get to this, but I raise this matter now because, as foreshadowed on the supplementary notice paper, I have a number of amendments that turn on that phrase and that seek to strike it out. That is the reason I am using this opportunity to raise this matter.

I note that when I read ahead to part 2 of the bill, I noted that on page 4 there are other expressions or definitions of terms used at clause 7, and this particular word is absent there as well. Whenever I look for the appropriate spot—perhaps I have not been looking in the right place—I cannot find a definition of the word "purportedly". I think it is absolutely material that we come to a common understanding of what that word means to assist us in further scrutiny of this bill. If the minister is in any position to cast any light on that, I would be most grateful to hear it?

Hon STEPHEN DAWSON: We do not believe the bill needs a definition of "purportedly". "Purportedly" is given its natural meaning—that is, appearing or stated to be true, although not necessarily so. The question refers to clause 19, but I will deal with it now. We are validating meetings. There may be some doubt as to whether a meeting was validly held because it was done by Microsoft Teams or Zoom as opposed to being face to face, so we just want to be 100 per cent certain that we will be ensuring that if a meeting is held by Zoom, it is validated and the decisions that are made are validated.

Hon TJORN SIBMA: We will return to this point at the appropriate point—that is, at clause 19. Suffice to say, I am not necessarily reassured that the reason the word "purportedly" has been used and is used here with its ordinary meaning relating to effectively audiovisual meetings and the like is warranted because specific reference is made to the legitimacy of audiovisual communication in a latter part of the bill. I am concerned about that. I will park that concern here, but forecast that at clause 19 I would like to examine that concept in a bit more depth in the time available. That is because a variety of decisions can be made "purportedly". I am particularly concerned about, for example, circular resolutions—that is, a person drafting an email and saying, "The decision of our meeting that was purportedly held is this and any dissenting voice can negative that." That is not gold-standard transparency; that lies beyond the immediacy of instantaneous communication via the platforms on which they are held. I will return to this point at clause 19. Hopefully, we can get on with the rest of the bill.

Hon NICK GOIRAN: Minister, how many COVID emergency declarations have been made?

Hon STEPHEN DAWSON: Does the honourable member's support for this clause hinge on the answer I am going to give him? I am happy to answer. I have certain advisers before me, but I do not have any Health advisers, so I cannot be confident about how many emergency declarations were made under the Public Health Act. My advisers tell me that a state of emergency declaration was made under the Emergency Management Act and that has been extended multiple times since it was first made on 15 March and started on 16 March. I am happy to get the honourable member an answer on the health act, but if he is open to it, I will provide that at a later stage, because I do not have those advisers with me.

Hon NICK GOIRAN: That is fair, minister. Under clause 4, which is the clause currently under consideration, there is a definition of "COVID emergency declaration". The definition includes two types of declaration: one is made under section 56 of the Emergency Management Act and the other is made under section 167 of the Public Health Act. I respect that the minister is seeking information on how many declarations have been made under section 167 of the Public Health Act and perhaps this line of questioning will assist those obtaining the information. The minister has drawn to our attention that one declaration was made under the Emergency Management Act on 15 March and it took effect on 16 March and indicated that it has been extended on multiple occasions. On how many occasions has it been extended?

Hon STEPHEN DAWSON: Honourable member, I am seeking advice; it is not readily available. I understand that two COVID emergency declarations were made, one under each act. I am just clarifying that. They were both made at the same time on the same date and then an extension was made. I think the extensions are made every fortnight. In terms of the dates and how many have been made since 15 March until now, we are seeking advice from the respective ministers' offices—that is, the Ministers for Emergency Services and Health—and I am happy to provide that information to the honourable member at a later stage.

Hon NICK GOIRAN: As the minister mentioned earlier, because the definition of clause 4 is not only prospective but also retrospective, we could have a situation in which a declaration would be live under only one of the two acts. To what extent will that have any material impact on any of the other provisions of the bill or is it the case that as

long as one of the declarations is in force under either one of the acts, then all the rest of the provisions under the bill will be able to operate?

Hon STEPHEN DAWSON: I am advised that it is either/or, honourable member. At the moment, because of the nature of the pandemic, we have declared a state of emergency and a public health declaration.

Hon NICK GOIRAN: My last question on this is: why was it then deemed appropriate to define a COVID emergency declaration using both mechanisms? I take it that the purpose of section 56 of the Emergency Management Act compared with the purpose of section 167 of the Public Health Act is to enliven certain emergency health powers under the Public Health Act compared with more general emergency management powers under the Emergency Management Act. Therefore, we do not understand why it is necessary for a declaration to be made under those respective statutes. But for the purposes of defining a COVID emergency, why is it necessary to cover off on both? Is it not the case that all the government needs at this point is for one of those declarations to be in force and, as the minister indicated earlier, all the rest of the act is in place? It seems unnecessary to bring in both provisions, but if there is a justification for it, now would be an excellent time to provide it.

