

Hon Colin De Grussa; Hon Stephen Dawson; Hon Rick Mazza; Hon Aaron Stonehouse; Hon Nick Goiran; Hon Alison Xamon; Hon Tjorn Sibma; Hon Michael Mischin

EMERGENCY MANAGEMENT AMENDMENT (COVID-19 RESPONSE) BILL 2020

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Martin Aldridge) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

Clause 2: Commencement —

Progress was reported after the amendment moved by Hon Aaron Stonehouse had been partly considered.

Hon COLIN de GRUSSA: Before we were interrupted for the taking of questions, the minister was answering a question from Hon Tjorn Sibma around enacting some of these clauses and whether that was related to a state of emergency or a declared emergency. I want to get clear in my head the minister's response to that question. I think he said that new section 72A is invoked in both a state of emergency and a declared emergency. That is correct. New section 70A, which relates to electronic monitoring, is invoked only in a state of emergency; is that correct?

Hon STEPHEN DAWSON: I am advised that practically that can be used only during a state of emergency. Because it refers to an authorised officer, it comes into play only during a state of emergency and not a declared emergency.

Hon RICK MAZZA: I am inclined to support the amendment moved by Hon Aaron Stonehouse that we have a sunset clause on new section 70A, which is headed "Electronic monitoring of persons in quarantine". To me, this clause is specifically for COVID-19 and quarantining people who are infected by that. If there is another disease in the future, the nature of that disease might be quite different. We do not know what that emergency will be. As I said earlier, I think that a lot of the legislation before us should contain a sunset clause. The bills are being rushed through the Parliament because there is an emergency. Once that emergency is over, so should this legislation be. If we need this in another state of emergency at some time in the future, bring legislation back again. Obviously we can deal with it in a week, so I do not know why this has to sit on the statute book. It should contain a sunset clause. I will support the amendment of Hon Aaron Stonehouse.

Division

Amendment put and a division taken, the Deputy Chair (Hon Martin Aldridge) casting his vote with the noes, with the following result —

Ayes (6)

Hon Tim Clifford
Hon Diane Evers

Hon Rick Mazza
Hon Charles Smith

Hon Alison Xamon
Hon Aaron Stonehouse (*Teller*)

Noes (21)

Hon Martin Aldridge
Hon Ken Baston
Hon Jacqui Boydell
Hon Alanna Clohesy
Hon Peter Collier
Hon Stephen Dawson

Hon Colin de Grussa
Hon Sue Ellery
Hon Adele Farina
Hon Colin Holt
Hon Kyle McGinn
Hon Michael Mischin

Hon Simon O'Brien
Hon Martin Pritchard
Hon Samantha Rowe
Hon Robin Scott
Hon Tjorn Sibma
Hon Matthew Swinbourn

Hon Dr Sally Talbot
Hon Darren West
Hon Pierre Yang (*Teller*)

Pair

Hon Colin Tincknell

Hon Robin Chapple

Amendment thus negatived.

Clause put and passed.

Clauses 3 to 6 put and passed.

The DEPUTY CHAIR: Members, I draw your attention to supplementary notice paper issue 3 and to new clause 6A in the name of Hon Aaron Stonehouse.

Hon AARON STONEHOUSE: The amendment in my name was dependent upon my amendment to clause 2 that would give effect to new section 6A. This one falls away with the defeat of my amendment. It would be merely to provide a sunset clause for the electronic monitoring provisions that the committee has already decided upon, so I will leave it at that.

The DEPUTY CHAIR: Thank you, member, for indicating your intention not to move that amendment.

