

Hon Dr Brian Walker; Hon Dr Brad Pettitt; Hon James Hayward; Hon Wilson Tucker; Hon Sophia Moermond;
Hon Neil Thomson; Hon Nick Goiran; Hon Dr Steve Thomas; Hon Stephen Dawson; Hon Tjorn Sibma

EMERGENCY MANAGEMENT AMENDMENT (TEMPORARY COVID-19 PROVISIONS) BILL 2022

Second Reading

Resumed from an earlier stage of the sitting.

HON DR BRIAN WALKER (East Metropolitan) [5.07 pm]: In the first half of my contribution to the second reading debate on the Emergency Management Amendment (Temporary COVID-19 Provisions) Bill 2022, I basically sought to underline my credentials as someone who is, I hope, thought of as a serious-thinking politician and medical professional. I understand that what I say is treated with some degree of respect, and I thank the house for that.

I have been through both the Emergency Management Act and the Public Health Act 2016, I have read the explanatory memorandum, and I have also read in some detail the *Hansard* from the other place and some of the legislation from Victoria. Without making any further comment, I think that it has already been clearly demonstrated that the emergency requiring this bill to be rushed through is actually non-existent, but it is also eminently clear that we need to prepare for future pandemics. This seems to be a *sine qua non*. This seems to be essential. This preparation needs to be done in a sensible, unrushed, considered and scientifically appropriate manner. We could in fact do what the Parliament of Victoria has done and prepare specific pandemic legislation. I had a look at that legislation. It is good; I think it could be improved on, but it is still better than what we have. When questioned on this specific point in the other place, I believe the comments from government members merely sought to denigrate the efforts of the Victorian government, or point out the difficult, painful and long lockdowns that contributed to quite severe social unrest. Rather than dealing with the actual facts of the pandemic legislation, it sought to downplay the Victorian government. We were not afflicted by that in the west but that could have happened to us.

Members might ask: what is the difference between an ordinary emergency and pandemic legislation? It could easily be said that a pandemic is a major emergency, and so it is. We were told in the briefing that the management of a pandemic is the same as for any other emergency, such as a cyclone, tsunami, bushfire, threat of invasion or widespread social unrest. That is patently untrue.

In a pandemic, the enemy is invisible. It might initially not be recognised. The mode of infection can vary widely from organism to organism. Clinical transmission, prodromal periods, specific groups at risk, sensitivity to treatments and methods of prevention are all unknown variables and require specific and specialist medical management. Public health physicians, epidemiologists, hospital managers and infectious disease specialists are all at the forefront of the battle, supported by the entire apparatus of the health industry. Under medical leadership, and with political control in the hands of government, we can then bring to bear the entire force of the discipline services, including police and armed services. Note the priorities here—medical leadership under the control of the political hands of government, which then commands all other areas of social management.

The ABC has reported on a report that was released last week from a team of international pandemic experts. The task force was created last year to assess evidence on what drove the origins and early spread of COVID-19 and to provide “evidence-based recommendations” to reduce the impact and improve responses to such outbreaks. The report found that the world had “largely failed” to meet the challenge to be better prepared to prevent or respond adequately enough to the next pandemic. The report goes on to say that the world still does not have strategies for preventing zoonotic transmission, or animal-to-human virus spread, and that, according to those same experts, this will only get worse with climate change and urban sprawl. That means that we in Western Australia are at risk, too.

That task force comprised 14 internationally renowned epidemiologists, wildlife biologists, virologists and public health experts. Note well: not one single police officer is in sight in this report. That is because health experts lead the management of a pandemic. We have a vested interest in this, not only because during the SARS outbreak, which my colleagues in the hospitals experienced, of the 11 per cent case fatality rates, one-fifth were among healthcare workers such as nurses, anaesthetists, intensivists and cleaners. When it comes to infectious diseases, we in the health profession are most at risk. In Western Australia, with an already fragile healthcare system, we cannot afford to lose a single healthcare worker; nor can we allow ourselves ever again to fob off the need for personal protective equipment by sending healthcare workers a single mask and a pair of nitrile gloves. When the COVID-19 Alpha variant hit our shores and the postulated case fatality rate in China was 10 per cent, the PPE that I received on the frontline was a pair of gloves and a mask. That is disrespectful. I think I have established that leadership in a pandemic must be medical.

I will now address the second principle by which I lead my party—freedom. This current bill has reversed the established precedent of leading with medical expertise during a pandemic. Let this sink in for a moment. Western Australia is not known for being at the forefront of innovation and science. We follow on, often years behind. We are going down a path that is not in accord with international practice and is not fit for purpose.

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We can look at two major nations as examples, the United States of America and Germany. The US has two federal structures. One is the Division of the Chief Medical Officer, which sits within the US Department of Health and Human Services. To quote from the website of the US Chief Medical Officer —

The Division of the Chief Medical Officer serves by providing policy and programmatic recommendations for critical emerging and long-standing federal issues that impact the medical and environmental determinants of health.

None of that seems to include pandemic coordination, however. Meanwhile, the US Surgeon General heads up his own office. To quote from the website of the Office of the Surgeon General —

The U.S. Surgeon General is the Nation’s Doctor, providing Americans with the best scientific information available on how to improve their health and reduce the risk of illness and injury. The Surgeon General oversees the U.S. Public Health Service ...

The Surgeon General plays a quasi-military role and has control of over 6 000 uniformed officers. I did not know that.

Dr Fauci, who was the face of the US national medical response to COVID, was both President Biden’s chief medical adviser and director of the National Institute of Allergy and Infectious Diseases. In other words, when the pandemic struck, they looked for the most qualified medic in the field and promoted him, although it has to be said that he has advised almost every President since Reagan.

I turn now to Germany. I have a particular fondness for Germany, having lived there for many years, and I very much appreciate its science. Germany has gone one step further and in December of last year appointed Dr Karl Lauterbach, who is both a doctor and epidemiologist and a member of the Social Democratic Party of Germany, to the role of federal Minister for Health. Otherwise, Germany also seems to have relied a good deal on the advice of Lothar Wieler, president of the Robert Koch Institute for disease control. They are clearly experts in this area.

In Western Australia, we have people who clearly either have no medical experience in managing infectious disease emergencies or are not professionally trained in such experience. These people seem to have created this bill. This is simply unacceptable. It is even more unacceptable because this bill will devolve control to the Commissioner of Police under, one hopes, the Minister for Emergency Services. Rather than a medical emergency being led by the Premier, and supported by the Minister for Health, who follows the guidance of the Chief Health Officer, we have almost a police state approach.

The language of the bill is misleading. Rather than use the correct title Commissioner of Police, it uses the title State Emergency Coordinator. That does not sound so “police-ish”, does it? It does not use the title Chief Health Officer. This bothers me. We are talking about the science of managing a pandemic and about lives that might be lost. This is not a minor thing. It seems that this will be devolved to people who are not competent to manage a pandemic. It states that the Commissioner of Police “may” consult with the Chief Health Officer. However, it is evidently clear that the Commissioner of Police is not obliged to follow the directions of the Chief Health Officer. If we protest this as being unacceptable, that protest goes to the Governor, who is an ex-police commissioner. If we then protest that as being unacceptable and take it to the Corruption and Crime Commission, it will go to the paid man from Mark McGowan who is named in the bill as the director of the CCC. I find that very worrying, but that might be a topic for another debate.

Two acts will be modified by this amendment bill. Major amendments are proposed to be made to the Public Health Act 2016. Members will be appalled to discover that in section 185 of the Public Health Act, it is legislated that an authorised officer—by which I mean a police officer—may detain an individual at the command of the Commissioner of Police and force that person to be stripped and injected with a substance without the approval, agreement and informed consent of that individual. That substance might well be a vaccine. If members think this will never happen in Western Australia, I have to ask: Why is that on the statute book? Why have we written into law something that we will never use? It is there. It can be used. If it can be used, at some time it will be used. I find that particular precedent unacceptable.

If a person refuses to take a vaccine that may save their life, they should bear the consequences. They are an adult. They can make their own choices. I am not going to let a police officer stop me and force me to take something that I do not want, even if that is in my own best interests. I am a free man, in a free country. This should not happen. Since when has it been the case, even in an emergency, that the Commissioner of Police, even with the permission of the Chief Health Officer, is given legislative power to demand that a vaccine be administered to someone without that person’s informed consent? Yet that is on the statute book in black and white and is about to be put into law, without the consent of the people who have been writing to me in droves, and certainly without the consent of anyone on the opposition benches or on the crossbench. I cannot even begin to express my anger about this. The government is seeking to ride roughshod over the rights of a free people.

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Why should a police officer be given immunity for removing a person's car, or breaking into their house, or be given the ability to commandeer a person's property? Why would a pandemic situation require a person's car to be taken by the police? I could imagine that there might be a need to break into a person's property during a pandemic if there was a stench because dead people had been lying there for days or weeks, but taking their car? No, members. In a pandemic we must be led by medical advice.

The last time I decided not to save a life was at the scene of a motor vehicle accident. A young man was very seriously injured and the police who were attending asked me, "Doctor, shall we get the emergency helicopter?" I am trained in this. Just the month before, I had finished training on that specific question. I said, "Let us not bring the helicopter out. This man is not to be saved." I let him die. He died in my arms. Members might think that it hurts me a lot that I did not call the helicopter and that I let someone die in my arms and did not do what I could to save them. I am trained in that. It would have been a waste of resources. This man was going to die no matter what, but the person who makes that decision needs to be trained.

If a policeman says, "Don't bother with the helicopter; we'll let him die by the side of the road", he may have made the right decision in this case, but how comfortable would we all be with a policeman making that choice? How comfortable would we be with a police officer making a medical decision about our wellness? How comfortable would we really be about that? I felt no guilt. I have often been in that situation. I used to work in cardiology; I was a cardiologist. Many a time I said to the team, "Guys, stop; we're not going any further. Stop the resus; this is a waste of time and effort. This man is dead; he's not going to be resuscitated. I will sign the death certificate and I will speak to the family." I was trained. If someone had walked in off the street and said, "Guys, you're wasting your time", that would not have been acceptable.

Imagine that we have an epidemic within Western Australia. I will not call it a pandemic. Let us imagine that there is Ebola in Uganda and some rich Ugandan bribes the staff and gets a flight to WA to get better health care. It is possible. Ebola has a 90 per cent fatality rate. If it spread outside the hospital, which could easily occur, we would need an immediate health alert. We need that in place right now because that could happen. The Chief Health Officer would put in place the infectious disease emergency protocols, the police would work under the guidance and advice of the Chief Health Officer, and the army would be called in to assist. Believe me, if this happened, there would be panic in the streets; there would be utter chaos. With a 90 per cent death rate in a pandemic, there would be utter chaos. Doctors on their own would not be able to manage it. We need disciplined services. That is what pandemic legislation is about. We do not have that. We need that.

Let us take it further. Let us imagine that a few people in a building caught Ebola. If they were to come out of the building, they would spread the disease to hundreds of thousands of others. A decision would be made to isolate and keep the people in that building and to see who survived. A lot of them would die, but by isolating them and preventing the spread of the infection, we would be saving hundreds of thousands of others. Would members like that done by the Chief Health Officer or a police officer? Which would they like? Both would be terrible, but in whom would we place the most trust to do the best for our wellness and the wellness of society?

Members, enough! There is not one member in this chamber, apart from Hon Dr Steve Thomas, who has had any training at all in infectious diseases. I could say that no-one here is competent to make a decision on this legislation because they have not been trained. This is new. Members do not have the experience. I do not know how many members have held a dying person they could have saved and then let them die. I do not know how many members have had the experiences that I have had or that those who are involved in managing pandemics have had. To push this legislation through without any experience or knowledge and to put these decisions in the hands of the police is, I think, an error of unimaginable proportions. This is the wrong treatment for the problem.

It is my considered medical opinion that this bill is not fit for purpose. What, then, is a potential solution? Let us address the last of my three words—growth. That word is deliberately vague. Growth can mean a variety of things. In this particular case, we can grow and learn from this pandemic. We can grow as a community, we can grow as a government and we can grow as a nation. We need to take certain steps to grow properly.

Firstly, we can declare that the emergency is over. There are problems still. I am aware of variants coming in. It is not going away. The Deputy Leader of the House is absolutely correct. What was on the posters outside was quite correct. I stand shoulder to shoulder with him on that. That is just not acceptable. But the emergency as such is over. We need to revert to the pre-pandemic legislation. The Emergency Management Act and the Public Health Act 2016 have served us well. In fact, the minister in the other place very clearly articulated how well both those acts have served us. They have done us well. We have no urgent need to do anything different, but we should lead on and put some proper pandemic legislation in place for the next major problem.

Secondly, we must begin to prepare that pandemic-specific legislation, which should cover not only COVID-19. Only COVID-19 is mentioned in this bill. What about multidrug-resistant tuberculosis? What about if someone releases polio from one of the labs because they want to destabilise us? It is one of the risks from the Russian labs,

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which may want to do something nasty. It is possible that polio could come from Pakistan and spread through the world, but they would say, “It’s not us—no, not at all.” We need to prepare for this. Of course, my personal fear, as members can probably guess, is Ebola. We have smallpox and I mentioned multidrug-resistant TB. This major problem is pending. It would not take much for it to become a problem. The multidrug-resistant infectious diseases in the world right now are going to be a problem. People are going to die of stuff that we have treated in the last few years without any problem at all. We need to prepare for this.

Thirdly, and importantly, as part of the pandemic legislation, we clearly need to define the chain of command, which must stop with the Premier, who works with the Minister for Health and whose actions must be under the guidance of the Chief Health Officer and not subject to political considerations. We cannot take this sensible measure because people might think. We have had all this discussion. We need good leadership, and it comes from the Premier. This is a matter of life and death. It demands science, not politics. It demands that the police force and the armed forces remain subject to, and at the command of, government and that they specifically do not command and control, but, rather, enforce and obey.

In concluding, I spoke of Keir Hardie earlier and I return to his wisdom. He spoke in 1906 of the need to see in the House of Commons a strong Labour Party that could compel employer and landlord alike to take their hands off the life of the nation and enable the working people to have a chance to live. They could do so only by having Labour members in Parliament to fight the cause of the common people. Yet here is Labor, a beast that Hardie would hardly have recognised, handing the crofter over to the factor—the working man to the company. Is Labor showing its true colours? I hope not, because those colours run into the hands of the police and the authoritarian state that we should be extremely wary of, if not disgusted by. Labor runs away from science—the science that it extolled just a few short months ago—into the hands of uniformed officers and diktats without justification. I do not know why, but I know that I will not run with it. We will not run with it. We will stand with science. We will stand with the ordinary men, women and children of WA. We will oppose this dangerous piece of legislation. We will stand with reputable organisations such as Civil Liberties Australia, which emailed me earlier this week to commend my commitment to individual freedom. We will stand with time-served public servants like ex-Commissioner of Police Karl O’Callaghan. He called this bill lazy in its avoidance of accountability. Yes, we will stand with those ordinary men and women who, whatever their political persuasion, hold serious concerns about the level of power that is being handed over to the police under this legislation. We will do so because, in its current form, we consider the legislation to be dangerous. We will take our seats again with a clear conscience—something I can only hope members on the government benches are also able to enjoy when this debate concludes.