Hon STEPHEN DAWSON: Honourable member, I am told that the situation might evolve, so it may be the case that we might not need an emergency declaration in the future but we might need a health declaration. Therefore, if only one is in place, what is before us allows for that.

Hon NICK GOIRAN: Under what circumstances would a COVID-19 pandemic be declared under one of those provisions and not the other?

Hon STEPHEN DAWSON: I am told it could happen, but advice is given from an agency such as emergency services to the Minister for Emergency Services that a declaration is needed for certain reasons and that corresponding or different advice may be given to the Minister for Health from a health agency saying that it is not needed. But I am told that we need to have both in there to allow for one to happen in the future and not both at the same time.

Hon NICK GOIRAN: Therefore, is the minister saying that two different ministers may have a different view as to whether a COVID-19 pandemic is occurring?

Hon STEPHEN DAWSON: I am told that the acts give different provisions for different responses, so it is not a case of ministers having a different view; it is simply that one act requires certain things to happen and the other act requires certain other things to happen. It is not about a crisis in cabinet and people having a different view on whether there is a pandemic or not.

Hon NICK GOIRAN: Are the declarations that have been made subject—not necessarily by law, but by a convention or protocol—to a decision of cabinet?

Hon STEPHEN DAWSON: Honourable member, cabinet has a security and emergency committee. I am not a member of that committee, so I am not sure whether the decision goes before that committee before a declaration is signed off or whether it is reported to that committee. I can seek further advice—I am not able to give it to the member now—and see whether there is a way to advise the member of that, noting the restrictions around releasing cabinet information. I will just check, and if I can give the member an answer to that, I will.

Clause put and passed.

Clause 5 put and passed.

Clause 6: Relationship of this Act to other written laws —

Hon NICK GOIRAN: What statutes is the government concerned will conflict with this bill?

Hon STEPHEN DAWSON: Honourable member, did you ask which other laws conflict? Were you asking for a list?

Hon Nick Goiran: Which other statutes; yes.

Hon STEPHEN DAWSON: Honourable member, I have a list of the 75 acts that will be impacted by the bill. I am happy to table that list and, again, I ask the attendants to provide me with a copy in case there are further questions.

[See paper 4168.]

Hon NICK GOIRAN: The minister indicated that there is a list of 75 acts that the government says will be impacted by this bill. That is not what clause 6 says, of course. Clause 6 states —

> This Act has effect despite any other written law.

I am a little concerned about the breadth of clause 6. I want to compare and contrast the approach that the government took in its consultation draft in what has been described as one of the more heinous Henry VIII clauses ever devised. The minister might recall that there was a part 7 in the consultation draft bill. To the extent that one could say anything complimentary about it, it listed a series of acts that would be excluded. At the time, Premier McGowan wanted the power, with the stroke of his feather pen, to change any law that he wanted, but he restrained his enthusiasm with

respect to a series of acts, including the Constitution Act 1889, the Parliamentary Privileges Act 1891 and so on and so forth. As I said, at least to some extent, if I want to try to say something positive about the old part 7, those acts were sought to be carved out. It was a grotesque lawmaking provision and I am glad that the government dropped it. I compare and contrast that with clause 6, which basically seeks to include the whole statute book of Western Australia, despite the fact that the government has just provided a tabled document listing 75 acts. Might it not be better to amend clause 6 to list the 75 acts rather than having this overreach?

Hon STEPHEN DAWSON: Honourable member, I am advised that this clause does not work in a vacuum. It works in relation to the other provisions of the bill, so it operates in concert with clauses such as clause 8, for example, which lists the relevant enactments that will be affected by each of the various subdivisions. It is not simply by itself; there are other acts listed in various places in the bill.

Hon NICK GOIRAN: What about the Interpretation Act 1984? What is the relationship between this bill and the Interpretation Act that would be affected by clause 6?

Hon STEPHEN DAWSON: Clause 104 relates to the Interpretation Act. There is no broad licence to amend other acts. Certainly, division 5—part 6—refers to amendments to other acts, and that is the Interpretation Act.

Hon NICK GOIRAN: To be clear, the minister is referring to part 6, division 5, which will amend the Interpretation Act 1984 and there are other consequential amendments as a result of that. I understand that. That would be the case irrespective of whether clause 6 was in place. We do not need clause 6 to amend the Interpretation Act at part 6, division 5. If that were true, government would need a similar clause 6 in every single bill that comes before the chamber. That is not an explanation about why clause 6 is necessary. Clause 6 states that this act will have effect despite any other written law. The government is obviously concerned that there are a number of acts under Western Australian law that are in conflict with this bill and it would, if you like, prefer for this bill to prevail over those other existing laws. The minister has kindly provided us with a list of 75 acts, one of which is the Interpretation Act, but there is a range of other written laws that are not listed in the tabled document that will be captured by clause 6. The minister said in his response that we need not be concerned because, to paraphrase him, this cannot be seen in a vacuum. The minister indicated that the intention of clause 6 is to address the 75 acts that he has listed and tabled. I revert to my original question: Why do we not list those 75 acts at clause 6? If they are the acts that the government is concerned with, why do we not list those 75 acts at clause 6 instead of leaving it broad and open-ended? Every single written law in Western Australia is captured by clause 6, including the Criminal Code, the Parliamentary Privileges Act and the Constitution Act. The minister said that it cannot be read in isolation, but he cannot have it both ways. If it is supposed to be only the 75 acts, let us list them in the bill. If it is not supposed to be the 75 acts, obviously the government is concerned that other laws in addition to the 75 acts will need to be addressed and I would like to know what those other acts are.