Hon Colin De Grussa; Hon Stephen Dawson; Hon Rick Mazza; Hon Aaron Stonehouse; Hon Nick Goiran; Hon
Alison Xamon; Hon Tjorn Sibma; Hon Michael Mischin

Clause 7: Section 71 amended —

Hon NICK GOIRAN: As I indicated to my party during the second reading debate and to the minister's advisers, I have a number of questions on clause 7. To restrict the time, I propose to ask them in a group of three questions. I will ask the first group of questions now. The explanatory memorandum lists nine categories as a class of place. Is that an exhaustive list? If it is not, what determines whether something is a class of place? I understand that this is being dealt with by the national cabinet. Is it the case that the Commissioner of Police, the State Emergency Coordinator, is ultimately the determiner of what is a class of place in Western Australia, albeit that he may wish and desire at the present time to be consistent with the national cabinet? My final question in this first group of three groups deals with the fact that clause 7 retrospectively comes into operation on 16 March this year, courtesy of clause 2(b), which the chamber just agreed to. What classes of place are currently under a proposed section 71(1A) direction that will have full force and effect retrospectively?

Hon STEPHEN DAWSON: The honourable member asked about 16 March. I do not have a list as of that date. I have a current list. Is that okay?

Hon Nick Goiran: That is all right.

Hon STEPHEN DAWSON: In terms of the nine categories, it is not an exhaustive list. It is influenced by the national cabinet. The State Emergency Coordinator, along with the Department of Health and the state disaster council, can recommend additions to the list, and the State Emergency Coordinator can add a place to the list.

In terms of what classes of place are under current directions, I have a range of lists. The document titled "Closure of Certain Places of Business, Worship and Entertainment Directions (No 3)" lists playgrounds, state parks and outdoor gyms. The document titled "Closure of Certain Places of Business, Worship and Entertainment Directions" states —

Affected place means any one of the following, whether operated on a profit or not-for-profit basis:

- (a) a business characterised as a pub, bar or club that supplies alcohol under a licence granted under the *Liquor Control Act 1988* (WA), but not including any part of the business constituted by a **bottleshop**;
- (b) a hotel, whether licensed or unlicensed, but not:
 - (i) to the extent that it provides accommodation, takeaway meals or drinks or a meal delivery service; or
 - (ii) any part of the hotel constituted by a bottleshop;
- (c) a gym;
- (d) an indoor sporting centre;
- (e) a **casino**;
- (f) a cinema or nightclub;
- (g) an entertainment venue of any other kind;
- (h) a restaurant or café, other than to the extent that it provides takeaway meals or drinks or a meal delivery service;
- (i) a **place of worship**, other than for the purposes of a wedding or funeral.

The document titled "Closure of Certain Places of Business, Worship and Entertainment Directions (No 2)" modifies the list of affected places. It states —

Affected place means any one of the following, whether operated on a profit or not-for-profit basis:

- (a) an auction house;
- (b) a beauty parlour or salon, other than a hairdressers or barbershop;
- (c) a nail salon;
- (d) a tattoo parlour;
- (e) a spa;
- (f) a massage parlour;
- (g) a gaming or gambling venue;
- (h) adult entertainment premises (including but not limited to strip clubs, brothels and sex on premises venues);
- (i) an amusement park or arcade;

Hon Colin De Grussa; Hon Stephen Dawson; Hon Rick Mazza; Hon Aaron Stonehouse; Hon Nick Goiran; Hon
Alison Xamon; Hon Tjorn Sibma; Hon Michael Mischin

- (j) a play centre, whether indoors or outdoors;
- (k) a community, recreation or youth centre or facility (including but not limited to community halls, clubs, Returned and Services League facilities and Police and Citizens Youth Clubs), other than to the extent that it remains open for the purpose of hosting essential voluntary or public services such as food banks or homeless services;
- (l) a health club or fitness centre, including a centre offering yoga, barre or spin facilities;
- (m) a sauna;
- (n) a bathhouse;
- (o) a wellness centre;
- (p) a boot camp;
- (q) a swimming pool, whether indoors or outdoors (not including a community swimming pool which is run on a non-commercial basis);
- (r) a gallery;
- (s) a museum;
- (t) an historic site;
- (u) a library;
- (v) a local government facility which is not essential to the continued functioning of the local government (such as, but in addition to, libraries and swimming pools).