HON DR BRAD PETTITT (South Metropolitan) [5.28 pm]: For me, it is an on-balance decision in speaking for or against the Emergency Management Amendment (Temporary COVID-19 Provisions) Bill 2022. Unfortunately, this balance comes down to not supporting the legislation in its current form. That is disappointing in some ways, because there are obviously sensible parts to it that I think we would all agree on. What it lacks and why the on-balance decision comes down on not supporting it is the checks and balances that I think should be in place in this kind of legislation. I thought to myself during the earlier debate that the opposition’s motion to refer the bill to a committee was a wise move. In response to Hon Stephen Dawson’s earlier comments, if there had been multiparty agreement on it and everyone supported it, it would have got me across the line. I am open to changing my mind. This is not legislation that I have a very strong position on, but it is legislation that I have reflected on because I do not think the balance is quite right at the moment.

This house finds itself in a bit of a weird position, whereby the left and the right of the political spectrum are standing against this bill. They are concerned and united by the fact that it does not actually have the right checks and balances in place. That is for good reason. I must say, I listened to Hon Tjorn Sibma who has taken the lead on this. Whilst we do not always agree on everything, I found myself in agreement with him on a range of matters. For me, the key bit is that this bill will elevate the State Emergency Coordinator, who is, of course, the Commissioner of Police, beyond the level of a minister. He may get the advice of the Chief Health Officer, but is not required to follow that advice.

I think one of the strengths of the way that this government has dealt with COVID is that the Chief Health Officer’s advice was very public, and it ultimately went through government. We saw the health minister and others responding to that. At the moment, this simply stops at the police commissioner, otherwise known as the State Emergency Coordinator, who, ultimately, is not elected. I think there are really good reasons why we should have governments signing off on this kind of advice. Having an elected representative of the people, in this case, is really important. Whether the representative is satisfied that these temporary COVID provisions should be made, extended, or revoked, it is all about having the appropriate safeguards to actually preserve transparency and accountability around how these extraordinary emergency powers are utilised.

There is also an important role for the Parliament, that from my reading of the legislation, is excluded. The Parliament should have the ability to disallow any directions that are made, as well as things that do not meet proper public health, social or economic considerations. Bills like this that exclude the role of the minister—the buck does not

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stop with an elected person—and exclude the role of the Parliament are a great concern to me. I think at the heart of this is a broader trend whereby we are giving unelected people more and more power, in this case, the police commissioner. As I have said publicly before, I like Col Blanch, and I have worked with him before. This is not a criticism of him at all. No matter who was in this role, I would say this. There is real danger when we start to give too much power to too few people, especially when they are not elected.

Hon Tjorn Sibma talked about the continuation of a police state. That is strong language, but I think there is a trend in this state that needs to be reflected upon whereby we are giving more powers to the police commissioner—the State Emergency Coordinator—or we are giving those powers to the police on our streets. We have been talking about legislation coming forward that would enable the police to exclude anyone within the entertainment district for six months. This is an emerging pattern that I think is not good for us as a society or a democracy, and we need to make sure that we are putting in place the right checks and balances. Unfortunately, the legislation as it is currently written does not do that. I think there is an opportunity to do that and it would not require huge changes to do that, but it does require everyone in this Parliament to seriously look at the amendments that I know will come forward and take them seriously. I would encourage that, but without those amendments coming forward, it is not something that I will be able to support.

HON JAMES HAYWARD (South West) [5.33 pm]: The McGowan government is telling us that it wants to end the state of emergency. With the COVID situation that we have been in, we have been told that the acute and dangerous phase of the pandemic is now over. The puzzling thing is that what this legislation proposes is an extension of the state of emergency for another two years. It extends this, effectively, by itself; not by having the public scrutiny of elected members, but by transferring that power to the police commissioner.

We have all been bombarded with emails. There are people who are upset by this and do not like, in particular, the proposed property powers that are included in this legislation. The government may have different views about whether those people count, but they are constituents. They live in Western Australia and they have a right to be heard in this Parliament and to have their views considered.

Hon Darren West: So did the other 99 per cent.

Hon JAMES HAYWARD: The member is certainly welcome to stand up and make his views heard.

I share some of the concerns raised by those people. I think this proposed legislation is an overreach and is completely unacceptable. I have had the opportunity to receive a briefing, which I was very thankful to receive. I appreciate that of the minister, and I thank him for arranging that for me. But when I asked some fairly specific questions in that briefing, the answers were largely talking points rather than dealing with the actual issues that were being raised. They were talking points like pointing out that we have had 600 people die from COVID, and others. Now, those things are not untrue, but I do not think they deal with the specific concerns that people are raising. People are concerned about the growth of the police state and the idea that their rights are being eroded by pieces of legislation, including this one.

I am not suggesting that there is any ill intent in the bill. I do not see that this legislation is designed to create a dictatorship of the police commissioner. I do not see those things. The real challenge we have is that the reality is if somebody else wanted to use this legislation to achieve that in some circumstances, there is certainly a lot of power being handed over to the police commissioner. Other members have spoken about that already and about the growing trend for command and control of the state whereby there are unfettered powers. It is a worrying situation for the people of Western Australia.

It is nothing short of bizarre that the police commissioner could declare a state of emergency even if the Chief Health Officer does not agree. All throughout the pandemic we had the Premier on TV ad nauseam. It seemed like it was every night of the week and in extended telecasts that sometimes went for 40 minutes at a time. He would constantly talk about the health advice: “We have got the health advice. We have got to follow the health advice.” The McGowan government then created legislation that says, “Well, the police commissioner doesn’t really need to follow it if he doesn’t want to.” He is a pretty good guy. I agree that the police commissioner is a terrific fellow and will do a very good job, but I cannot help but notice that there is a bit of a change in the way that the McGowan government has been managing this, given the time and effort. The Premier constantly told the people of Western Australia through the media that this was based on health advice. We had health advice for everything. We had health advice that said that a person could not go to a drive-in bottle shop, unless they had, effectively, a vaccine passport. They had to prove their vaccination status. The Premier told us that was based on health advice. Later on we discovered through parliamentary questions that the advice was really not so much about health, but more about trying to encourage people to get the vaccine.

Under these new powers the police commissioner is only encouraged to get health advice. Although I cannot personally imagine any police commissioner making a decision without talking to the Chief Health Officer—I agree

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with the government that it seems completely illogical—the reality is that the government is proposing a law that says he does not need or have to do that.

It also talks about the powers to commandeer property. I asked some questions about this. What is an example? I could understand in a bushfire or a cyclone that a COVID-19 officer might say to Woolworths, “You have got a semitrailer of food driving past that we need to feed a community outside of Carnarvon. I am really sorry. Here is a cheque for \$90 000 for your semitrailer. We are taking it. We need to feed these people”. I can understand the need for that type of law. I can understand the need for that during a cyclone. I can understand the need to commandeer a bulldozer or a water truck in a fire. Those things make sense. However, it is difficult to understand how the commandeering of personal property in this situation makes any sense. An example I was given was that in the instance of an illegal party going on at a pub, like there was in Perth on New Year’s Eve, the police need that authority to break down the door and get in. I might be wrong, but I am pretty sure that the police can break down the door and go in if they think that a crime is being committed. I do not think they need COVID legislation to give them overarching powers; they already have plenty of powers.

As Hon Dr Brian Walker mentioned, another example is that perhaps there are bodies rotting in a house and the police need to enter the premises. Under the Coroners Act 1996, the police have incredibly strong powers. Members can speak to any police officer about the powers the Coroners Act gives them; they are incredible. They can do whatever they like under that act. If they are dealing with dead bodies, there are no problems because they already have the powers. I suspect that the police do not need these powers specifically in this legislation, but they have been put in because perhaps they mimic emergency powers in the Bush Fires Act 1954 or other emergency management acts.

One of the other challenges with the Emergency Management Amendment (Temporary COVID-19 Provisions) Bill 2022 is the idea that somebody can be deputised on the run. It can be announced that a person is able to perform a role and duties under these particular powers. They can be deputised on the spot, preferably in writing, but it does not have to be in writing. That means that the Commissioner of Police can deputise anybody who is performing a function and give them the job. That could be a State Emergency Service worker, a local shire worker; it could be anyone. The checks and balances seem a bit loose in this space—they really do.

One of the problems when we make these types of laws is that inevitably somebody will attempt to use them and they do not always use them in the way that they were designed to be used or how members imagined they would be used when debating them in Parliament. Laws are twisted around all the time to get a result that is not necessarily the intended purpose. I can give members a couple of short examples from my background as a television cameraman.

I remember going to a bus crash scene on the South Western Highway, south of Manjimup. It was a terrible crash. A lady died and many, many elderly people were injured. I think I was working for the ABC at the time. I turned up and started filming the scene of the crash. Somebody said, “Mate, you can’t film here.” I asked why not. I was told, “We just don’t want you here.” I had a job to do, so I decided to keep filming. A police officer came over to me and said, “Mate, you can’t be here.” I asked why. He said, “If you’re going to be like that, I’m going to declare this a protected forensic scene.” I said, “You’ve got traffic driving through. The road is open; people are driving through.” That declaration was not designed to try to control the media, but it is something that is used under the Criminal Investigation Act 2006.

In another example, I was detained by the Department of Fire and Emergency Services for about five or six hours under the Emergency Management Act 2005; I am probably one of a few people who have. I was the first cameraman into Yarloop on the morning after it burnt down. I had gone around to film all the buildings that were gone and the hundreds of houses that had been lost. It was an eerie morning. I was there from about 5.00 am when, literally, the sun came up and revealed the devastation. I was promptly—I would not say apprehended—detained by DFES and told that it had authority over me under the Emergency Management Act. I was told that I had to stay in the car park. I could not move and I was not allowed to fulfil any media work while I was in the car park. I thought that was interesting because there was no paperwork that said I had been detained. There was nothing—just this guy’s say-so. I asked him what the reason was. He said, “We don’t want people seeing that their houses have burnt down on TV before we get a chance to see them.” I pointed to the sky where a Channel Seven helicopter was flying around and said, “They are beaming live pictures right now.” He replied, “Yes, but I can’t do anything about that.” The problem is that that legislation was never set up to be used to control somebody by preventing them from doing their job or whatever. Those rules and laws were passed to help people and bring about the best possible outcomes in an emergency situation. The problem is that these things are misused. That is the reality.

Those are a couple of stories that came to mind when I was thinking about these things. I am sure that many people have had other experiences. The real concern about passing bills like this one is that it does not have the right checks and balances; the government is literally handballing responsibility to an unelected person. Ultimately, the government can sack that person if they do something that it does not like or there is public outrage about the way that something has been done, but it does not have to take responsibility. It can say, “That is the decision that the

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police commissioner made. It's got nothing to do with us. He's got the power to do these things." These are the problems with the legislation that is being pushed through.

One of the other things that we do not think about is that Western Australia is full of people who have immigrated from all around the world. Although many of us have grown up in Western Australia and enjoyed the tremendous freedoms of this state and country, some people who have come from other cultures and experiences and who now call Western Australia home have experiences of tyranny and justice that are not necessarily like ours, and the fact that these laws are going through creates a lot of concern for them.

Hon Dr Brian Walker also spoke about the idea that people can be forcibly vaccinated or subjected to some kind of medical procedure, which is outrageous. I agree that I cannot imagine police officers enforcing something like that, so why have those provisions in law if they are not likely to be used? The only other criticism I have is that the government is creating this situation for pandemics, particularly COVID-19, when, largely, the emergency has finished. Why does the government not create laws for the state to deal with any type of pandemic? Would that not make a lot more sense than rushing through these laws for two years and handballing control to somebody else so that the government is potentially not responsible? The government is handing over sweeping powers to do all sorts of stuff pretty much without having to be accountable to anybody. Those are real concerns. I understand that this bill will pass on the numbers, but it is important to get these things on the record.

HON WILSON TUCKER (Mining and Pastoral) [5.48 pm]: I rise in opposition to the Emergency Management Amendment (Temporary COVID-19 Provisions) Bill 2022. The bill does not sit well with me and I do not think it sits well with the majority of the Western Australian public. I say that because in my extensive tenure in this place over the last year and a half, I have received by far the largest amount of correspondence on this bill than any other bill that we have dealt with. We have dealt with some fairly controversial bills. In the last year and a half, we dealt with the reform and the overhaul of the upper house standing orders, the Aboriginal Cultural Heritage Bill and also the direct appointment of the head of the Corruption and Crime Commission. They were all very controversial bills that we dealt with in this place and they solicited a fair amount of public outrage, as we would expect. But on this bill, I have received by far the most correspondence from concerned members of the public, as I am sure other members also have. It is not an exaggeration to say that I received hundreds of emails. Some of these emails have certainly been shared across the social media pages of right-wing groups, which asked their members to contact their members of Parliament to express their outrage. Some of these emails were copy-and-paste jobs, but a lot were genuine emails coming from individual members of the public who are very concerned about these ongoing powers and want to know why, as we are coming to the end of this pandemic, we are still retaining and renewing the majority of these powers under the Emergency Management Amendment (Temporary COVID-19 Provisions) Bill 2022.

I will take a very cynical view about this bill. I do not believe I am a very cynical person, but the government has certainly made me this way in the last year and a half. This bill seems to be a superficial marketing exercise designed to give the public the impression that the state of emergency is over, meanwhile allowing the government to retain the extensive powers it holds under the existing Emergency Management Act and which this amendment bill will renew. It will also put these powers at arm's length from the Parliament. As commented on by the opposition and the crossbench, the Commissioner of Police, an unelected public servant, will be appointed as the State Emergency Coordinator, which will put these extraordinary powers at arm's length from Parliament and reduce the transparency and accountability contained within the existing Emergency Management Act. If members want to judge this bill through the lens of transparency and accountability, it is a terrible piece of legislation and, in my mind, is up there with the bill that enabled the direct appointment of the head of the Corruption and Crime Commission. They were the two most terrible pieces of legislation I have unfortunately had to deal with in the last year and a half.

I will raise two points in relation to this. The first point is the intention and the short-sightedness of the bill. Again, taking a cynical view, I cannot see what the government intends with this bill. We will see a slight reduction in the scope of powers and the police will no longer have the ability to control the borders, but all the other extraordinary powers contained in the act will still exist. As stated, the police will have the ability to forcibly vaccinate someone and to enter your premises and seize your property. I asked a question of the minister's office in the lead-up to debating the bill in this place: which powers that are in effect and used under the current Emergency Management Act will continue under the amendment bill? The answer I received was COVID transitions such as Face Covering Direction No 10, Proof of Vaccination Direction No 7 and the Department of Fire and Emergency Services Ambulance Service Assistance Directions. That is a very narrow scope of the powers that are currently afforded under the existing Emergency Management Act. We could say there is a delta here. The existing provisions that are in effect today are quite limited. At the height of the pandemic, I do not believe that any of the more extraordinary powers afforded under the existing act were used. These include the ability to enter a premise to vaccinate someone. I understand why these provisions were baked in. We were dealing with the public, which comprises a broad spectrum of humanity. Certainly, a lot of edge cases can come out of that. It is entirely appropriate for the government to

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give itself some wiggle room and leeway when dealing with the public, based on the fact that a lot of extraordinary circumstances can arise.