Hon STEPHEN DAWSON: I am told, honourable member, that the legislation has to be interpreted as a whole. Clause 6 is needed because, for example, clause 8 would not work without clause 6. Clause 8 is headed "CEOs or chief employees may reduce, waive or refund fees and charges". Clause 8(3) states, "For the purposes of this section, the relevant enactments are", and it lists the acts that it affects. Clause 11(3) refers to a validated reduction, waiver or refund, and clause 11(4) states, "For the purposes of subsection (2), the relevant Acts are", and they are listed. That continues throughout the bill. Clause 6 cannot be read by itself; it can only be interpreted as a whole with the rest of the legislation.

Hon NICK GOIRAN: I understand that explanation. What I am saying is that if that is the case, it should be no problem for the government to list the 75 acts under clause 6. At the moment, clause 6 is open-ended. The minister is saying that clause 6 needs to be interpreted in light of the 75 acts that are referenced in various provisions of the bill. If that is the case, there should be no problem with amending clause 6 so that those 75 acts are listed and we can be very clear on what we are agreeing to rather than it being the whole Western Australian statute book. What would be the detriment to the government of not going ahead with that approach?

Hon STEPHEN DAWSON: I am told that there is no purpose in providing such a list at clause 6 because, again, clause 6 cannot be read in isolation. Under the bill, acts are specified and contained in the provisions listed. My advisers tell me that it would make for a clumsy bill to list the 75 acts at the beginning. Such a change is not supported.

Hon NICK GOIRAN: I take the minister to the words used in clause 6. It states —

> This Act has effect despite any other written law.

It does not say, "This act has effect despite any other written law referred to in this act." If it said that, I would be quite happy to sit down and move on, because it would then clearly be referencing the 75 acts that the minister has referred to. But that is not what it says. It says that the act will have effect despite any other written law in Western Australia. It does not say, "This act has effect despite any other written law found within the province of the COVID-19 Response and Economic Recovery Omnibus Bill 2020." With respect to the advice that has been provided, I think if we were to amend clause 6 in the way I have suggested, members would be very clear about which 75 acts are being impacted by clause 6 and this bill, rather than the whole statute book of Western Australia.

Hon STEPHEN DAWSON: The government would not support such a change. My advisers have been giving me advice as to why.

I will take this opportunity to answer the honourable member's earlier question on declarations made under the Public Health Act and the Emergency Management Act. I am advised that there have been two declarations under the Public Health Act 2016. The first was made on 16 March and contained limitations on powers. Those were removed in the second declaration, which was issued on 23 March. I am advised that, subsequently, there have been 14 extensions to the second declaration. The Minister for Emergency Services has advised that for declarations made under the Emergency Services Management Act, there have been 12 extensions. In other words, there have been 13 declarations, including the first.

Clause put and passed.

Clause 7 put and passed.

Clause 8: CEOs or chief employees may reduce, waive or refund fees and charges —

Hon Dr STEVE THOMAS: This was the clause I was interested in during the debate on clause 1. I will try to narrow this down slightly. I thank the minister for the information he gave at that point. I asked at the time whether under the bill, a CEO could reduce, waive or refund a charge to an individual or a group of individuals as a subset of an entire administration charge, and the answer was yes. I assume that we are still working within that parameter. The minister then looked at some of the other constraints that might be in place, including moving through an Expenditure Review Committee process and into cabinet et cetera. I will start by asking a question to reinforce that we are starting from the same process. I think the intent of the government is that a minister might propose to an ERC and cabinet that there be a waiver for an entire group of charges. Could the minister confirm that this clause is aimed at the waiving or reducing of a group of charges and not a specific, individual charge? If it is, what prevents a CEO from giving a waiver or a reduction to an individual? Notwithstanding the fact that, in theory, it is supposed to go through a preliminary approval process, if an individual applied for something under the legislation that required a fee to be charged and then directly asked a CEO, one on one, for a waiver, how would this bill prevent such a waiver from proceeding and being valid?