Hon NICK GOIRAN: For the record, all the questions that I am asking now were given verbatim at the 1.15 pm briefing. The advisers were excellent and I thank the minister for the answer that has been provided, which is consistent with what was discussed at 1.15 pm.

The second group of questions relates to one of those categories that the minister mentioned. He listed a very large number of affected places and one of them is a place of worship. I want to take the minister through a few questions about that. It may be most expedient at this time if I indicate to the minister what the question is and what I understand the answer to be, and at the conclusion the minister might draw to my attention any errors that I have made. This is a very important issue. I know that people are concerned to get this legislation through in the amount of time allocated today, but I cannot emphasise enough how many constituent inquiries I have received about this matter. The amount of time will be the amount of time with respect to clause 7.

The explanatory memorandum lists places of worship as a class of place. I understand from the answers that the minister gave earlier today during his reply, which I thank him for, that one direction is currently in force about places of worship, but there are three versions of it, if you like: an original, plus two updated versions. My understanding is that weddings in places of worship are an exemption. In other words, as we sit at the moment passing this bill, including its retrospective provisions, places of worship need to be shut to the public. They cannot be open to the public, with the exception of weddings, which must have strictly five people, and there is no extension to those five people. There cannot be the celebrant, the two people getting married, two witnesses, plus a sixth person videoing the wedding for the purpose of live streaming it to everybody else who is missing out on the wedding. That is not acceptable in a place of worship. I understand from the minister's answers that when it comes to funerals, that number is extended to 10 guests at a funeral, but it does not include those people who will participate as organisers of the funeral. In other words, the place of worship in that situation would have more than 10 people in the building, being up to 10 guests, plus the organisers. Do any other exemptions apply, specifically with regard to people who work or volunteer at a place of worship? For example, can workers and volunteers continue to distribute goods to the poor and the vulnerable during this time from a place of worship? I understand the answer to that question to be yes. Can workers and volunteers continue to provide services such as chaplaincy and counselling from a place of worship? I am unclear what the answer is to that question. I believe the answer for workers is yes; I am unsure of the answer for volunteers. Can volunteers continue to provide services such as chaplaincy and counselling from a place of worship, or must they be a worker?

My last question on clause 7 in this second category or second group of three is: can workers and volunteers live stream a worship service? In other words, if a person whose ordinary place of work is a place of worship, can they continue to undertake that task, whether they are the priest, the orderly, or the various people who might be involved in the performance at that place of worship as part of their ordinary work? Can they continue to do that, whether that be on a Sunday or any other day, and live stream that to everybody else who would normally attend as a member of the public? Those are the issues that need to be clarified about places of worship.

Hon STEPHEN DAWSON: The honourable member is correct about the number of people at weddings and funerals. He is correct about workers and volunteers. I am answering in the order of his questions; hopefully, he

Hon Colin De Grussa; Hon Stephen Dawson; Hon Rick Mazza; Hon Aaron Stonehouse; Hon Nick Goiran; Hon
Alison Xamon; Hon Tjorn Sibma; Hon Michael Mischin

can follow this. I will park chaplaincy for a moment as I am seeking further advice. With volunteers, my advice is that they can attend only when they are helping with COVID-19, and if it is considered essential. Again, I mention the social distancing requirements. Can workers live stream a service? My advice is that there is an exemption to the prohibited gatherings direction. If the premises are a place of work and the worker's attendance is necessary for the normal business of those purposes, in that case, live streaming could take place.

Hon Nick Goiran: Could there be only workers and not volunteers for that purpose?

Hon STEPHEN DAWSON: That is my understanding, yes. If chaplains fall within the definition of "volunteer", they will be excluded, but if it was the workplace of the chaplain, they would be able to be present.

Hon NICK GOIRAN: To conclude on that part, I want to be crystal clear about the live streaming of a worship service. A volunteer cannot attend the place of worship and be a participant in a live stream, but an employed worker for whom this is ordinarily their place of employment and it is part of the performance of their normal duties can do that, but they must adhere to the four-square-metre social distancing rule. For example, if a person is normally part of a team of workers of up to 10 people, just like with funerals, where the place of worship has enough room to fit 10 people and there is enough room for social distancing for a worship service, it can be live streamed, but social distancing must be adhered to and the person must be a worker who in their ordinary course of employment is there at that time and this is part of their normal duties.