However, I do not believe these more extraordinary powers were used at the height of the pandemic. The question is: if they were not used then, when we had a very strict regime in Australia and certainly WA—the government was fully entitled to make the decisions it did, which it has largely been praised for—why renew them now? Why continue with these more extraordinary powers towards the end of this pandemic? This bill is feeding into the narrative of these right-wing groups. It is giving them oxygen around the notion that an autocratic police state could arise. We will see a slight reduction in these powers, but the government has not read the room correctly. That is evident from the rallies we have seen outside. There should be a more significant reduction in these powers, which would appease these groups and, hopefully, bring them along for the ride. The government should try and build up the public's trust in it, which has been eroded through the pandemic with some of the government's more heavy-handed approaches.

Speaking of measured approaches, the Victorian government has a regime in place to manage the COVID pandemic that is aptly named the pandemic management framework. It has three key safeguards, which I will read for the benefit of *Hansard* and members —

1. Advice and reasoning that has informed the Premier and the Minister for Health's decisions in relation a pandemic declaration and pandemic orders must be published and tabled in Parliament.
2. Parliamentary oversight of any pandemic orders will be provided by a joint Parliamentary investigative committee that will be established after a pandemic declaration is made.
3. The Independent Pandemic Management Advisory Committee will be able to review pandemic orders and provide advice to the Minister for Health and to Parliament through the joint investigatory committee. In addition, their reports to the Minister will be tabled in Parliament.

I do not raise these as an endorsement of the Victorian model, because I am not familiar with some of the challenges that Victoria faced during the pandemic, but more to highlight that other states and jurisdictions have baked-in scrutiny and oversight for accountability and certainly more transparent mechanisms than we have seen here in WA. This bill will move away from the current regime, which certainly has some flaws, to a more short-sighted system that will basically reduce the amount of accountability that Parliament has and therefore the public is witness to.

The second point I will raise is the public perception of this bill. We know that the bill allows for the Commissioner of Police to act as the State Emergency Coordinator. As I said, I do not believe that the police commissioner will abuse these powers. I think the police commissioner will act judiciously and independently and keep each role separate; however, it becomes a matter of principle. This bill will take away Parliament's ability to scrutinise these powers and will put the decision-making capability of a pandemic declaration in the hands of a public servant. Despite how well-intentioned he may be, this will reduce the accountability and transparency of this process that currently exists and will cement it in a more black box regime, which I do not believe is a good outcome or long-term process. We can do much better.

To play devil's advocate and be a little cynical, during the pandemic we heard the Premier say one thing about the use of G2G data and we saw the police do something else. The use of the G2G data proved a little too tempting for the police. They were not breaking the law; there was no underlying data privacy legislation to stop them and they acquired that data for their own use. I do not believe that the Commissioner of Police will do a power grab and we will end up in a police state, but that temptation exists. That is why we have safeguards and why this Parliament is here—to provide scrutiny and feedback in the hope of improving this regime and making it more secure so that it will better serve the Western Australian public.

Sitting suspended from 6.00 to 7.00 pm

Hon WILSON TUCKER: To quickly recap and summarise my remarks, I raised a number of concerns that I have with the Emergency Management Amendment (Temporary COVID-19 Provisions) Bill 2022. I spoke about the intention and the short-sightedness of this bill. It appears to be a political marketing exercise designed to create the perception that the COVID emergency is over, and meanwhile exonerate the McGowan government for any future decisions relating to the pandemic. There was an opportunity to take a more comprehensive look at the pandemic, let the dust settle, and take a measured look at how we could improve the Emergency Management Act for future pandemics, rather than the short-sighted, piecemeal amendment bill that we see here tonight. I am of the firm view that we have missed an opportunity to put something long-lasting in place that will improve transparency and accountability, rather than the bill that we see tonight.

The second point I raised was around the public perception that the Commissioner of Police is now operating in a dual role and that it is a potential power grab, essentially conflating the Emergency Management Coordinator and the Commissioner of Police into one role. A direct conflict of interest may arise in the future and therefore there

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may be a public perception problem when we talk about this bill. It is a complex piece of legislation. We have not had a lot of time to review it, and some potentially serious consequences could arise from this legislation. Obviously, with the government's numbers, this bill will pass. However, I believe this is a good opportunity for the upper house to prove its worth, to scrutinise this bill in the short time that we have available, and potentially tease out some of the intentions behind it. With that, I will leave my remarks for the Committee of the Whole House at a later stage.

HON SOPHIA MOERMOND (South West) [7.03 pm]: I rise to speak to the Emergency Management Amendment (Temporary COVID-19 Provisions) Bill 2022. I appreciate the contributions made by my honourable colleagues, who are much more succinct around legal matters than I am. This bill caught me by surprise. The COVID pandemic is over and there is no reason to continue along this line. COVID does not rate on the news anymore, in the rest of Australia and around most of the world. Most of us have moved on. There is no state of emergency and there has not been for at least a year.

I have several concerns about this bill, with the focus specifically on the ambiguous language used in the proposed amendments to the existing section 77, and I am obviously not the only one. Earlier today I was presented with a petition containing approximately 150 signatures. The format was not suitable for tabling in this place, but it showed the engagement and passion of people with regard to this bill. When the bill passes—I am under no illusion that Labor will push it through, but I must speak to these matters, nonetheless; my conscience simply does not allow for a different course of action—and it is enacted, it will bring about significant changes that will affect all Western Australians. It will provide the ability to invade the sanctuary that should be our home. I understand that emergency legislation is necessary. We will be entering a period of increased climate instability, including more severe weather events and possible food and water resource issues. We absolutely need to have protocols in place to deal with that in the future. This legislation is not it. It comes across as a hastily put together bill with language that is so open to interpretation, it almost loses all function—in particular, the term “reasonable”, when referring to actions taken by authorised COVID-19 officers. I will cover the method of appointing COVID-19 officers later. The term “reasonable” is open to interpretation. It is influenced by culture and changes throughout history.

When growing up in South Africa, I was well aware of the system of apartheid. Racism was the norm. This was over 40 years ago, when no-one batted an eyelid at some of the horrors that resulted from that racism. I am pleased to say that what was reasonable then is not reasonable now. “Reasonable” is a word in flux and means different things to different people. That means that this legislation and some of the far-reaching consequences it can effect are all based around an individual's interpretation.

That brings me to the appointment of COVID-19 officers. They will be able to be appointed with no qualifications, possibly no vetting at all of their education or mindset and possibly no official identification. On top of that, they will be able to be appointed retroactively. That frightens me. When looking at mindsets in particular and at how divisive this topic is, we can see that radicalisation happens on all sides. I have mentioned othering and dehumanisation before. This legislation reads like a blueprint to give radicalised people power over others. This bill looks as though it could be used to justify violence. Although that may not be the intent of this bill, it still could be used that way. I have obviously disagreed with other bills. However, this one fills me with the most dread. It has no redeeming features. The lack of guiding terminology and accountability and the retroactive appointing of COVID-19 officers without any suitable qualifications is concerning. People negatively affected will have no recourse, with culpability simply legislated away.

There is simply no way I can support such a bill. It is shoddy and it is dangerous. In my opinion, the lack of clear guidance around what behaviour will be acceptable is a major concern. This is a blueprint for a police state and, in line with that, it will be passed in a very undemocratic manner.

HON NEIL THOMSON (Mining and Pastoral) [7.08 pm]: I rise to add my voice in opposition to the Emergency Management Amendment (Temporary COVID-19 Provisions) Bill 2022. It is fascinating. I would like to commend the other members who have spoken on this bill, from both the Nationals WA–Liberal Party alliance and the crossbench. They have spoken articulately. Each of them has made very interesting observations. It is fascinating that we have not seen a single non-government member speak in support of this important legislation. The government will use its numbers and get the bill through. I ask the government to pause and think what it might mean when not a single crossbencher or member of the opposition supports this bill. Maybe that will send a message to the government.

One of the important things about governing is governing responsibly. We have heard much from the government about its responsibilities during the COVID pandemic, and that may be the case. However, the important factor is that we must bring the community along with us. We must also have a social licence for the legislation that we put through this place. There should be a level of bipartisan support across this chamber when we are dealing with something as fundamental as managing the COVID pandemic. I have a degree of sadness that we have not seen that level of collaboration. I must say that at the beginning of the pandemic, given the state of emergency that we were facing, my thoughts were akin to being at war with a disease that would result in the death of many people. We

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have seen the history and how governments at that time reached across the aisle to the other side. I believe that the opposition acted in good faith during the early stages of the pandemic. Throughout the emergency, a lot of good faith was shown in support. Even prior to this forty-first Parliament, there was a lot of goodwill. However, we did not see a level of bipartisanship that would have been very beneficial in gaining social licence from the community.

The government has said to the opposition and other members in this place that we are simply engaging in a stunt. That is fine. Minister Whitby in the other place said to Dr David Honey, MLA, that his comments were alarmist, dog whistling and extremist. I think the opposite. It is all very well to throw around accusations about dog whistling and being extremist, but the government would achieve much more if it acted in a more collaborative way on this matter. If it dealt with the referral to committee as proposed earlier, and gave greater consideration to the viewpoints and diverse voices in this place, albeit that we are a minority, it might be able to get broad coalition support across this chamber, not that we will always agree on everything. I commend Hon Sophia Moermond for her comments. She has mentioned on more than one occasion the othering of people and so forth, and extremism. The ongoing lack of collaboration, lack of information and lack of considered debates put forward in a transparent way give fuel to people who might take more extremist views on a matter. It is important that we bring as many people in the community along with us as possible. That does not mean a majority. Clearly, a majority of people supported the government, and that is fantastic. I think most people on this side of the chamber would have supported the measures that were put in place early in the pandemic. However, there is now almost a cavalier attitude towards having more considered discussions that would bring a greater number of people along on the journey. That includes some of the hardcore people who might be opposed to some of these measures and who at times rally at this place and say things that are considered outrageous. However, that dialogue and consideration provides a pathway to bringing every person on board to support the sorts of measures that we put through this place.

The concerns of the opposition have been summed up by other speakers, but, in summary, the concerns are about the lack of ministerial oversight, the lack of alignment between the existing state of emergency provisions, the lack of transparency and accountability, and the lack of clarity on the publication of COVID declarations. I hope that during the committee stage, we can get more clarity on how those declarations are likely to occur. I assume that those declarations will be ongoing. There are also concerns about personal and private data. The government cannot claim to have clean hands in this process. We have seen this time and again over the years. This applies to both sides of government. There are concerns about the handling of data, whether it be the transport executive and licensing information system data, the contact tracing information or the G2G data. We have not had a great track record.

These concerns are worthy of debate and consideration in more detail. If the referral motion had been passed earlier today, we would have had more consideration by a committee, with more expert advice to be given to the non-experts in this chamber. That is what we all are. We are just members doing our very best to represent the broad views of our communities, some of which we do not always agree with, and trying to get a broad consensus so that there is this incredible buy-in, as we have enjoyed for so long in our wonderful democracy.

The comments of Hon Wilson Tucker were very interesting. In addition to the points I have raised, he spoke about the conflict of interest between the role of the Commissioner of Police and the role of the State Emergency Coordinator. That is an interesting concern, particularly when we link it back to some of the concerns about data management. That is something that is worthy of considered discussion and debate. We are not here to point fingers. I have a lot of faith in our police. They do a tremendous job. But we know that there is fallibility in all human systems and all organisational systems, and that is exactly why we have this oversight through the parliamentary process and also through the executive.

In reference to dog whistling and extremist comments, that was an interesting line of attack by the government. I just ask for a little bit of logic to be considered in this process. If this is so important, why does the minister not have oversight of the processes? That is a question that I have to ask. It is important, and that is why we believe the minister should have oversight of those sorts of powers, and the chambers of the Parliament of Western Australia should ultimately have responsibility for those powers. Instead, this government is acting in a capricious way by bringing in a bill to make changes to this process when there is still time to consider it. I am sure that if there were a very considered approach, there would be no objection to a further extension of the state of emergency. That is the sort of importance that people like me put on this issue.

We should not have got to this point. I will clarify that point. This should have been considered six or 12 months ago. Other jurisdictions have this sort of legislation, but it is not as capricious or as dangerous as this legislation and it does not have the same lack of accountability and transparency that we have talked about. It would have been great to hear in the presentation of the second reading speech, for example, a blow-by-blow comparison of some of the legislative provisions in those other jurisdictions and the reasons for any variance that might occur in order to enhance the responses that we might need, particularly if there are, as outlined in the second reading speech, certain powers that are not available when we are talking about declarations. The powers might have to be escalated if

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there is an escalation of infections. We do not know what the future holds. There could be an escalation of infections and the need for a significant, coordinated response. I think the word “coordinated” implies a level of collaboration and support from a broad cross-section of the community. We do not know what the future holds, but we would like to see a more intellectual, thoughtful and considered approach to putting forward the provisions that we are going to be governed by for the next two years.

It is time for the government to reflect. I do not know whether there is any appetite for reflection going forward. I do not know whether government members are listening to all members of the crossbench and opposition. I do not think they are, but I always hold out hope that there will be a certain level of reflection, and that because of a desire to create a level of bipartisanship on such an important issue, we will see whether we can get to a result that is at least better understood by a lot more people in the broader community. This is a process by which we can dispel misinformation. This is a process by which we can get buy-in and support for public health measures that require people to be brought along on the journey. In some respects, we have already seen COVID fatigue creeping in. I note that as I travel. People are not being as diligent in wearing face masks, for example. There is a whole range of issues.

I think people are taking a more casual attitude towards COVID. That is understandable, but we want to make sure that if things do escalate, a broad cross-section of the community is prepared to step up and continue, even with the issues around the vaccination regime. It is important that people continue to support those measures because we need ongoing buy-in from the broader community, notwithstanding the small cohort who, for whatever reason they choose, have taken more strenuous opposition to that. That is a broader cultural issue or community psychology. I think that would be supported if the government took a more measured approach in its application of ongoing legislative instruments.

From my reading of this law and from what people have said here today, it does not really meet the standards of good law. There are principles of good law, which can be many and varied. One of the most important principles is the separation of powers and responsibilities for the executive and the judiciary, yet this law is taking quite a different approach. Effectively, it will abrogate, or I could say delegate, but it will do more than delegate because responsibility will rest with a public officer. There are considerable powers. For example, proposed sections 77J to 77Q of this legislation have enormous powers. It is going to be interesting to unpack them during the Committee of the Whole to understand how these powers are likely to be applied on a day-to-day basis and maybe during a time when there might be an escalation of infections, for example. I do not believe that enough serious thought has been given to the importance of maintaining the separation of powers in our liberal democracy. There are distinct roles. This place provides oversight and accountability when things go wrong or when concerns or complaints are raised by members of the community about overreach by members of the executive or, in this case, those who will operate on behalf of the executive. That is very important.