Hon STEPHEN DAWSON: The honourable member is correct; this is about waiving a fee for a group across an industry. However, I am advised that individual waivers can be made. A fee waiver order has the status of subsidiary legislation. Section 43 of the Interpretation Act therefore applies. The significance of this is that it indicates how the order can be made. It includes exercising the power to make such an order in relation to all cases to which the power extends—that is, all persons to whom the fee applies. It also applies to those cases subject to specified exemptions—that is, all persons to whom the fee applies, except, for example, those under a certain category or any specified case, such as a particular individual. The power provided under clause 8 of the bill does not obviate a CEO's existing obligation to properly and appropriately manage their agency's budget and finances. Rather, it simply overcomes the lack of a head of power in any other act to provide for fee relief in these instances. The requirements under clause 104 of the bill for publication of the fee waiver in the *Government Gazette* and on a department's website will also ensure a level of transparency and accountability for any fees that might be waived, including for an individual.

Hon Dr STEVE THOMAS: I thank the minister. I thought we would get a fulsome answer to that question, so I appreciate that. However, during the break I took the opportunity to look at the Interpretation Act, and in particular the references under clause 104. Although I accept that the order must be published on a website, my concern remains that, under my interpretation of the bill, it will still be open for a CEO to provide an individual with a specific fee waiver, refund or reduction. Yes, the information will have to go on a website, but the truth is that not everybody reads these websites. In fact, many departmental websites are not read all that much. In particular, if someone is looking for a complicated piece of information, a lot of government websites make it very difficult to find it. I guess the question remains, particularly as this is a COVID bill, about whether adequate safeguards will be in place to make sure that there is not a risk of corruption in the process of allowing an individual waiver. I probably got the extent of the answer that the minister is able to provide, but in an attempt to close off my concerns on this clause, I simply ask: is the minister in a position to indicate that it is not intended that this clause be used for the waiver or reduction of an individual fee? If it is potentially likely that an individual or a subset group of individuals might have a fee or charge waived or reduced, under what circumstances might that apply?

Hon STEPHEN DAWSON: As I have previously indicated, the power provided under clause 8 does not obviate the need for a CEO to meet their existing obligations to properly and appropriately manage their agency's budget and finances. Rather, it simply overcomes a lack of a head of power in any other act to provide for fee relief in these instances.

A combination of general principles and a specific process operates to regulate and promote proper conduct of fee orders. As to the general principles, CEOs are expressly required, under the Public Sector Management Act, to plan and undertake financial management for, and to monitor the financial performance of, his or her department.

Further, their duties include complying with the principles set out in the Public Sector Management Act, one of which expressly requires that proper standards of financial management and accounting be maintained at all times. They must also comply with public sector standards, codes of ethics and other written laws, such as the Financial Management Act. A CEO does not operate in a vacuum. CEOs are supported by their respective financial services teams, comprising chief financial officers and qualified individuals who process these requirements. The Office of the Auditor General annually inspects the financial accounts of such agencies. Finally, any order waiving a fee must be gazetted and published on the department's website. These principles, and the involvement of multiple individuals in any process to make such an order, promote transparency. This demonstrates that conduct contrary to these requirements should be recognisable and capable of being reported, and will form the grounds for investigation and further action by the appropriate authorities.

As to the specific process, following the government's announcement on 31 March, Treasury informed agencies that they would each be responsible for the implementation of that announcement, given their varying legislative needs and requirements. However, a process to identify and capture fees to be waived would then be provided. Treasury then set up a general process by which fee waivers, reductions or refunds are to be undertaken and provided agencies with template documents to use for this. This process requires the completion of a form identifying the relevant fees together with an estimated reduction of revenue as a result of any fee reduction, and whether regulatory change is necessary to achieve this. The process then requires both the director general of the agency and the relevant minister to approve of the proposal. If the minister approves, it is submitted to the Department of Treasury for consideration and then approved by the Treasurer and the Premier. Treasury further indicated that approval by the Treasurer and the Premier permits agencies to provide that fee relief to industry but does not explicitly address the budget implications of the waiver. As such, agency CEOs need to make further formal submissions to adjust their budgets as part of the 2020–21 budget.

In summary, clause 8 provides a head of power to enable heads of departments to implement government policy on providing fee relief. It is clear that there is a framework within which CEOs have to operate that promotes accountability and transparency. This does not have to be referenced in the bill in order to be effective or for noncompliance to be capable of being identified and addressed by appropriate authorities.

Hon Dr STEVE THOMAS: I am going to try to finish this off. I forget the exact words, but the minister said that Treasury developed a template that CEOs use to apply, and a set of conditions—that was not the word that the minister used in his response—effectively, a set of guidelines. Is there any chance that the minister might be able to table or provide at a later date that set of guidelines, so that we get an indication of what CEOs are operating with?

Hon STEPHEN DAWSON: I give the honourable member the guarantee that I will ask the question, and if I can provide it at a later date, I certainly will.

Hon Dr STEVE THOMAS: I thank the minister; I appreciate that. The final point was part of a previous question. Can the minister give us an indication of the set of circumstances in which a charge might be waived or reduced for an individual or a subset of individuals within a broader scope? I did not quite get a guarantee that we are just aiming at cross-industry charges here. If it is not purely cross-industry, in what circumstances might it not be cross-industry?