Hon Stephen Dawson: That is my advice.

Hon NICK GOIRAN: My final group of questions relates to people's homes—people's private personal homes, which some might refer to as their castle. Can a grandparent living in the same intrastate area as their grandchild visit and vice versa? My understanding in accordance with what the minister said earlier in his reply is that the answer is yes, and, indeed, multiple guests can attend a person's private home, but they must adhere to the four-square-metre rule. For example, in my case, I can have multiple guests other than people who normally live in my home attending my home, my private residence, but we must comply with the four-square-metre rule.

Hon STEPHEN DAWSON: I thank the honourable member, I appreciate it. I have advisers all over the place, but I think this is an important issue to put on the record. The advice from my advisers from WA police is that there are no restrictions on visiting the home, so yes, that grandparent would be able to visit, subject to the four-square-metre rule. Multiple people could visit a house, subject to that four-square-metre rule. Obviously, there are restrictions on visiting aged-care facilities, so the member could not visit his grandparents, but they could visit him.

Clause put and passed.

Clauses 8 and 9 put and passed.

Clause 10: Section 72A deleted and consequential amendments —

Hon AARON STONEHOUSE: I will be very quick, because I am mindful that we are running out of time and we have other clauses to get to. My intention with the amendments at clause 10 was to insert a sunset clause to the removal of the requirement for gazettal of directions. In my second reading contribution I already outlined why I think that should be the case. I have another amendment to clause 10 in my name that would provide a sunset clause for the introduction of the penalty of 12 months' imprisonment at proposed section 86(1). I do not have too much more to add, so I will let the question be put, and we will leave it at that for the first amendment. I move —

Page 7, lines 22 to 25 — To delete the lines and substitute —

(2) In section 77(2A):

(a) delete "71, 72A(2)" and insert:

71

(b) delete paragraph (b).

Hon STEPHEN DAWSON: We are not supportive of these amendments. I indicated earlier the reasons for that so I will not do it again.

Amendment put and negated.

Hon AARON STONEHOUSE: I move —

Page 7, lines 26 to 29 — To delete the lines and substitute —

(3) In section 86(1):

(a) delete "71, 72A" and insert:

71

(b) in paragraph (a) delete "imprisonment for 12 months or".

Hon Colin De Grussa; Hon Stephen Dawson; Hon Rick Mazza; Hon Aaron Stonehouse; Hon Nick Goiran; Hon
Alison Xamon; Hon Tjorn Sibma; Hon Michael Mischin

Hon STEPHEN DAWSON: Again, we do not support this amendment.

Amendment put and negated.

Clause put and passed.

Clauses 11 and 12 put and passed.

Clause 13: Section 86 amended —

Hon ALISON XAMON: I will not be proceeding with the amendment standing in my name because the government has put forward alternative wording that meets exactly the same intent but is possibly drafted more appropriately. I have already made the arguments about why it is important. I thank the government for taking that on board.

Hon STEPHEN DAWSON: I move —

Page 9, after line 10 — To insert —

(2) After section 86(2) insert:

(3) It is a defence to a charge of an offence under subsection (1) for the person to prove that the person had a reasonable excuse for failing to comply with the direction.

Hon TJORN SIBMA: I foreshadowed in my second reading contribution that what has been reached today is a pragmatic accommodation of the original intent of the amendment put forward by Hon Alison Xamon. I appreciate the government's open-mindedness in respect of this and I indicate that we support this amendment.