The second principle is that laws should be made by representatives of the people in an open and transparent way. That is one principle of law. If we look on Google, we can find out what principles of good law are. There are plenty of websites out there that tell us. I am sure that there are plenty of lawyers who could tell us about principles of good law, because lawyers are taught them at university. I am mentioning just two of those principles today. The second principle is that laws should be made by representatives of the people in an open and transparent way. We are not seeing that today and we will not see that tomorrow. This bill is being rushed through this legislature in a way that will diminish the ability of the opposition to scrutinise it in a careful and considered manner so that we can understand the implications and any unintended consequences. I have been around public life for many years. As a public servant, I provided advice to many ministers on both sides of politics. One principle that was instilled in me when learning my craft—the development of policy—was that we should always think about the out-of-the-box, unintended consequences or outcomes of laws, because those are the things that other people have not thought about. We should always do workshop sessions. I do not know whether that has been done. We have not been given any explanation of the unintended consequences.

I can certainly see some issues with these proposed laws—for example, the locking down of certain areas under certain conditions or under the direction, effectively, of the Commissioner of Police. During the early stages of the COVID pandemic, the government was very reluctant to lock down certain areas. I was living in the Kimberley at the time. It was through the advocacy of local government, to its credit, that the approach was taken to lock down shires. It was like the game of freeze that kids play; everyone stood still for a moment and worked out what was going on and locked the place down, which was absolutely needed at that time. Again, it had a huge buy-in at the local level through the advocacy of local government. We were able to do that through the state of emergency provisions that had been put in place, as well as under provisions in the commonwealth’s Biosecurity Act.

What are we going to do? The police commissioner will just be making arbitrary decisions. What impact will that have? I will hypothesise a bit: the commissioner will be obliged to consult and consider the broader implications. No single public officer can possibly have knowledge of all the impacts and whether there is broad consensus in the

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community on how they might be impacted. I think we really need to pause for a moment and give more consideration to the second principle I have raised—that this law needs to be made by representatives of the people in an open and transparent way.

We must apply the reasonableness test to this whole process. That is seriously lacking at this point in time. The government does not have a social licence to apply the law in the way that it is proposing to apply it. The legislation does not pass the principles of good governance and good law and will not receive the highest degree of bipartisan support possible, despite being such an important issue. The government has not engaged and it has not provided sufficient information. The coming hours of debate on this matter, particularly in the Committee of the Whole, will be very interesting as we try our very best to unpack the implications of this law, which I cannot support.

HON NICK GOIRAN (South Metropolitan) [7.30 pm]: I rise as we now consider the Emergency Management Amendment (Temporary COVID-19 Provisions) Bill 2022. We are, as the house of review, currently considering whether a majority of us will agree to the second reading of this bill. It is worth us pausing for a moment to consider the circumstances in which this bill comes before us.

The bill has been rushed before us; it has been rushed before us in the context that the other place had approximately 24 hours in which to deal with it. A number of Western Australians are concerned about this bill, and members are well aware of that. Many of those Western Australians may not be aware that the ordinary rules of Parliament are part of the law of Western Australia. The ordinary rules of Parliament, as they apply to the other place, indicate that a bill, ordinarily and customarily, on the vast majority of occasions, ought to sit and be considered for a period of three weeks. That did not happen with this bill. I will not spend any further time unpacking the provisions available to the other place to expedite bills, but suffice it to say that the government elected to utilise provisions that enabled the bill to be expedited in a fashion within some 24 hours. That is the circumstance in which the Emergency Management Amendment (Temporary COVID-19 Provisions) Bill 2022, 84–1, arrived before us.

I simply make the observation that it is a fair and reasonable conclusion to draw that members of the other place, despite their best endeavours, diligence and efforts to be conscientious, simply would not have had the time to properly consider the bill, hence the responsibility for that shifts to the house of review, which ordinarily and customarily reviews bills and provides full scrutiny, to do so in an even more elevated and critical environment. That is why I am particularly disappointed to note that we are now operating in a very constrained environment. The reason I say that, for the benefit of those who will consider what we have had to say as a chamber through the *Hansard* in the days and weeks ahead, is that at the present time, as I stand in the house of review, the clock is ticking, and it is ticking with respect to not only the limited time in which I have to address this very substantial piece of legislation, but also the total contribution that is permitted to be made on this bill. We now have less than one hour and 28 minutes, at which point in time, Acting President, you will have no option but to put the question to members.

Although I accept that newly created provisions brought in at the behest of the government in the forty-first Parliament created this mechanism, I add that they should be used sparingly and in the rarest of circumstances, and that when they are used, they ought to be justified. None of those things have happened with the bill before us. What compounds the problem is that the McGowan Labor government's description of this bill to the public has been nothing short of misleading and deceptive. Indeed, the government's handling of the bill in both houses has been what I would describe as contemptuous of proper parliamentary scrutiny.

On the day before this bill was pushed through the other place, the Premier stated that the state of emergency allowed for a range of measures to be reinstated that are not necessary at this time. I draw members' attention to what the Premier said in question time to the Leader of the Opposition. I refer to question without notice 545, when the Premier specifically said —

The state of emergency that has been in place allows for a whole range of measures to be continued or reinstated, if you like. They are not necessary at this point in time.

The Premier used that argument as some form of justification for blasting through Parliament the bill that I understand the government had just given notice of.

On the same day, the Premier also admitted that his government was keen to remove the terminology for and measures available under the state of emergency. Government members wanted to distance themselves from this designation, this classification, of a state of emergency. It was becoming increasingly uncomfortable for the Premier, his ministers and the government to front the people of Western Australia and suggest that we are in a state of emergency. As a result of that, we had the very revealing admission from the Premier that he and his government would like to distance themselves from this language of an emergency. It was hardly a surprise when we consider that the Premier was travelling the globe, as was the Deputy Premier and, I might add, the Minister for Emergency Services, during a time when the McGowan government and, in particular, the Minister for Emergency Services were continuing to extend the state of emergency. After repeat questions and advocacy from the opposition and

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other concerned members of the Western Australian community, the penny eventually dropped with the McGowan government that it is nonsensical to sign a declaration that we in Western Australia are in a state of emergency while some of its key leaders were travelling the globe and telling people to come to Western Australia. They were saying, “Come and visit us; we would like to be the tourism state of Australia. Come and visit us; it’s a great place to visit”, while we were in a state of emergency. It is staggering how long it took before the penny dropped with the McGowan Labor government, but eventually the penny dropped and the Premier delivered this bill under the guise of being what the opposition has been calling for.

Although the Premier and the McGowan ministers might like to distance themselves from the designation or the classification of an emergency, nothing that they do will change the fact that the member for Rockingham, the Premier of Western Australia, once described these powers as draconian. That does not change. He said that these are extreme powers and draconian. The question that ought to be asked is: which of those powers he described as extreme and draconian will be retained as a result of the passage of this bill? Will any of those powers remain as a result of this bill? That is a question we expect the government to be able to answer. What is this whole range of measures that the Premier asserts will be removed by this bill? Will it be all the measures? Will it be some of the measures? Will it be all the measures except for the closing of the Western Australian border or the use of the G2G PASS? What are the powers that have been used by the McGowan government under the state of emergency to date—for more than two years—that will be able to be used as a result of this bill, under the so-called temporary COVID-19 provisions?

It is grossly misleading of the Premier to suggest that this is some kind of a step down or a modest approach when it appears, at first glance, that almost all of those powers will be retained, with the exception of the closing of the WA border and perhaps the use of the G2G PASS. Rather than the Premier’s misleading description of this as a step down, I think it is, in truth, a sidestep. The bill simply seeks to rebrand the state of emergency. We will unpack this further during the Committee of the Whole stage, but at this point I am inclined to the view that elements of this 46-clause bill are more radical than the status quo.

Under this misleading and deceptive bill put forward by the McGowan Labor government, the new way to manage COVID, under these temporary COVID-19 provisions, will involve no ministerial oversight. Meanwhile, the threat of mandates, lockdowns and restrictions will remain. As a result of this bill, which the government intends to blast through a second chamber of the Western Australian Parliament, the person who will be authorised to make a COVID declaration will be the same person who enforces the powers that are granted. That is highly inappropriate. It is, in fact, an affront to proper governance. In my view, this bill will simply allow for the emergency powers to continue for a further two years.

On 20 September this year, the Premier tried to justify the ramming of the bill through the lower house as a means to prevent having to extend the state of emergency. Of course, that is an absurdity, with all due respect to the member for Rockingham, because the current Minister for Emergency Services and the two former ministers have evidently had no issue whatsoever with extending the state of emergency on a fortnightly basis since March 2020. Indeed, the current minister, as I explained in an earlier debate, extended the state of emergency at the stroke of a pen, most probably without having troubled himself with asking for the advice that is said to justify the extension, on the same day—20 September 2022—that the Premier made that astonishing proposition. As I indicated earlier, on 5 October the acting Minister for Emergency Services made the decision to extend the state of emergency once again.

As we debate this bill this evening, tomorrow and possibly into the early hours of Thursday morning, members of the Legislative Council and residents of Western Australia should be under no illusion that, according to the McGowan government, at this very moment we are in a state of emergency. The McGowan government would have us believe that at the present time, under the force of law by the signature of the Minister for Emergency Services and/or the acting Minister for Emergency Services, we are in a state of emergency. This state of emergency will continue for as long as either the existing Minister for Emergency Services, or a replacement or an acting minister, continues to sign these fortnightly declarations. The opposition has already asked the minister what the government’s intentions are with respect to these state of emergency declarations. Given that the government has decided that this bill will pass tomorrow and given that the government has already indicated that it has no appetite for this matter to receive one minute more scrutiny than that, and that it is evident that the bill will proceed this week, seemingly without amendment, and then become law, one would hope that in reply the minister will be able to confirm whether the government intends to dispense with the fortnightly extensions of these state of emergency declarations on or before the next time it is due to be renewed, which is 12.00 am on 21 October 2022. I hope that the Minister for Emergency Services will be in a position to confirm that during his second reading reply.

When the government is challenged on elements of this bill, it has a tendency to talk down the powers that are plainly contained within clause 7 of the bill. For those members whose are yet to have an opportunity to peruse and consider the bill, clause 7 will insert new part 6A into the Emergency Management Act 2005. Although the bill contains some 46 clauses, those who are finding themselves time pressed would be best directed to concern themselves with that one clause of the bill, being clause 7. Evidently, this clause sets out a number of extraordinary powers. As I said,

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when the government is challenged about this, it makes trivial comments, such as those that were made by the Minister for Transport in the other place who said the powers would allow for the introduction of rules for things such as mask wearing. It is interesting that whenever challenged on some of the more powerful elements of emergency management, time and again, whether it is the Premier, the Minister for Transport or some other senior member of the McGowan cabinet, they fall back and rely on the discussion about mask wearing as though that were the be-all and end-all when it comes to extraordinary powers and emergency management. Of course, the bill does far more than simply deal with mask wearing. There are even elements of the bill that deal with the confiscation of property. The former Commissioner of Police, Dr Karl O'Callaghan, recently published an opinion piece in which he described this bill as lazy. There will be elements in the community, as there always are, who will choose not to put a great deal of weight on a person's opinion depending on the political party of the person who expresses the opinion. I simply make this observation to some of the harder hearts within the McGowan government: they might just pause and reflect for a moment that it is not just the Liberal Party or the National Party who have expressed concerns about this bill; it is all the non-government political groupings in the chamber.

That is six different political groups represented in the Legislative Council all expressing concerns to the one political group in government—six different political groups expressing concerns! In addition to that, for those who will simply rely on the trite line that this is the type of thing that oppositions or non-government parties do, perhaps they will reflect for a moment on why former police commissioner Dr Karl O'Callaghan would decide to put his name next to an opinion piece describing this as lazy. If you are a hard-hearted Labor member of Parliament who does not care what the Liberal Party says, what the National Party says or what any of the other four crossbench groups have to say on this bill, might you have something to think about when it comes to Dr Karl O'Callaghan, to say nothing about the multitude of Western Australians who have contacted Western Australian members of Parliament in recent times?

Why is the view of Dr Karl O'Callaghan important at this time? Members may recall that earlier in today's debate I referenced another bill that was able to pass very swiftly through the Legislative Council. It did so with the support of the opposition. It was actually a bill that fell in the Attorney General's portfolio. Although I might be known for substantial scrutiny of bills, this particular bill flew through the Legislative Council; it did so with my concurrence. It was done because the government had done the job properly. It had consulted outside of government with experts who had confirmed that the bill was good. Keep in mind that as a result of these so-called temporary COVID-19 provisions, the key person moving forward will be the Commissioner of Police. There will be no person more important as a result of the bill presently before us than the police commissioner. As members of the Legislative Council, we cannot contact him; we cannot speak to him. Why is that? It is because the McGowan government has decided that under no circumstances will this bill be referred to the Standing Committee on Legislation, which would have called in the police commissioner and cross-examined him on this bill. We do not know what the police commissioner thinks about this matter. We do know that the police commissioner has been consulted. I think that information was provided to the opposition through the expedited briefings in advance of the bill. It would not be appropriate to seek the opinion of the immediate past police commissioner because he currently has higher duties. It would not be appropriate for us to go and knock on the door of Government House and ask His Excellency, Mr Dawson, the former police commissioner, what is his view on these matters. The next most immediate past police commissioner is Dr Karl O'Callaghan, who has referred to this bill as lazy. As I say, the McGowan government has made an express policy decision that as far as it is concerned the best expert in Western Australia, the best person to handle these temporary COVID-19 provisions, is the police commissioner. The McGowan government made that decision. I would like to know what a former police commissioner has to think about that. According to Dr Karl O'Callaghan, this is lazy. In fact, he says it is a lazy move to give the police commissioner the ability to grant his own emergency powers in relation to COVID-19 without any ministerial oversight and to be able to seek medical advice from the Chief Health Officer without any requirement to follow it.

I might pause there for a moment and make the observation that, in my view, I do not think people should be mandated to follow the advice of the Chief Health Officer because if we are going to simply ask a public servant to do whatever the Chief Health Officer tells them to do, we may as well get the Chief Health Officer to be the person to make the decision in the first place. There is no point in having a second person there simply to mandate it at every instance. Therefore, it is appropriate for the Commissioner of Police, in this particular role, to weigh up the advice of the Chief Health Officer. Nevertheless, the other points are well made. This will all be done without ministerial oversight, and the Chief Health Officer will be able to grant his own emergency powers. The former police commissioner, Dr O'Callaghan, also points out that this bill will remove accountability and controversy for the McGowan government over the exercise of emergency powers. This expert outside of Parliament and outside of government has identified this, and it is very interesting that this should happen to match and marry with the comments of the Premier, who said that he wanted to distance himself and his government from this type of designation and classification—this type of language.

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What is astonishing is when the government deceptively argues that these powers have not been abused in the past. We see, again, what the government says when it is put under a bit of pressure. I suspect that this will come out either in the reply or at some point over the next 24-or-so hours. The government will simply say, “Well, if you are a law-abiding Western Australian, you do not need to worry about these extraordinary emergency powers. Just go about your business normally. If you have done nothing wrong, you have nothing to worry about.” Really? Might I remind government members of the fact that the onus is on them to prove that these measures are necessary; there is no onus on us to say that it is not necessary. Talk about the reversal of the onus of proof! But beside that, might I remind government members of the SafeWA app data fiasco.