Hon STEPHEN DAWSON: I am told that, pre-COVID, during the last bushfire we had over the Christmas period, Landgate made a decision to waive fees for government agencies to get free bushfire mapping to enable them to fight the fires and deal with those issues properly. As a result of that change, the thinking was that there may well be a need during the COVID-19 pandemic to be able to waive fees to enable a government agency or somebody to get access to bushfire mapping. This clause before us was based on the thinking at that time and came from that area.

Is there an example of how the fee audit process has been and will be conducted? Yes; the Western Australia Police Force has identified certain business licence renewal fees concerning existing firearms businesses and existing security, crowd control and inquiry agents that were relevant to the Premier's announcement on 31 March. Specifically, these fees are levied under the Firearms Act 1973, the Security and Related Activities (Control) Act 1996 and associated regulations. Both those acts lack heads of power to waive or refund fees. As such, these two acts have been included in clause 8. The WA Police Force followed the process and completed the forms as mandated by Treasury. This required the approval of the relevant CEO, the Minister for Police, the Treasurer and the Premier. In sequence, the WA Police Force financial services team together with the Licensing Enforcement Division, which is responsible for the administration of licence fees and charges payable to the WA Police Force, were instructed to identify fees under those two acts that were relevant to the government's announcement. Financial services submitted a briefing note to the Commissioner of Police explaining which fees had been identified. This package included an explanatory briefing note and a fully completed copy of the form that Treasury has provided for this purpose. This listed the relevant fees together with an estimated reduction of revenue and signalled regulatory change was necessary to achieve this. The commissioner approved of the list of fees presented to him as relevant to the government's announcement and signed Treasury's mandated form. The commissioner submitted the executed form to the Minister for Police for consideration and approval. The minister also approved and signed it, as

appropriate. In accordance with the process, the documentation was forwarded to the Department of Treasury for consideration. The Department of Treasury submitted it to the Treasurer and then the Premier for approval. The endorsed documents were returned to the police for processing. Upon enactment of this bill, the commissioner can issue an order under clause 8 to deliver this fee relief. There are no examples of individuals having had their fees waived.

Hon Dr Steve Thomas: Does the minister know whether that was cross-industry—everybody in that industry received the relief—or just to a subgroup?

Hon STEPHEN DAWSON: It was to a subset. This clause allows for a subset to get a fee waiver but not everybody across the whole industry.

Hon TJORN SIBMA: As the minister knows, I have an amendment foreshadowed on the supplementary notice paper. I will lead up to that. However, I seek some clarification on, first of all, if an applicant would ordinarily be required to pay a fee to receive a licence, whether it be a firearms licence, a real estate sales representative registration or a settlement agent licence, a plumber's licence or whatever, how do they go about applying for fee relief, or is that fee relief automatically applied through the application process?

Hon STEPHEN DAWSON: What counts in the bill before us is that some agencies—the Department of Mines, Industry Regulation and Safety, for example—stop charging a fee, and therefore a person off the street does not need to pay the fee. In other cases, a fee may have been paid by a person, but the fee will be refunded. There is no application process for the individual. A decision is made by government to vary, reduce or cancel a fee. Could a person walk in off the street to see the director general and say they want their fee waived? That is possible, but, again, I identified how that would happen—the governance of that—in answer to earlier questions from Hon Dr Steve Thomas.

Hon TJORN SIBMA: I thank the minister. When agencies, via their minister, seek the joint approval of the Treasurer and the Premier to effectively provide fee relief across a class of fees, is there an obligation on that agency to discharge that fee relief or are they just provided with the opportunity on a discretionary basis to waive those fees? The reason I ask that question is that in earlier answers, the minister pressed home the point that it is still incumbent on the CEO to manage this fee relief measure with an eye to financial sustainability and the state of their own finances—if I have interpreted that correctly. I might have this wrong, but I would just like it clarified. A CEO of an agency may be empowered to provide a fee waiver, relief or what have you, but they are not necessarily obliged to execute, discharge or honour that fee relief. Is that correct or not?

Hon STEPHEN DAWSON: There is nothing in clause 8 that compels a fee to be waived, but, as I indicated earlier, an announcement was made on 31 March by the Premier about certain fees that could be waived, reduced or ceased. That was a decision of cabinet. Any fee to be waived or ceased needs to fall within the approval given on that date. If it was not part of that decision, the CEO does not have the power to do it and would need to go through the process that I spoke about earlier.

Hon TJORN SIBMA: We will just take an example then. Cabinet has determined that a certain class of fees might be reduced, waived or refunded at some later point but, as the minister has just said, nothing in the bill necessarily compels a CEO to act on that advice, although I imagine it would be unusual if they did not do that. Bearing that in mind, have there been or could there feasibly be instances when a CEO refuses to grant fee relief either to a class of licence holders or to an individual, if one, as the minister put it, walks in off the street and asks for it?

Hon STEPHEN DAWSON: Not to our knowledge.

Hon TJORN SIBMA: Just to carry through on that, there nevertheless seems to be a measure of discretion in the application of this power. For example, would the refusal to reduce, waive or refund a fee potentially be a reviewable decision?