Hon STEPHEN DAWSON: I appreciate that. I will place on the record the reasons this amendment is before us today. I thank Hon Alison Xamon for not proceeding with her amendment. She is correct; conversations have taken place behind the Chair about this amendment. I stress that we stand by the fact that defences are available for the offences under the Emergency Management Act. Section 36 of the Criminal Code confirms that defences under the code apply to any offence against the statute law of Western Australia. We did not consider the insertion of a defence of reasonable excuse necessary in circumstances in which the full range of defences under the Criminal Code are available in relation to a charge under the Emergency Management Act as proposed to be amended. However, in the interests of ensuring that this legislation progresses as quickly as possible in the Legislative Council and that the provisions are available to those on the front line, we have agreed to amend clause 13. I stress that we are in a state of emergency in Western Australia and penalties are there to protect the emergency services workers, who are doing their best in their jobs.

Hon MICHAEL MISCHIN: I support the intended amendment, but with respect, I do not think that the minister has correctly stated the legal position, which is important. I have a couple of questions that concern the question of it being a defence. Firstly, it is in fact a proper defence when the accused has to prove the matter on the balance of probabilities rather than a so-called chapter V defence, which is actually an exculpatory factor that has to be overcome by the prosecution beyond reasonable doubt.

Secondly, we were told yesterday by the minister's advisers that a reasonable excuse overlaps with those exculpatory factors in chapter V, and I do not think that is the case. Lastly, the operation of section 86(2) states —

A person must comply with a direction referred to in subsection (1) despite the provisions of any other written law, and the person does not commit an offence by reason of that compliance.

Does that act as an indemnity to an accused against any breach required by compliance with a direction, or does it go so far as to negate any of the so-called defences under chapter V?

Hon STEPHEN DAWSON: In light of the honourable member's support of the bill, I propose to proceed now. I give an undertaking that we will provide the member with an answer after the passage of this bill, and I will provide it as quickly as possible. My advisers inform me that at this stage, they do not have that information at hand.

Hon MICHAEL MISCHIN: I think that it ought to be on the record, because it is important for the enforcement of this into the future, and the government's intentions and considered operation of it needs to be clear.

Hon STEPHEN DAWSON: I will certainly undertake to provide it on the record. I am still seeking an answer to Hon Tjorn Sibma's question from earlier. I will provide both answers, on the record, at a later stage.

The DEPUTY CHAIR (Hon Martin Aldridge): Members, the time has elapsed under the temporary order for the consideration of the Emergency Management Amendment (COVID-19 Response) Bill 2020 in Committee of the Whole House. I am now required, without debate, to put all questions before the Chair in Committee of the Whole.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 14 put and passed.

Hon Colin De Grussa; Hon Stephen Dawson; Hon Rick Mazza; Hon Aaron Stonehouse; Hon Nick Goiran; Hon Alison Xamon; Hon Tjorn Sibma; Hon Michael Mischin

Title put and passed.

Report

Bill reported, with an amendment, and the report adopted.

Third Reading

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [5.53 pm]: I move —

That the bill be now read a third time.

HON AARON STONEHOUSE (South Metropolitan) [5.53 pm]: I would like to speak on the question that the Emergency Management Amendment (COVID-19 Response) Bill 2020 be read a third time. I understand that we have five minutes, so I will be very brief. I understand the need for us to pass emergency legislation at a time like this, but I cannot support the bill in its final form. I cannot do that because we were allowed a mere one hour to examine a bill that grants the government quite extraordinary powers, and that one-hour time slot expired before the Committee of the Whole House had a chance to consider every clause of that bill. That is a process that I feel ashamed to have been a part of, and I cannot put my name to a bill that the Committee of the Whole House did not have the chance to actually consider yet. We did not get through all the clauses. I think that is ridiculous. With a mere extension of a few minutes—maybe 20 minutes—we would have had the chance to get through the final clause of the bill, but we were denied that opportunity. As legislators and members of the Legislative Council, I really do not think we should be voting on bills that we have not yet had the chance to examine. That is atrocious. I do not want to take up any more time. I understand that we have only four minutes left to get through the third reading, but I cannot in good conscience support a bill that we have not had a chance to look at.

Question put and passed.

Bill read a third time and returned to the Assembly with an amendment.