Remember that according to members of the government, if someone is a law-abiding citizen, they have nothing to worry about. What about the law-abiding citizens who did nothing wrong and had their data accessed? Access to data has become quite a thing in recent times. It has been quite topical to talk about the Optus breach, but in some respects Optus has learnt all its lessons or has had maybe some coaching, one might say, from the McGowan government. This government has been expert in breaches of data, such as the SafeWA app fiasco. Government members never want to talk about the Corruption and Crime Commission report into the unauthorised access of data by the Department of Transport. We try to ask the Leader of the House, who is currently away on urgent parliamentary business, about this type of issue, whether it is in budget estimates hearings or annual report hearings, in her representative capacity for the Minister for Transport, and she does not want to know about it. Immediately all the shields come up; things are starting to get too uncomfortable: “What are you doing, honourable member, asking questions about the CCC report that exposed unlawful practices in the Department of Transport?”

The government was so concerned that at one stage it had to resort to rushing a piece of legislation through the WA Parliament. Why did it have to rush legislation through the WA Parliament? It was because when it became clear that the SafeWA app data was being accessed by none other than the Western Australia Police Force, contrary to the assurances that had been provided by the Premier and the then Minister for Health, who has since been sacked, these individuals said that this data would not be used for any purposes other than contact tracing. Yet the WA Police had a very different view of things.

Keep in mind that at the time, sitting around the table when these decisions were being made was none other than the Commissioner of Police. I have interrogated the former Commissioner of Police about the sequence of events that occurred at that time. How could it have been that the Premier, the Deputy Premier, the Commissioner of Police and others all sat around the table and decided that they were going to embark upon this SafeWA app process and that they would collectively give an assurance to Western Australians that the data would be used only for contact tracing purposes, but then, before you know it, the Commissioner of Police’s own advisers were running around accessing the data, but not for contact tracing purposes? We are expected to be reassured by the McGowan government saying, “Don’t worry about it, don’t ask questions, just trust us.” That is not good lawmaking and it is not good government, and it is certainly not responsible government.

As I said, Hon Roger Cook was Minister for Health at the time. He claimed that he was unaware of all this, some four months after the event. He claimed that he was unaware of it two months after the Chief Health Officer claimed he was unaware of it, which was one month after the Commissioner of Police became aware of it. With respect to the Premier, he said that he was unaware of the SafeWA data breaches by WA Police for an additional month. It seems that at the time everyone knew what was going on except McGowan government ministers. Perhaps that explains why the government is so keen to remove any ministerial oversight, because with this government, it does not really matter. It is not really overseeing what public servants are doing; it simply allows them to go on. It is blissfully unaware while all these things are going on. During that particular episode, we had the then Commissioner of Police and the Chief Health Officer holding discussions behind closed doors. No-one thought to advise the Premier, and no-one thought to advise the Minister for Health. I think it is fair to say that the McGowan government has repeatedly demonstrated a lack of interest in the private data of Western Australians.

Hon Wilson Tucker asked some excellent questions during question time recently, trying to get to the bottom of when this famous privacy legislation will see the light of day, but of course he was told to talk to the hand: “We’re not going to tell you any information. These are all matters for cabinet.” It is very interesting. When the government wants to, it is very happy to issue media releases to promote legislation that it is investigating, considering or drafting, but when it is put under a bit of pressure it straightaway goes and hides behind cabinet confidentiality, time and again.

The refreshingly honest contribution by the minister in the other place revealed why the government refused to manage COVID-19 via amendments to the Public Health Act 2016. According to that minister, the power to restrict people’s movements under the Public Health Act are subject to administrative burdens. The government admits that the Public Health Act is not sufficient for dealing with the pandemic, but it is simply too lazy to amend the Public Health Act. It is too busy complaining about administrative burdens. It has totally missed the point that when there is an exercise or grant of exceptional extraordinary powers, it should be matched with an increase in oversight. This bill does the opposite. It delegates extraordinary power and removes oversight—something

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that the opposition would like to see changed, as can be seen in some of the amendments on the supplementary notice paper. It is plainly inappropriate for any person to have such powers for an extended time, let alone—with all due respect—an unelected public official. As was stated by the former WA Law Reform Commissioner Professor Augusto Zimmermann recently —

Thanks to the actions of its state Labor government, some basic constitutional principles inherited from our common-law tradition are now seriously undermined in Western Australia.

In fact, he aptly quoted Friedrich Hayek, who said —

“‘Emergencies’ have always been the pretext on which the safeguards of individual liberty have been eroded—and once they are suspended, it is not difficult for anyone who has assumed such emergency powers to see to it that the emergency will persist.”

That is precisely what is happening here. The government cannot justify why we are in a state of emergency. In fact, it is so ashamed of it that the Premier himself admits he wants to distance himself from that language, and yet it is going to allow, in effect, the same process and the same so-called state of emergency to continue for another two years. Clearly, this tells us that the McGowan government has forgotten about the principle of responsible government. Responsible government sees the government through its ministers of the Crown, and it is responsible to Parliament and accountable for the administration of their portfolios. This bill shifts that responsibility from the minister to an unelected public servant.

Let us not forget that over 700 directions have been made during the state of emergency. That is 700 directions, which have the full force of law, that have been made by executive edict. With all due respect to the Chief Health Officer and the police commissioner, Western Australians do not elect them. The more than 700 directions were often done unannounced without publishing the health advice used to justify them. This is important because part of our modern democracy and responsible government demands that the law be capable of being known by anyone in our state so that that person can comply with the law. I cannot be the only member of Parliament who frequently had constituents calling due to a lack of understanding about the directions that were in place and whether they applied to them. Many people had no idea where to find the directions. Some said they had spoken to somebody from the Department of Health or the Department of Education, or even a teacher on one occasion—all of whom were unable to provide any clarity. Some called up their local member of Parliament’s office and still did not get any clarity. This lazy bill will do absolutely nothing but perpetuate this unsatisfactory situation for another two years.

Another important principle is that the law should be applied equally and fairly so that no-one is above it. We all know that there was an episode in which the Attorney General failed to wear a mask while up in the Kimberley when they were mandated. I have previously said that, in my view, that was a trivial matter. I do not seek to score any political points with that; I simply make the observation that, shortly after that happened, the government allowed police to interrupt a Catholic mass to conduct a mandatory mask check. Meanwhile, we have had allegations that Labor has fast tracked G2G passes for Labor donors. They were not made by any old person but by a former electorate officer for the Deputy Premier. That is still unresolved. The government does not want to talk about that; it hates that entire case.

When we get to Committee of the Whole House, after this bill has been blasted through the second reading phase, I would like the government and the Minister for Emergency Services to demonstrate that he and the government are sufficiently across how the other states are dealing with this same issue. What is the situation in Tasmania, for example? The public health emergency declaration ended on 1 July this year. As I understand it, COVID-19 is now being managed alongside 76 other diseases using ordinary powers under its Public Health Act—not emergency powers.

Meanwhile, what is the situation in South Australia? I note that the Minister for Emergency Services is away on urgent parliamentary business. Maybe he is trying to find out what is happening in Tasmania and South Australia before we get to those provisions. I can assist him somewhat by noting that South Australia’s major emergency declaration ended on 24 May this year. Amendments were made to its Public Health Act enabling directions to be issued by cabinet instead of the State Coordinator. Meanwhile, amendments permit the easing of restrictions when safe to do so but not for the imposition of new restrictions.

What is happening in Victoria? It ended its state of emergency on 15 December last year. It implemented a pandemic-specific framework under which the Premier is responsible for making pandemic declarations and the Minister for Health makes pandemic orders. There is parliamentary oversight of pandemic orders by a joint parliamentary investigatory committee. Those other jurisdictions appear to have more safeguards and transparency than anything contained in this bill.

It seems to me that what we have before us is merely the rebranding of a state of emergency. I find that misleading at best and deceptive at worst. It is most definitely a sidestep by the McGowan government and not a step down. As I have said before, these emergency powers should be used rarely. If they are used in a true emergency situation,

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they ought to be met with increased oversight. I simply say to new members to this place that this is the same argument that I made repeatedly when we were in government. When it came to extraordinary powers or new powers that were going to be provided to the Corruption and Crime Commission or the WA Police Force, time and again, a somewhat annoying government backbencher would consistently argue that when we are giving more power, it needs to be matched by increased oversight. It is not a new principle being articulated by me today in 2022; it is a principle that has been articulated for the best part of 14 years. There is no great political advantage in me making those points this evening. The parliamentary record is replete with examples.

The government simply needs to explain to the people of Western Australia why the threat of mandates, lockdowns and restrictions ought to remain based upon the decision of an unelected public servant with no ministerial oversight. This matter, plainly, should have been considered by the Standing Committee on Legislation. It is all well and good for the government to use its numbers this afternoon to ensure that this bill does not get to that standing committee where that expert scrutiny would have been undertaken. In lieu of that, the government has a responsibility to answer those same questions during Committee of the Whole House, which we will embark upon in less than an hour. Western Australians deserve certainty and the confidence to move on with their lives. I am asking the government to stop the current charade. There is no state of emergency anymore. The government knows that and the Premier knows it. He has, effectively, conceded that point, hence why he wants to run away from that language. I ask the government to relinquish its clenched grip on these emergency powers; they are simply not needed. If the government chooses to disagree with that, it is quite entitled to—this is the wonderful thing about our democracy—but then it has a duty and a responsibility to justify what it is doing as part of the ordinary principles of good governance.

Why does the government need these emergency powers; for how long does it need them; and what enhanced oversight will these emergency powers be subject to? Those are three questions that any ordinary, competent government ought to be able to answer. If the answers to those questions cannot be provided in reply to the second reading debate, they most definitely should be able to be provided during consideration of the first clause of the Emergency Management Amendment (Temporary COVID-19 Provisions) Bill 2022, which I oppose.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [8.15 pm]: I think I am the last speaker from this side of the house that the Minister for Emergency Services will have to listen to during the second reading debate on the Emergency Management Amendment (Temporary COVID-19 Provisions) Bill 2022. I am sure that the minister has taken great interest in the contributions to date and has taken good notes. I will try to make my contribution a bit different by approaching this bill from a different angle.

Before I start, I would like to address a few points in the second reading speech that the minister delivered a week ago. I could almost leave this bit out, but I notice that in the second paragraph of the minister's second reading speech he refers to Western Australia's strong domestic economy and states that it has grown by 7.2 per cent since the start of the pandemic. I also noted during members' statements last week the comment from Hon Lorna Harper that Scrooge McDuck is apparently a hero adventurer. I quite like that. How Scrooge McDuck got his money is one thing. We would have to say that the Premier of this state has been a lucky duck, not a hero adventurer, because he has been rewarded for taking the benefits of the international stimulus spending. He has been a very lucky duck in those circumstances. However, it is true to say that the Western Australian economy has done very well.

Hon Jackie Jarvis: We've got all our ducks in a row.

Hon Dr STEVE THOMAS: The government has got all its ducks in a row? We will have to do better than that! Scrooge jokes will be coming up from here on in.

Some luck was obviously also involved in the state of Western Australia when we managed to keep the Delta variant out long enough for the Omicron variant to become the dominant infective COVID agent. The Delta variant had a much more severe impact on both morbidity and mortality, but particularly mortality. It had both a greater sickness and a greater death rate. However, the Omicron variant was more effective in spreading infection. It was less effective in its impact on the people whom it infected, but it infected people at a greater rate, which provided a greater level of immunity with a lower level of health impacts. The state of Western Australia was lucky in that we largely faced the Omicron variant rather than the ones that preceded it. That was a positive outcome for the state of Western Australia.

I want to focus on some parts of the second reading speech and where I think this is going. The minister states in the first paragraph that the bill seeks —

... to provide a temporary legislative framework for the ongoing management of COVID-19 after current state of emergency declarations end.

The minister notes also —

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... the pandemic is by no means over. The recent Omicron wave presented new challenges throughout winter, particularly due to the emergence of new sub-variants.

The question that the house needs to look at as part of the debate on this bill, but also in the greater management of COVID, is the lack of a long-term strategic plan. We started without a plan. That is because when COVID came along, no-one knew how to deal with it. It was a fairly new experience. I mean no disrespect to my colleague Hon Dr Brian Walker, but I suspect that in veterinary terms we deal with these things probably more regularly than do members of the medical profession. In terms of a response, the government was unprepared. That is not a criticism of this government, because no government has been prepared for these things. These events have been relatively infrequent, and governments do not really get prepared in advance. It is obviously not the first pandemic in the state of Western Australia or across Australia. There have been other pandemics and some of those other pandemics have had a significantly greater impact. As we look at the numbers today, we can see that what we call the Spanish flu in the late 1910s had a far greater death rate, particularly because it was in a smaller population.

Hon Matthew Swinbourn: It didn't even come from Spain.

Hon Dr STEVE THOMAS: That is right, but that is what it was called in Australia, America and a few other countries. The number of deaths from that particular virus was estimated to be somewhere between 30 million and 50 million across the world at a time when the world's population was a lot smaller than it is today. We have not had a great deal of future preparation.

I want to make the point that we are not well prepared for what comes next. We are sort of flying by the seat of our pants in this regard. One of the issues with the bill before the house today is that it is open-ended; no-one really knows what is going to happen. This legislation will sit in place for two years for a disease that the minister acknowledges is still active in the community. I understand that Dumas House is rife with it at the moment, which is potentially where the Minister for Education and Training picked up a case. It is certainly still circulating in the community, and it is largely the Omicron variant.

We do not have a specific plan for how we will manage this going forward. What we do not have is a plan for the next outbreak—the next significant variant shift, the next alternative virus, the next influenza that has both a significant morbidity and mortality rate. We are basically flying by the seat of our pants in the management of this. I note that a much more conservative approach to the virus was taken federally and in other jurisdictions than in Western Australia, where there was very much a keep it out and then crush and kill approach. Other states have taken a far more long-term approach to this, with the recognition that we cannot save everybody from every pathogen all the time. Members might remember the movie *Jurassic Park* and the part played by Jeff Goldblum. He was a mathematician; he was the sceptic in the room. I have always felt that the sceptics in the room are my kindred spirits. I guess that is just my nature. He famously said that nature will find a way—that when you start to mess around, nature will find a way.

Hon Matthew Swinbourn: I think he said, "Life will find a way."

Hon Dr STEVE THOMAS: Okay—life will find a way.

Hon Matthew Swinbourn: There are big fans in our house.

Hon Dr STEVE THOMAS: Sorry—the nerds are coming out all of a sudden! Life will find a way. We have known for a long time that mutations in viruses are related to population density both from an animal perspective in original hosts—that is still an issue with COVID-19—and within the same species, even if it is human to human.