Hon STEPHEN DAWSON: We do not think this is something that will happen. An individual could potentially seek a judicial review, but, essentially, if the decision is made by cabinet to waive fees, it is a government decision, and the CEO is bound to carry out decisions of government. The Public Sector Management Act 1994 essentially governs how the CEO needs to undertake their role, so it would be highly unlikely for such a case to eventuate.

Hon TJORN SIBMA: I thank the minister for that earlier answer. With agreements that appear to have been struck by implementing agencies, by which Treasury is a central agency, and the Treasurer and the Premier are the final decision-makers, have respective agencies been provided with their own financial parameters? I understand that there is a global figure of $100 million or thereabouts. Agencies are not constrained, but there is fee relief up to a certain quantum. I seek to understand how this plays out at the agency level in a daily financial management sense.

Hon STEPHEN DAWSON: That amount of $100 million eventuates from agencies in the first place, so, as I explained to Hon Dr Steve Thomas, agencies were asked for advice about fee relief. They then looked at the numbers of a particular class of licence and provided advice to Treasury saying that, for example, there were 700 licences that cost $500 each, and it would cost them whatever that total is—$350 000—to waive fees for that class. That $350 000 was added to the $2 million from that agency, for example, and altogether that added up to $100.4 million.

Hon TJORN SIBMA: Basically, this was just a forecast on the basis of annual revenue that individual agencies expected to forgo as a consequence of providing relief. That being said, the full financial impact to the state will potentially not get to $100 million. I want to clarify whether that is by the end of 2021. Is that the time period we are discussing?

Hon STEPHEN DAWSON: It was for a 12-month period, honourable member, so some of the fees may cross calendar years. It just depends on the fees due to be paid. If a fee is due to be paid on 1 June, there is fee relief for 12 months. If a fee is due to be paid on 1 July, there is fee relief for 12 months from 1 July. That $100.4 million—again, this is probably a question for Treasury as opposed to being about the bill before us now—will have been over the 12-month period for all of those licences together.

Hon TJORN SIBMA: Regarding the fees and their quanta, is a date embedded in this part or division of the bill for when this fee relief measure terminates? I need to be guided there, please.

Hon STEPHEN DAWSON: I want to clarify this. The figure cited is an estimate of the cost of revenue foregone; therefore, the reduction of revenue and accuracy of the estimate will become apparent over time. The power ends when the subdivision ceases. The subdivision will need to be operative for the relief to take place. I am told that for the majority of agencies, the fee relief will be to about March 2021, but it will be a 12-month period. I also want to make the point that, for example, some of the police licences that I referred to are three-year licences, so the relief will be for 12 months. Obviously, those fees will be reduced by one-third.

Hon TJORN SIBMA: I would like some clarification, and this comes to the heart of the reason that I will move the amendment in the terms that I will. Can the minister clarify whether the capacity of a CEO or employee to reduce, waive or refund fees and charges, which is a power that can be delegated, can be delegated to other officers within an agency; and, if so, to what level of delegation?

Hon STEPHEN DAWSON: I am told that there is no express power in this bill to delegate in that manner.

Hon TJORN SIBMA: Hypothetically—I do not like to get into hypotheticals at this stage—particularly insofar as there is capacity to apply a measure of discretion, is it the government's advice at the moment that the CEOs of agencies administering these fees and charges will be the final decision-makers when it comes to fee relief or waiver or refund, or will that power be delegated to someone else in those agencies?

Hon STEPHEN DAWSON: The CEO can make a decision only if that earlier process has been followed, which was to fill in the Treasury-provided form. It will have been submitted and signed by the respective minister and submitted to Treasury for sign-off by the Treasurer and the Premier. If that process has not been followed, the CEO cannot waive a fee. I am told that, obviously, the CEO himself or herself will not process the waiver; it will be a human resources or finance officer of the agency. That other process has to be followed first and approved by Treasury before a CEO can make a decision to waive a fee.

Hon TJORN SIBMA: I am mindful of the time, bearing in mind I would like to close out this clause, if possible, before question time, and even, potentially, get to clause 11 or even beyond. I do live in hope. I do my best. The principle underlying my amendment on the supplementary notice paper is, from my perspective, a lack of transparency, because the process that occurs internally is a little opaque. However, as the minister has described it, there is a process internally within government whereby a CEO of an agency, in order to apply this relief across a class of fees as appropriate, must first be authorised, as I understand it, by the Treasurer and the Premier, after that relationship with Treasury—after filling in the appropriate template.

On page 5 of the bill, clause 8(3)(a) through to (s) lists relevant enactments. I presume that this capacity will be limited to a range of fees and charges that apply under each of those enactments. That is my understanding and is the basis upon which I proceed. I imagine there will be consultation, for example, because a number of Public Transport Authority and road traffic acts are listed in those paragraphs. Will the CEO who is responsible for the administration of each of those enactments, to the best of the minister's knowledge, have gone through this process with Treasury? Will all those people now be in a position to provide the fee relief or refunds as contemplated in this bill?