The more dense the population, the more mutations that will develop and the more likely one will survive and have a significant impact. I am a fan of that component, which plays into chaos theory a bit. That means that although these outbreaks have been less frequent over the breadth of human history, they are going to become more frequent. I think it is inevitable now that two things will happen. One is that we are going to have more frequent outbreaks. The next influenza cross-species contamination will probably occur when both species—humans and whatever it comes from—are in close communication in a highly dense population. That is going to become more frequent. The spread is going to become easier as we continue to have high levels of travel around the world. The third component is that we will continue to have a high population of vulnerable people. Although the proportion of people who are ageing and aged is continuing to get higher, we also seem to have a higher proportion of immune-challenged people not just in this state, but across the world. All of that lends itself to the proposition that we are going to have more epidemics, including more pandemics, over time and in a higher proportion of vulnerable people. The concern is that we have now set the stage in what we have done for COVID-19. It is now the baseline response. This might sound cruel but it is well known amongst aged-care providers that every year, influenza would tend to have an impact. To some degree, it would empty the beds in aged-care facilities. I am sure the medical profession is well aware that there was generally a toll every year from influenza. We did not panic. We did not stress. We did not impose lockdowns. We did not require masks to be worn. We did not do all the things that we suddenly started to do with

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COVID, but influenza existed. These wider epidemics have existed and continue to exist. Guess what? Influenza has not gone away, in the same way that it is highly unlikely that COVID is going to go away. It will maintain a presence in the community in the same way that influenza does. We can get broader and broader vaccination bases. We still struggle a bit with influenza. Influenza is a highly adaptive virus. What someone gets vaccinated for in any one year may or may not offer them significant protection against the current strain that is floating around because mutations occur all the time. Before members start to think that viruses are exceptional, the cells in our bodies mutate regularly. There are millions of mutations going on across our bodies all the time. It just happens that the vast majority of mutations are incompatible with cell life and the cell dies. If that does not happen, unfortunately that is largely where cancer comes from. Viruses do the same thing. Mutations are incredibly common.

We have set the new standard for response. I think this is a change that the world has suddenly applied in 2020. The first outbreaks of COVID were in 2019 but, in 2020, we changed the rules in response to a health problem. We changed the response to an infection problem in a way that we had never seen before. The world had never seen worldwide lockdowns and the worldwide responses as it did in COVID. We had never seen that level of response before and we have now set ourselves a whole new standard. I understand why. I think this is why governments now struggle with what to do going forward. Governments are traditionally conservative in that they are loath to take very big broad steps and go out on political or social edges. We have now set the standard in which government, the public sector and the medical profession in particular have become incredibly risk adverse not just for COVID-19, because it will not stop there, but everything that comes after it. That is the most critical point I want to leave members with tonight. What we debate tonight is not just about what happens with COVID-19. It is not just about the rules that we put in place for COVID-19 because, once we set that standard, once we put the bar in place, we are going to have to apply it to every significant outbreak from here. Once we do that, it is very hard to get back from that. Members might have noticed that the commonwealth government is having a battle about whether it will continue to pay COVID leave payments. Suddenly, there is this new process in which the government is expected to manage all the impacts of COVID. In 2018 or 2019 before COVID took over, we considered influenza a natural part of life. We vaccinated for it when we could and we took health advice and precautions when we could, but it was not a government responsibility to protect us from influenza; it was a personal responsibility. Almost across the board, it has become a government responsibility to manage COVID for us and we are not capable of managing ourselves in the process. I think that has ultimately led us to where we are right now—with a piece of legislation that will remove our capacity to handle these things for ourselves. I am not necessarily completely opposed to that; the world is a much more densely populated place, and people who are spreaders and refuse to take action will potentially have to be managed.

The bill proposes very strong powers for inspectors, but these are not unknown powers. These powers have been applied through previous legislation; they are not unheard of. These powers have been repeated to prevent people from spreading infections. Some people will find those powers offensive. If the bill was not going to expire in two years, we could argue that it will be a permanent infraction upon the individual rights of people. The question is not whether they will be an infraction on people's freedoms, because they will be. We, as a Parliament and as political parties, have to make that choice and say that there are occasions when those freedoms have to be removed. I understand that. There are occasions when we will sacrifice those freedoms for the greater good, but we usually do so with an end point in sight. We give up our freedoms in circumstances in which there is a known end point. People will say, "Okay, I will give up my freedoms for this period of time." The difference is that the bill before us could ultimately be a stepping stone to a more permanent arrangement. It might not be the government's intention to make permanent the sorts of restrictions we are talking about and the powers that will be granted to public servants—presumably, they will largely be granted to police, as authorised persons—but some explanation of that might be useful.

We have to consider what will happen in the next epidemic. We need to consider that these powers might become repetitive. At some point, they might become permanent; they might never be taken away because we are dealing with a biological system. If we ascribe to the rules of chaos theory, things will always try to degenerate. Viruses will always mutate. That will always occur. There will always be epidemics and outbreaks. There are some great examples throughout history of epidemics that caused major devastation to civilisations. It is not new. It has occurred before. I am not just talking about the easy ones to reference, like smallpox through the Americas, for example, which devastated a massive proportion of the Indigenous population, or the Black Death in Europe, which killed off half the population or more in some countries. There are plenty of examples of epidemic outbreaks throughout history, but we have now changed the rules to say that we will deal with them incredibly differently. Suddenly, everybody has to go through a process of mandated state-run protection, as best as we can.

From my perspective, that is the biggest issue we have to face. When this legislation passes, which it will, and we put these rules in place, it will not just be about the fact that these powers will exist for two years and that they may or may not be used. Given the vaccination and infection rates for COVID, it is possible that these powers will not be used in the next two years, because both play a role in providing protection. I am not overly concerned about

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the impacts of this legislation in relation to COVID-19. I think COVID will continue to bubble along; it will become a bit like influenza. It will be in the community. This bill will set the standard for the next one and the next one—probably the next transgenic influenza virus. I suspect the next big one will come as another influenza virus. But what if it is not as infectious as COVID-19 and is only half as infectious? What if the mortality rate is a bit lower? At what point will we say that there is a level of impact that the community can live with and we will not impose the power to take away people's freedoms? In my view, it is that uncertainty that frightens people.

I want to take a couple of minutes to talk about vaccination status, because this argument comes up all the time. To all those people who continually tell me that vaccination does not offer 100 per cent protection against either disease or transmission, that is absolutely true, in the same way that infection does not offer 100 per cent resistance against infection or transmission. Somebody raised that in the debate today, but I do not remember who. It is a specious argument, because both infection and vaccination reduce transmission, the level of infectivity and symptoms significantly. It would be easier if we could move away from the debate that says that there is a problem because vaccination is not 100 per cent effective. I can tell members that no vaccination is 100 per cent effective; no vaccination against a virus, bacteria or any other organism is 100 per cent effective against either disease or transmission. Any vaccination can be overwhelmed in the same way that if a person had a disease once, even if they get a big enough dose the second time around, nothing will stop them from being reinfected with the same disease. Remember, it is just about building up antibody levels and the body remembering that it is a foreign organism, a foreign body, and being able to stimulate its own immune response much more rapidly. When that happens, there is a reduction of the virus that is built up inside a person and there is a reduction in the amount of virus that they spread. There is an effectiveness to all these things without them having to be 100 per cent effective. For those who are consumed to continue to argue that because vaccination is not 100 per cent effective means that it is ineffective, surely it can still be effective if it is 99 per cent effective. It should not be claimed to be 100 per cent effective, but those who are demanding that have lost any reason that they could give.

I want to leave time for the Minister for Emergency Services to give a substantive response at the end of this second reading debate, so I do not intend to take the full time available to me. I know that the minister can extend his time past the five-hour limit should he so need, so I will try to balance that out as best I can.

I want to refer to a couple of other bits in the second reading speech. I note that the minister said in the middle of page 2 —

Certain powers that are available only in a state of emergency will not be available under the COVID-19 declaration ...

That particularly relates to the interstate border. However, as others have said tonight, the government could have gone part way. The powers available to the government under the Public Health Act 2016 are probably adequate for a pandemic or epidemic that is bubbling along at current levels. In effect, the government appears to be saying that it needs the powers to use in another massive outbreak, as though we are starting the pandemic all over again. That reinforces my point that the government is effectively preparing for the next big outbreak. As I have said before in other debates, if the government makes changes that it thinks are good, why would it take them away with temporary changes? The planning powers around COVID are a prime example, which I have said in the house. It makes changes to make planning more streamlined so why on earth would it reverse that because COVID has ended? The issue the government has now is that it is planning for the next significant pandemic, which is effectively what the government has said. It has effectively said, "We need these significantly increased powers to be maintained. We need to be able to call upon them as required." But it is also saying that COVID is bubbling along in the background and is not a significant pandemic: "We do not need these powers. They may not be called upon, but they will be called in if there is another major outbreak." I think that reinforces the point that we are not really discussing the continuation of COVID at the level it is in the community currently, which, in my view, the community has largely adapted to. Walking down the street, I see some people who choose to wear masks and some who do not. Most people are managing their own risk in an appropriate way and to a large degree the community has returned to normal activities. I give the government some credit for that because I think it has assisted that process by relaxing the restrictions it put in place. The minister might not be aware, but the times I went out and spoke in the media about the pandemic, I quite regularly credited the government. When we had the debates on the government reducing restrictions and the media wanted an opposition member to say it had put everybody at risk—look out, the minister might be catching something—I regularly said that I agreed with the Premier and removing the restrictions was the right thing to do. I think that probably annoyed the blazes out of the Australian Medical Association and others, but I was happy to give credit to the Premier for removing those restrictions and allowing the community to get back to a relatively normal platform, to get back some degree of normalcy. That lends itself to this statement: we all agree that getting back towards that is ideal.

I think the minister will stand up and say that the legislation will only be used in certain circumstances and that the government wants to put it in place for certain circumstances. In my view, those certain circumstances absolutely

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include the potential for another significant outbreak in some way, shape or form. Ultimately what it means is—I know we have digressed a little bit—we have to have a far more mature conversation with the Western Australian community about how we manage pandemics in the future because this legislation is a really half-hearted response. I am not saying that to deride the government; it is a half-hearted response because the government probably does not have a better option right now. Rather, we should be having a very broad discussion around what will happen in the next outbreak of something—how will we manage it, can we do it in a constructive way without having to remove people’s freedoms, and at what level of outbreak should personal freedoms be removed? That would be a really interesting debate for the house to have at some point. There is a point. We would all in our experience have a point at which we would say, “That’s actually okay.” I do not think anyone in the chamber would say there is no point ever at which freedom should be removed, otherwise we would not have prisons. There is a point at which freedom gets removed, and we all accept that. But during an epidemic or a pandemic, we are not able to have that frank discussion and describe what that will look like in the long term.

I said that I would give the minister some time to sum up and I intend to stick to that. We are sort of getting close to the last 15 minutes or so. The minister can go over a little bit if he wants to because there is a fair bit in there. We could have a range of debates —

Hon Stephen Dawson interjected.

Hon Dr STEVE THOMAS: No. We checked that earlier. I will let the minister sort that out. We did check it earlier and the minister is not restricted to the time frame that was given to everybody else. We did check, and can confirm that. Having said that, I do not intend to extend my contribution just for the sake of it. That is my critical point. We will go into Committee of the Whole House for the bill and I think some very sensible amendments have been proposed, particularly around oversight. I agree with the points made by particularly Hon Tjorn Sibma but also a number of other members that government oversight ultimately becomes critical. It is easy to try to have somebody take the hard decisions for you. It is easy to say, “We did this because.” The government likes to say that it made decisions based on the health advice—the Chief Health Officer said this is what the government should do and that is what it did. To a large degree, that is true and I think the government should take some credit for that.

The problem with saying that, of course, is that whoever was in government would have done the same thing. The government cannot argue that its management went above and beyond and it saved the state of Western Australia if its argument is that it employed and acted upon and delivered the health advice it was given, because then it is simply listening and doing what somebody else says. There is a little of that in this bill, because it passes on responsibility to somebody else. I have always been a firm believer that, ultimately, if you are in government, the buck stops with you. We will argue the minutiae of how to make it more accountable. If there is a part of this bill that is missing, it is that it will end up as the new bar and it is likely to be applied repeatedly—ultimately forever, if you believe in the long-term aspects of biology. The government needs to take responsibility because the buck stops with it. Whether that is the minister, cabinet or the Premier, it does not matter because the buck stops with government as government is the only thing that people can express an opinion on.

There is no point protesting outside the front of the police commissioner’s office, which I would never suggest just in case that was on offer. They are a non-elected person, for good reason. I would hate to have the American system of electing sheriffs and police officers; it would be dreadful. There is no point protesting out the front of the police commissioner’s office or any police station because they are not elected officials. We cannot hold them responsible. They are ultimately accountable for their actions, and there is a system in place that does that. The system in place for the people of Western Australia is the political one, so the buck stops with the government. The buck stops with the minister, the Premier, the cabinet. It is a joint decision. I do not mind if they share the glory and share the blame around cabinet. That is absolutely fine, but the buck has to stop somewhere with someone who can be held to account. That is not the case in the legislation before us today.

I will sit and give the minister a chance to respond. I do not expect the minister necessarily to be across or to respond to the existential issues I have raised because I recognise it is late at night and that will be a bit tough, but it is important that I put them in place. Here is my prediction—a bit like Nostradamus! I predicted the \$6 billion budget surplus, so I will see if I can get this prediction just as close: within the next five years, the next minor pandemic will occur. The next minor outbreak probably will be national and perhaps multinational and suddenly we in Australia will be trying to work out how we will deal with the next pandemic—the next outbreak. When that happens, we will look back and say that because we flew by the seat of our pants now, we set the bar and we have to operate at this level and we will have to put in place the things that were put in place for COVID because that is now the new standard. Sometime after that—I am not sure how long it will take; it might take a decade or two—that standard will be permanently enshrined in the laws of Western Australia, because that is the path we started down. If we end up there, let us at least do it with our eyes open. That is what I will leave members with: if we go down that path and that is the future for Western Australia, let us be aware of it now at the start of the process so that in 20 years’ time, when someone asks how we got to this point, we will say that we accepted the risk and decided it was worth

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it; that is why we started down this path of permanent restriction. That is where we will end up on the path we are currently on.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Emergency Services) [8.49 pm] — in reply: At the outset, I acknowledge the contributions made by the various members who have spoken this evening. I have to say that from the early days of COVID-19, we have continuously faced opposition from the official opposition alliance about how we have handled COVID-19, and obviously that has continued this evening. I appreciate the considered contribution that the Leader of the Opposition made tonight and I thank him for at least acknowledging that COVID-19 is still out there in the community. That is certainly something that Hon Sophia Moermond refused to acknowledge in her contribution. I think she said that there was no state of emergency for at least a year. She seemed to gloss over the fact that COVID-19 continues to be prevalent in the community. It is important to acknowledge that since COVID-19 came to Western Australia, there have been over 1 100 066 cases. That is an extraordinary number. Even this week there are about 2 500 active cases and 184 people remain in hospital, with a handful of people in ICU. I take umbrage at Hon Sophia Moermond's comment that there has been no state of emergency and that it has not existed for a year. It was only in July this year when we had the peak with over 450 COVID-19 cases in hospital, which was the highest number we have had. That was only a few months ago. The figure I have is that Western Australia has had 674 deaths since COVID-19 started. It is important to acknowledge that people have lost their lives and people have lost loved ones during this time.