Hon STEPHEN DAWSON: I am advised that the CEOs with responsibility for all those acts have gone through that process. It will be a different decision whether each and every fee captured under each of those acts is waived.

Hon TJORN SIBMA: I meant to say, "Yes, minister. Thank you." It is the minister's understanding that each CEO responsible will have gone through this process—presumably, "gone through that process" means that they will have received the appropriate authorisation from the Premier and the Treasurer to execute government policy as it is envisioned. Can I ask, as a consequence of that, whether CEOs will be internally obliged to report on a regular basis on, say, the volume and value of the fee reductions, waivers and the like that they have undertaken to either Treasury or their minister or someone else in government?

Hon STEPHEN DAWSON: There is no formal requirement for agencies to report periodically. The only formal requirement is that the waivers or the cessation of fees will be reflected in the annual budget so that at least annually

Treasury will be advised how the waiver or reduction has fared. But there will be no ongoing requirement to report monthly or weekly; indeed, that does not happen.

Hon TJORN SIBMA: That being the case, since it is not being measured, the government would not be in any position until the publication of financial statements, whether that is through the annual reports process or the budget papers, which this year are both compressed around the same time line, and ministers, or potentially even the agency chief executive officers, will not have an understanding of the financial impact of the application of this provision until such a time as something is published in paper form.

Hon STEPHEN DAWSON: The honourable member said that it is not being measured. It is being measured annually, but not weekly or fortnightly. Certainly, the CEO may internally have a requirement for the chief finance officer to report on this stuff. There is obviously a preordained window of what it might cost and the annual requirement to advise Treasury of what it cost, but no ongoing reporting is required, so that information is not readily available.

Hon TJORN SIBMA: There is no regularised monitoring of this, but there will be a report at some stage about the consequences, for example, insofar as what the metrics of the volume and the value concerned might be at a later stage. I infer from the minister's remarks that there is no real burning platform to monitor the application of this provision in real time.

Hon Stephen Dawson: It is monitored as an agency's spending is ordinarily monitored. There is no special requirement to monitor it in a different way.

Hon TJORN SIBMA: Sure. I think the minister mentioned earlier an obligation on an agency to publish information on waivers—if it is not waivers, please correct me—on its departmental website, and I want to know whether that is germane to clause 8. Can the minister please elaborate on the specifics of that obligation and how it is presented? I might leave it there and follow up later.

Hon STEPHEN DAWSON: Clause 104 of the bill requires publication of a fee waiver in the *Government Gazette* and on the department's website to ensure that level of transparency and accountability. I understand that publication of the waiver would read, "A decision has been made to waive a fee for a class or reduce a fee for a subclass of individual under the blah act." There will be no requirement to report that a decision has been made to waive jetty licence fees costing $400 000 over the next 12 months; it would simply be that the decision has been made by the CEO, after the process that we outlined previously had been undertaken, to waive the fee. It is only that the decision has been made that would appear in the *Government Gazette* and on the department's website.

Hon TJORN SIBMA: I thank the minister for redirecting me to clause 104(4) in part 7 of the bill. Are all agencies to which clause 8 provisions apply publishing this material on their respective departmental websites now?

Hon STEPHEN DAWSON: They will be, honourable member. The order cannot be made until the bill passes. But, certainly, upon the passage of the bill, it will be a requirement for them to publish this material on their websites, and it will also appear in the *Government Gazette*.

Hon TJORN SIBMA: I will take up this issue with the minister again at clause 104, if we ever get that far, and I hope that we do. At the moment, of the range of implementing agencies, none have proactively, for example, published on their websites the powers they have applied, for which we are providing retrospective validation, to waive fees and the like. Sorry, minister, this question is a bit longwinded. Will there be a standard form by which agencies report on these metrics?

Hon STEPHEN DAWSON: Agencies and ministers may well have released information on press releases previously, but it is not a requirement for them to publish information at this stage, not until the passage of the bill. I should also point out that clause 8 is not retrospective. Clause 11 is where the retrospectivity kicks in.

Hon TJORN SIBMA: I thank the minister for pointing out that distinction. I refer to my amendment 1/8 on issue 3 of the supplementary notice paper. The minister helpfully advised previously that the government does not support this proposed amendment. I want to know the government's rationale for not supporting the proposed amendment. It does not seem to be a practical impediment because it refers to ongoing decisions made within the period for which this legislation will be operable. I do not want to introduce a provision that will be unwieldy or impossible to implement. Can the minister please advise me whether that is the problem?