Hon Dr Steve Thomas said in his contribution that the buck stops with the government. We have not shied away from making decisions all the way throughout this pandemic. We have taken advice from various people, but we have noted that as we progressed, from time to time, various stakeholders have not been happy with how we handled it. However, I think that the majority of the public of Western Australia has supported how we have handled the COVID-19 pandemic. We will continue to make considered decisions as we move forward when dealing with COVID-19. It is not going away in the foreseeable future, as Hon Dr Steve Thomas essentially indicated in his contribution. Some good work has been done over the past few months with agencies like the Department of Health, which now has a COVID-19 framework for a system alert and response. We did not have that in the late 1910s or 20s.

Hon Dr Steve Thomas interjected.

Hon STEPHEN DAWSON: Yes. A great deal of work has happened over the past couple of years on how we can deal with a pandemic of this nature and how we can potentially futureproof ourselves, if we can do that when dealing with a pandemic. Having documents and plans is certainly helpful. Although there were plans of a certain nature before COVID-19, I do not think anyone understood how difficult this time might have been, so we have learnt from that. If it were to happen again, we would hope that we would be more prepared for what is ahead of us.

Hon Dr Steve Thomas: Look out, I think you are agreeing with me!

Hon STEPHEN DAWSON: Sometimes I do. I thought the honourable member made a considered contribution.

A range of questions was asked. Obviously, I will not get to all of them now. I am aware that people will have an opportunity to raise them again in Committee of the Whole stage when we get to that.

It is fair to say that COVID-19 has been treated differently in all the states and territories around the country. It might have been Hon Nick Goiran and Hon Neil Thomson who mentioned in their contributions that the other states and territories did things differently all the way throughout COVID-19, notwithstanding that the Australian Health Protection Principal Committee met and gave guidance to the various states and territories. We have all done things differently. I think we have been driven by the circumstances in which we found ourselves, in whichever state or territory we were in at the time. We responded to COVID-19 differently from the other states, and I think we responded well. I think it is to the credit of Western Australians that we had fewer deaths, although every death is tragic, per head of population than other places around the country. We also had fewer closures and less interruption for the vast amount of time, albeit we had a border closure in place that kept Western Australians in and kept our economy ticking over. Other jurisdictions have done things differently.

As we transition out of states of emergency, other states and territories are doing things differently. Most have moved on from their state of emergency. I note that Queensland is debating legislation at the moment; I understand that at this stage its state of emergency is due to expire at the end of October. Certainly, other states and territories have done things differently over the past few months. As I say, I think we have had the best response in dealing with COVID-19.

I turn to some of the questions. For a state of emergency to be declared, the minister must be satisfied, amongst other things, that an emergency has occurred, is occurring or is imminent, and that extraordinary measures are required to prevent or minimise loss of life, prejudice to safety or harm to the health of persons. With declining case numbers

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of COVID-19, it is foreseeable that there will soon come a time when the circumstances relating to COVID-19 mean that the threshold for a state of emergency will no longer be met and a suitable framework to manage it outside of a state of emergency will be required. The new part that this bill seeks to introduce incorporates elements of the Emergency Management Act framework, but in a way that is fit for purpose to manage COVID-19 on an ongoing basis in the medium term if required. The threshold for making a COVID-19 declaration will be lower than the threshold for declaring a state of emergency. In an emergency, extraordinary measures are required. The threshold for the making of a COVID-19 declaration is provided for in proposed section 77C, under which a coordinated response to manage COVID-19 and the need to exercise powers during a COVID-19 declaration are required. The emergency powers available under a state of emergency are also more expansive than the powers available under a COVID-19 declaration.

Why will the State Emergency Coordinator make the declaration rather than the Minister for Emergency Services? The declaration will be informed by elements of the existing declaration framework, as I indicated. The making of a COVID-19 declaration by the State Emergency Coordinator is consistent with their current ability to make an emergency situation declaration for any hazard under the Emergency Management Act. The State Emergency Coordinator being responsible for making the declaration also recognises their experience and ability to coordinate and manage the state's response to COVID-19. The State Emergency Coordinator also has the appropriate level of experience and authority to make decisions for a COVID-19 declaration.

I do not agree with honourable members who have said that we are giving the State Emergency Coordinator too much power. The powers under the proposed new part are appropriate and will facilitate the effective management of COVID-19 over the next two years. The past few years have highlighted the ever-changing nature of COVID-19, which has required a range of different responses and measures to keep the community safe depending on the nature and level of threat presented by COVID-19 and its subvariants. There is no one-size-fits-all approach when dealing with COVID-19. It has been a challenging exercise across the world to try to predict what the future holds when it comes to COVID-19. I note that even in the last few days there have been new variants taking hold in places around the world, and we do not know how some of those will end up. There is certainly still a risk.

The power of the State Emergency Coordinator to make a COVID-19 declaration and the exercise of COVID-19 powers will be subject to the normal legal conditions that apply to discretionary and statutory powers. For example, the power to make a COVID-19 declaration must be exercised reasonably and for a proper purpose, and, in exercising the power, the SEC cannot take into account irrelevant considerations. If those legal conditions are not complied with, the validity of a COVID-19 declaration could be challenged in judicial review proceedings. Having lived through the past few years, I note that there will be people out there who will take advantage of the courts and seek to challenge decisions that are made.

Hon Tjorn Sibma suggested that this bill will enable property to be seized. Proposed section 77M will not permit authorised COVID-19 officers to seize a vehicle or other thing. Taking control does not mean the ability to seize. The power to seize would need to be supported by a comprehensive scheme that deals with matters such as returning, forfeiting or destroying the seized item, which is not part of this bill or the Emergency Management Act. Other legislation such as the Fish Resources Management Act 1994, the Animal Welfare Act and the Environmental Protection Act 1986 include powers to seize. These acts also contain specific powers to deal with the seized items. This legislation does not.

I will not give the example that Hon James Hayward gave of The George hotel in Perth, whereby police needed to use powers to stop an illegal event during the period of COVID-19.

Now that we have moved to a living-with-COVID approach, why are any legislative amendments specific to COVID-19 necessary? I think that question was asked by a number of people. COVID-19 has been an unpredictable challenge, and public health and social measures are appropriate and critical to minimising the spread of the virus. Despite a living-with-COVID-19 approach, the impacts of the virus are significant, particularly for vulnerable groups and those who experience long COVID. The Chief Medical Officer recently advised the Prime Minister that it is highly likely that further waves of infection will continue to occur for at least the next two years. This is due to a range of factors, including waning immunity, potential new variants and environmental factors such as winter seasons. With COVID-19's wideranging and significant impacts on the community, it needs to be appropriately managed under a framework that does not have the limitations of the existing legislative framework.

The Chief Health Officer's role is not being diminished in this bill; if anything, it makes that role more prominent. For example, under the Emergency Management Act there is currently no requirement to consult the Chief Health Officer prior to declaring a state of emergency, and there is no requirement for the Chief Health Officer to provide written advice in relation to a state of emergency. In contrast, the bill that is before us will require that the CHO is consulted prior to making, extending or revoking a declaration, and that advice is required in writing and must be considered by the State Emergency Coordinator. It is fair to say that the Chief Health Officer works very closely

Extract from Hansard
[COUNCIL — Tuesday, 18 October 2022]
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with the State Emergency Coordinator to appropriately manage issues as they arise, with the advice of the CHO providing an insight into what has informed a COVID-19 declaration.

I touched on the two years. Other states and territories have done things differently. Some have gone for a year, some for 18 months and another for two years. We believe that two years is an appropriate time to have these powers in place, noting what the federal Chief Health Officer said to the Australian government recently.

I will leave my contribution there. Lots of things were raised by honourable members in their contributions, and they will get a chance to tease those out when we go into committee. With that, I commend the bill to the house.

Division

Question put and a division taken, the Acting President (Hon Peter Foster) casting his vote with the ayes, with the following result —

Ayes (19)

| | | | |
|--------------------|------------------------|----------------------|-----------------------------------|
| Hon Klara Andric | Hon Peter Foster | Hon Shelley Payne | Hon Matthew Swinbourn |
| Hon Dan Caddy | Hon Lorna Harper | Hon Stephen Pratt | Hon Dr Sally Talbot |
| Hon Sandra Carr | Hon Jackie Jarvis | Hon Martin Pritchard | Hon Darren West |
| Hon Stephen Dawson | Hon Alannah MacTiernan | Hon Samantha Rowe | Hon Pierre Yang (<i>Teller</i>) |
| Hon Kate Doust | Hon Kyle McGinn | Hon Rosie Sahanna | |

Noes (10)

| | | | |
|--------------------|---------------------|---------------------|---------------------------------------|
| Hon Peter Collier | Hon Steve Martin | Hon Neil Thomson | Hon Colin de Grussa (<i>Teller</i>) |
| Hon Donna Faragher | Hon Sophia Moermond | Hon Wilson Tucker | |
| Hon Nick Goiran | Hon Tjorn Sibma | Hon Dr Brian Walker | |

Pairs

| | |
|----------------------|---------------------|
| Hon Sue Ellery | Hon Dr Steve Thomas |
| Hon Ayor Makur Chuot | Hon Martin Aldridge |

Question thus passed.

Bill read a second time.

Committee

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

Clause 1: Short title —

The DEPUTY CHAIR: Members, we are dealing with the Emergency Management Amendment (Temporary COVID-19 Provisions) Bill 2022 and I make members aware of supplementary notice paper 84, issue 1.

Hon TJORN SIBMA: I appreciate the minister providing the chamber with a second reading reply speech in a way that was actually consistent with the time allotment. He did not take the opportunity available to him under the standing orders to extend his remarks until their conclusion. Knowing the minister as I do, I think he is a fair person, but I think he may have also inadvertently restricted his reply in a way that meant he could not address a range of matters that had been raised in the second reading contributions of members on this side of the chamber. I refer particularly to a matter that I raised towards the conclusion of my contribution concerning the continuation of states of emergency declared under both the Emergency Management Act and the Public Health Act. Understandably, my area of focus on the bill is the fortnightly rolling over of states of emergency made under the Emergency Management Act. It was drawn to the attention of the chamber by Hon Nick Goiran that the current state of emergency declaration extension was signed by Hon Don Punch. That declaration was made on 5 October. It is currently in place and will lapse at 12.00 am on 21 October 2022, which is this Friday morning.

Bearing in mind that the government has seen fit to declare this bill an urgent COVID bill, it is inevitable that it will pass this chamber some time tomorrow and may then be whisked away to Government House, where it will receive royal assent and, no doubt, that message will likely be communicated to this chamber on Thursday. At that moment, bearing in mind this is a hypothetical, but a reasonable, question, would the minister entertain a further fortnightly extension of the present state of emergency declared under the Emergency Management Act to take us from the period after 12 midnight, Friday, 21 October for another two weeks?

Hon STEPHEN DAWSON: Hon Nick Goiran was correct in pointing out when the current declaration expires. I will meet with the State Emergency Coordinator later this week. As I have done since I have been in the role,

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I will take the advice of that person on whether there is a need to extend the state of emergency. If the bill is passed, several steps need to be taken before a COVID-19 declaration can be made. These include royal assent to make the bill an act and then consequential amendments to regulations. That will take place upon proclamation in the *Government Gazette*. It is anticipated that the regulations could be in place by early November, a couple of weeks away. It may well be a moot point. I will meet with the State Emergency Coordinator later this week. If that person advises me that the state of emergency needs to be extended, I will consider it at the time.

Hon TJORN SIBMA: I take it from that that the most plausible forecast of future events would be that the minister will extend the present state of emergency for at least another two weeks. If I comprehended the answer the minister just gave, which included information about the timing of the implementation of consequential amendments manifesting themselves in regulations, which are gazetted, the act might be fully enlivened some time in November in the way the government anticipates and hopes that it will.

I asked this question not to be obtuse but just to reinforce the manner in which the purpose and object of this bill was communicated to the public by a person of no less standing than the Premier of this state, who articulated that the passage of this bill was essential to the rescinding of the state of emergency under which we operate. It appears to me that potentially some liberty—I am being generous here—was taken with that assertion. The point at which royal assent might be granted to this bill does not of itself automatically rescind the state of emergency declaration made under the Emergency Management Act. Indeed, the minister forecast that he is open to advice that is likely to be the continuation of that state of affairs.

Hon Stephen Dawson: Just by way of clarification, I have not said I am likely to. I have just said that I will take the advice that I get the next time I meet the State Emergency Coordinator, not that I am likely to continue a state of emergency.

Hon TJORN SIBMA: Indeed. In fact, that was my interpretation of the answer provided by the minister. But going on the previous track record of untrammelled, uninterrupted continuations, it would be fair to assume as a matter of probability that the more frequent a scenario or state of circumstances is played out previously, the more likely they will continue. I would expect that continuation.

At what point or at what threshold would the minister determine, consistent with his role as the Minister for Emergency Services, that a declaration of a state of emergency related to COVID-19 and its presence in our community would no longer be demanded? What weight does he place on the passage of this particular bill in making that judgement?

Hon STEPHEN DAWSON: Again, I will not presuppose the advice that I will be given by the State Emergency Coordinator later in the week, but we are in a state of emergency now. The State Emergency Coordinator, on the advice of the Chief Health Officer, has recommended to me that we should be in a state of emergency now. That may change as the number of cases and the number of people in ICU drops off. They are all reasons that the threshold for declaring a state of emergency might no longer exist. As the number of cases and the number of people in ICU drops off, it is fair to say that an argument could be made that we do not need to be in a state of emergency. I do not know what advice will be given to me later in the week. This legislation will allow us to step away from the state of emergency, while also ensuring that we are able to deal with issues like masks and keeping people away from aged-care facilities and disability homes moving forward. What we have heard and what has been said tonight is that COVID remains out there. It is just whether the threshold is met. I place a great deal on the advice that I get from the State Emergency Coordinator.

Hon TJORN SIBMA: I thank the minister. I am not seeking an opinion, because we know how unparliamentary that is, but my original question was whether in the minister's professional judgement, and consistent with the roles and responsibilities entrusted upon him by virtue of his commission as a minister, Western Australia is in a state of emergency. That question is obviously redundant because the minister has been at pains to reinforce the view that at least in his personal estimation, based on the advice that he has received—I will provide that caveat—we are still in a state of emergency. Nevertheless, throughout the debate, throughout the entirety of the post-border opening phase of COVID, and throughout the last few months, the government has on occasion intimated that there are threshold considerations, effectively suggesting that judgement calls are applied to the advice that is provided to the minister formally through the State Emergency Coordinator.

By virtue of the fact that this is a time-limited debate, and that a state of emergency is not a trivial declaration but involves all kinds of suspensions of ordinary ways of doing business, which I do not need to elaborate, would it be possible for the emergency services minister to shine a greater light on what the particular threshold considerations might be that would trigger a re-evaluation of whether it is fair and reasonable to declare that this state is indeed in a state of emergency? Perhaps I will then provide an avenue that would be more helpful, reflecting upon the answer that the minister has recently provided, which talked about the trend line for daily case numbers dropping down. I think the minister mentioned a figure of 2 500 active cases that have been reported by those who are currently

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suffering from COVID-19. The minister would attest, by virtue of his answer, that that is effectively a very significant reduction. In attempting to see what the threshold is, perhaps I should put the question in this way: What would the quantum of daily case numbers need to be to determine that a state of emergency is no longer the appropriate declaration to make? If there is a number, what would the number be and who would determine that number?

Hon STEPHEN DAWSON: I will just bring the honourable member's attention to division 1 of part 5 of the state Emergency Management Act 2005, where it says —

56. Minister may make state of emergency declaration

- (1) The Minister may, in writing, declare that a state of emergency exists in the whole or in any area or areas of the State.
- (2) The Minister must not make a declaration under this section unless the Minister —
 - (a) has considered the advice of the State Emergency Coordinator; and
 - (b) is satisfied that an emergency has occurred, is occurring or is imminent; and
 - (c) is satisfied that extraordinary measures are required to prevent or minimise —
 - (i) loss of life, prejudice to the safety, or harm to the health, of persons or animals; or
 - (ii) destruction of, or damage to, property ...

I have, as have previous ministers, relied on the advice of the State Emergency Coordinator and the Chief Health Officer since the pandemic began, and I continue to rely on it. I am very glad that I and other ministers relied on the advice of those people because it has allowed Western Australia to manage COVID-19 as well as it has. I continue to hold the people in those positions in the highest regard, and I do not see that changing over the next few days or in the future.

It is important to note that we are in a state of emergency under the Emergency Management Act and there is a separate public health state of emergency under the Public Health Act. They are two different things. My state of emergency, if I can put it that way, as we have spoken about, is due to expire on 21 October and the current public health state of emergency extension is due to expire on 26 October. It is under continual assessment. I have the power to revoke the state of emergency at any time, but I will continue to rely on the advice of the State Emergency Coordinator and the Chief Health Officer. It will not simply be that there are now 1 000 or, indeed, 10 cases of COVID in the community. It is not as simple as that. The Chief Health Officer gives advice to the State Emergency Coordinator, who in turn advises me of what they believe is the appropriate course of action—whether or not to stay in a state of emergency—and I am happy to keep following that advice.

Things like whether there is a need to make people wear masks in certain circumstances are part of the consideration of the Chief Health Officer in the advice he gives to the State Emergency Coordinator. Is there a need to restrict people from visiting certain places such as aged-care or disability care facilities? If we do not, there is a risk of loss of life, prejudice to the safety or harm to the health of persons. I go back to the act. This is constantly on our mind. At the moment, there is still a need for a state of emergency in Western Australia. As I said, I am not going to presuppose what advice might be given to me later in the week or in a fortnight's time. The bill before us will allow us to step down from the current state of emergency, while allowing certain things to happen moving forward.

Hon TJORN SIBMA: I sort of anticipate to some degree not being able to achieve any reasonable satisfaction in my own mind in the settling of this question. This is not to disparage the minister's contribution, nor him personally. I just think it is evident of a government in its broadest sense, including the public sector apparatus behind it, seeking to perpetuate the state of affairs because it has become accustomed to that state of affairs and it finds that state of affairs convenient for the tasks it has previously undertaken and might conceive of being asked to undertake potentially in the future. The rationale for the invocation of the state of emergency declaration that we are experiencing now and have experienced over the course of the last thousand days seems to be justified by the minister just referring to what he can do under the Emergency Management Act. A variety of speakers, potentially even the minister himself, reflected upon the fact that the Emergency Management Act 2005 has been utilised through the course of this pandemic in a way that was obviously not anticipated by the drafters of that act, even though one of the contingencies anticipated was a pandemic. I do not think it is fair or reasonable to assume—whichever parliamentary chamber or whichever number in 2005 or thereabouts passed that bill—that they would ever have effectively envisioned a state of emergency being the status quo for an extended period of time. In fact, it makes a mockery of the concept of an emergency, which is a temporal contingency of limited duration.

This is now the state of affairs. My curiosity around thresholds was not to seek to forecast what might happen in the future; it was asked in an attempt to understand the kinds of frameworks, priorities and justifications, the kinds of self-imposed discipline, that the government is applying in using a powerful and extraordinary instrument—a state of emergency declaration. The minister said, effectively, what we all know: that this is a complex and

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dynamic event. However, we can also acknowledge that its very nature has altered. The contingency has changed by a function of the kind of variant that was introduced into Western Australia, a function of the number of people who have been vaccinated in Western Australia, and indeed, those who have developed a potentially hybrid style of vaccination against other hybrids by virtue of the fact that they have taken their two or three vaccinations, plus they have contracted the virus itself. The dynamic or threat presented by the virus presently, I put to the minister from my uneducated, non-medical perspective, is very different from the contingency that justified a state of emergency declaration in 2020, when we knew nothing about this virus, no vaccines had been developed, we had no widespread immunisation and it was prior to the various mutations and strains that developed.

My question is, considering the circumstances we are now facing in which others, including the Chief Health Officer of the nation who has categorised them as a post-emergency management phase of COVID: what judgements does the minister bring in assessing that advice? I assume the minister takes the advice; I do not question that. There is a threshold. The minister introduced that word into this debate. I am attempting to understand what that threshold is. If the minister cannot quantify it, perhaps it is the State Emergency Coordinator, working to a particular model, or the Chief Health Officer. Have they been asked what the threshold might be? That is what I am attempting to understand. If the minister could elaborate on those points, I would be deeply appreciative.

Hon STEPHEN DAWSON: First of all, I take issue with the member suggesting that it is convenient for public servants or me to use the act to keep going as we are going. There is nothing convenient about the last two and a half years or the last thousand days. Convenience is wrong.

Hon Tjorn Sibma: If I may by interjection, it is a theory on government and bureaucracy —

Hon STEPHEN DAWSON: Okay. Whether it is me or the bureaucracy, there has been nothing convenient about the last thousand days. Everybody has worked incredibly hard to keep people alive, keep the state open and make sure that what is in the act is adhered to. The Emergency Management Act 2005 is an all-hazards act. It was designed to provide the framework for management, no matter the hazard. However, hindsight is best. Had we known there was a pandemic on the way, would this be the best act? Who knows. Certainly, at the appropriate time down the track, there will be a review of COVID-19 and I am sure there will be lots of learnings from that.

It has been an extraordinary thousand days and extraordinary powers have been used. I have mentioned the types of things that could be considered, such as the number of cases. When hundreds or, indeed, thousands of people in the community have COVID, as there are, it is still an emergency. A significant number of lives are at risk, notwithstanding the fact that we have good vaccination rates. The rate for the first and second doses is above 95 per cent. The third dose is at about 83.5 per cent, so it is reasonable and better than lots of jurisdictions around the world, but the number of children who are vaccinated and the number of people who have had their fourth dose is still reasonably low. There is a risk to lives; it could prejudice people's safety. While we have those numbers, I imagine the Chief Health Officer will consider that to be a threat and that it is appropriate for a state of emergency to continue. That will then be brought to the attention of the State Emergency Coordinator, who in their advice to me will suggest that that is appropriate. As I said, I do not know what will be said to me later in the week; I will wait to see what that advice is.

The DEPUTY CHAIR (Hon Peter Foster): Just before I give Hon Nick Goiran the call, I remind members to keep their chitchat to a minimum, please.

Hon NICK GOIRAN: The minister and I both know that this bill is going to pass. Once it passes, what weight will the minister give to the existence of this legislation when determining whether to extend the current state of emergency?

Hon STEPHEN DAWSON: If this bill passes, obviously, as I mentioned, various steps will need to be taken, including the making of regulations and gazettal of the bill. I am sure it will give me a lot more confidence that we can deal with what is going on in the community—the risk to lives and safety—than not having it. However, I will continue to rely on the advice of the Chief Health Officer, through the State Emergency Coordinator. People called for the state of emergency to be removed earlier in the year. I mentioned in my reply to the second reading debate that in July, the highest number of COVID-19 hospitalisations was reported in WA since the onset of the pandemic. That was a reminder that the COVID-19 pandemic is not over. I also mentioned the figures from today. It is not over, and there needs to be a vehicle to deal with it. While there are risks to people's safety and lives, the advice to me is that the state of emergency should continue. However, if this bill passes the Parliament, it will give me a level of confidence. The advice from the State Emergency Coordinator is that we might be able to rely on the bill before us and not need the Emergency Management Act 2005 anymore.

Hon NICK GOIRAN: The existence of this legislation will give the minister a level of confidence. It will be a factor that he will take into account when he makes his decision on whether to extend the current state of emergency. The minister indicated that the existence of the legislation will not be instant—my words, not his—because certain steps will need to take place. Obviously, this legislation will exist at some point in time, so the minister will have the

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option of proceeding under this new regime or to continue under the existing regime. He has not been able to do that because this new option has not existed. Other than this legislation, what would give the minister sufficient confidence that he no longer needed to extend the state of emergency declaration?

Hon STEPHEN DAWSON: The advice of the State Emergency Coordinator, and from that, the advice of the Chief Health Officer.

Hon NICK GOIRAN: When was the last time the minister spoke with the State Emergency Coordinator on this matter?

Hon STEPHEN DAWSON: To the best of my recollection, in the last week and a half.

Hon NICK GOIRAN: The minister has not spoken to the State Emergency Coordinator this week.

Hon STEPHEN DAWSON: I have not.

Hon NICK GOIRAN: Is it the case that, at any time, the minister can revoke the state of emergency declaration and extensions that he has been making?

Hon STEPHEN DAWSON: I have indicated that previously.

Hon NICK GOIRAN: It is the case, then, that the minister could tonight revoke the state of emergency declaration extension that he has been making. He has obviously decided that he does not want to do that for reasons that are not immediately apparent. Is it the case that COVID-19 requires a significant response from government?

Hon STEPHEN DAWSON: I am not sure I understand the question.

Hon NICK GOIRAN: That is interesting, because as I understand the Emergency Management Act 2005, the minister needs to satisfy himself that extraordinary measures are required to prevent or minimise the “loss of life, prejudice to the safety, or harm to the health” or “destruction of, or damage to, property” to make a state of emergency declaration. The minister needs to be satisfied that an emergency has occurred, is occurring —

Hon Stephen Dawson: Honourable member, I asked you to repeat the question. I read that section that the member is reading out now in the last few minutes. I was asking you to repeat your question. I did not understand what you were getting to. Perhaps you could do that.

Hon NICK GOIRAN: My question is: does COVID-19 currently require a significant response from government?

Hon STEPHEN DAWSON: Yes, it does.

Hon NICK GOIRAN: That being the case, why are we passing this bill with such urgency? This bill will not allow the State Emergency Coordinator to make one of these COVID-19 pandemic declarations if a significant response is required.

Hon STEPHEN DAWSON: The government deemed this bill an urgent bill; in fact, this afternoon, the chamber deemed it an urgent bill.

Hon NICK GOIRAN: We know that the government said that and that the chamber agreed with—in actual fact, minister, the chamber did not agree with that because under the standing orders, all that is required is for the minister to stand up and declare the bill urgent, which is what the minister did. We had no say in that; the chamber had no say in that. With due respect, the minister has to take complete responsibility for the fact that this bill has been declared an urgent bill. I go back to my question. The minister indicated that COVID-19 requires a significant response. Once this bill passes, it will not allow the State Emergency Coordinator to make a declaration if a significant response is required so why is the matter urgent?

Hon STEPHEN DAWSON: Under the bill before us, the State Emergency Coordinator will not make a COVID-19 declaration unless they are satisfied that —

the occurrence of COVID-19 is, or imminently will be, of such a nature or magnitude that it requires a coordinated response ...

A coordinated response will be required under this bill. The State Emergency Coordinator will advise me on the response needed and I will take that advice. Whether it occurs on Friday, in two weeks’ time or in a month’s time, the State Emergency Coordinator will advise me on the response needed and I will take that advice under consideration at that time.

Hon NICK GOIRAN: In order to make a state of emergency declaration, which the minister has done countless times by way of a declaration or an extension, does the minister need to be satisfied that the matter requires a significant and coordinated response?

Hon STEPHEN DAWSON: Yes. For a state of emergency —

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

Hon NICK GOIRAN: The minister told the chamber earlier this evening that, in his view, COVID-19 requires a significant response. Evidently, that must be true otherwise he would not continue to extend this state of emergency declaration because he can do so only if he is satisfied that it requires a significant and coordinated response. Under this bill, the State Emergency Coordinator could not make a declaration if it requires a significant response; only if it requires a coordinated response.

Hon Stephen Dawson: This bill would not preclude a significant response.

Hon NICK GOIRAN: In which case, for something that does not require a significant response, we will give a person who is not a minister of the Crown the capacity to make the same type of declaration that the minister has been making currently.

Hon STEPHEN DAWSON: The declaration that could be made by the State Emergency Coordinator under this legislation would be different from the declaration that I can make for a variety of reasons, including things like border closures et cetera. This is real stuff. These will still be extraordinary powers for dealing with an extraordinary situation that is continuing.

Hon NICK GOIRAN: Does the minister understand that the threshold will change under this legislation, and that the minister, as a minister of the Crown, will not be able to make one of these declarations unless he is satisfied that it requires not only a coordinated response but a significant and coordinated response? A person who is not a minister of the Crown, a person who is junior to the minister and reports to the minister, will not need to be concerned about whether a significant response is required; he will only need to be concerned that a coordinated response is required. Is it accepted by government that the threshold will be lowered?

Hon STEPHEN DAWSON: Government accepts what is in this bill before us, honourable member. We have made a decision that this is an appropriate way forward. This will allow us to move from a state of emergency at the appropriate time in the appropriate circumstance or situation. We stand by the bill that is before us. It may well be that the legislation might not need to be used in the next few weeks or months, but COVID-19 is out there and it could well be that new variants come into being.

The COVID-19 declaration is informed by elements of the existing emergency situation declaration framework, which operates under a lower threshold and aligns with a move away from a state of emergency in which, as Minister for Emergency Services, I make the declaration. The making of a COVID-19 declaration by the State Emergency Coordinator is consistent with their current ability to make an emergency situation declaration for any hazard under the Emergency Management Act. The State Emergency Coordinator being responsible for making the declaration also recognises their experience and ability to coordinate and manage the state's response to COVID-19. The State Emergency Coordinator has the appropriate level of experience and authority to make decisions for the COVID-19 declaration. The State Emergency Coordinator will also engage with ministers through the State Disaster Council, which ensures whole-of-government input and liaison is occurring.

Hon NICK GOIRAN: The minister said that it will be the same, but when there is an emergency situation, will the State Emergency Coordinator need to be satisfied that only a coordinated response is required—that lower threshold—or will he or she need to be satisfied that a significant and coordinated response is required?

Hon STEPHEN DAWSON: Under this legislation, it will only require that coordinated response. However, as I said —

Hon Nick Goiran: So it's not the same. There's no point saying it's the same when it's not the same. An emergency situation declaration is the same as a state of emergency declaration but, clearly, not the same as a COVID-19 declaration.

Hon STEPHEN DAWSON: It is definitely similar, honourable member.

The DEPUTY CHAIR: Members, noting the time, I need to report progress to the house.

Progress reported and leave granted to sit again, pursuant to standing orders.