I am concerned to move the amendment, too, because there seems to be no stipulation for uniformity of reporting in the transparency obligations in clause 104. There is no uniformity of the metrics or the information provided on a website, which might be difficult to navigate; no sense of what information might be gazetted and when; and whether the obligation at clause 104 is a perpetual obligation or a retrospective tidy up. I am not 100 per cent sure about the justification for the opposition to my proposed amendment 1/8 on the supplementary notice paper. If the minister can put to me a cogent reason why the proposed amendment is superfluous or potentially difficult to implement, I am happy to hear it, entertain it and think about how the obligation as it applies at clause 104 might operate. But at the moment I am a little concerned that there is no real line of sight between the agency that will

be implementing these new powers and Treasury or ministers. In fact, one has to proactively seek that information from the CEO, rather than it being yielded up on a helpful, transparent and regular basis.

Hon STEPHEN DAWSON: Treasury decided that a certain amount—a quantum of fees—will be reduced. That decision has been made, so we know that rigour has been applied to the decision-making around fees. I have outlined the process previously, so there has been rigour around that. We do not support the proposed amendment before us because it appears designed to require orders pertaining to fee waivers or reductions or refunds issued under clause 8 to be published in the *Government Gazette* and therefore made public. I am advised it is not necessary because such a requirement is already imposed upon a CEO by virtue of clause 104 of the bill. Publication is required in two places—namely, the *Government Gazette*, as is required for all subsidiary legislation under the Interpretation Act 1985, and on a website maintained by or on behalf of the person who made the order, which would normally be the website for the department responsible for assisting in the administration of the legislation to which the order relates. If the intent of the amendment is that it ensures that the orders made are publicly available, the bill already robustly provides for that by requiring a higher level of publication than is normally required for subsidiary legislation. In effect, the amendment seeks to restate what the bill already provides for and is in fact redundant.

As I have indicated, processes are followed. To get something in the *Government Gazette*, proper process has to be followed. It is the same standard information that would be required of each of those agencies; that process is standardised. Everything that will go in the *Government Gazette* will be standardised. It will already be in the *Government Gazette* and on the website. We do not see the need to add other steps into the process and make it cumbersome. We have all been involved in debates in this place about red tape, and this would add another layer of administration and bureaucracy that I know is not needed.

Hon TJORN SIBMA: Thank you, minister. Without indulging in a small degree of self-congratulation, sometimes I find that if one does not put amendments on the supplementary notice paper, one does not get to the nub of the issue. We have discerned that an internal arrangement is in place in government to provide a measure of financial control around how agencies implement these powers and how CEOs would be accountable for those decisions. I would like to satisfy my curiosity that the arrangements are effectively like agency agreements or a variation of a resource agreement. I do not know what template is used and what status that document has. Can the minister please clarify what the agreements are called and how they are policed?

Hon STEPHEN DAWSON: I do not have Treasury advisers with me and, indeed, I do not expect to have them at all during this process, but, essentially, there has been a direction from Treasury. My recollection is that this stuff went to the Expenditure Review Committee of cabinet, so it was signed off at that high level. From then, Treasury issued a direction to individual agencies to use a process that was defined as part of the decision, and agencies are using that process, so there is no form. I think the honourable member is asking me to be helpful in giving him a name for something that he can ask further questions on later or seek regular reports on this particular form and how many times it has been filled in or whatever. I do not believe that the form has such a name and, in effect, I suggest that the form may well be captured by cabinet-in-confidence because it is part of a decision of cabinet. But, certainly, I again reassure the member that clause 104 of the bill requires an order to be published in the *Government Gazette* and on a website that is maintained by the agency. That information, once the bill passes, will be able to be accessed.

Hon TJORN SIBMA: Thank you, minister. I might follow up on the minister's invitation. Can the minister seek advice on whether the agreements to which we have referred—name unknown—might be tabled if he has the capacity to do so. If he could get back to me on that, please, I would be grateful. I advise the chamber—even though I do not necessarily need to do this, as I understand it—that based on the advice provided by the minister I will not proceed with moving my amendment to clause 8.

Clause put and passed.

Clauses 9 and 10 put and passed.

Clause 11: Validation of reductions, waivers and refunds —

Hon TJORN SIBMA: We are dealing with the same form of decisions here. However, this applies more specifically to the validation period beginning on 1 April this year and proceeding into the future. Are the relevant acts here the same acts as for clause 9 or are we dealing with a different species?

Hon STEPHEN DAWSON: Some acts are the same, honourable member, but others are not. This validation provision is required to ensure that any person who benefited from economic relief can validly rely on it; therefore, it largely relates to the Department of Mines, Industry Regulation and Safety, but in this case a decision has already been made by the agency to waive or not charge a fee.

Hon TJORN SIBMA: Thank you, minister. I do not mean to be obtuse, seeing as time is escaping us. Other than the fact that the majority of these acts seem to be in the administrative province of DMIRS, is there any reason for the difference in treatment of these decisions at clause 8 and clause 11? I am just trying to understand. I am not

impugning anything nefarious by saying the words “special treatment”, but they seem to have been specified for a different reason and I want to understand why that is the case.

Hon STEPHEN DAWSON: DMIRS has opted to make changes to its regulations to allow for fee-waivers into the future. It does not have the head of power at the moment to do it.

Committee interrupted, pursuant to standing orders.

[Continued on page 5427.]