

Hon Stephen Dawson; Hon Martin Aldridge; Hon Tjorn Sibma; Hon Sophia Moermond; Hon James Hayward;  
Hon Wilson Tucker; Hon Neil Thomson; Hon Dr Brian Walker

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**COVID-19 RESPONSE LEGISLATION AMENDMENT  
(EXTENSION OF EXPIRING PROVISIONS) BILL 2022**

*Second Reading*

Resumed from 10 May.

*Declaration as Urgent*

On motion by **Hon Stephen Dawson (Minister for Emergency Services)**, resolved —

That the bill be declared an urgent bill.

*Remaining Stages — Time Limits — Motion*

On motion without notice by **Hon Stephen Dawson (Minister for Emergency Services)** resolved —

That pursuant to standing order 125A, maximum time limits apply to the following stages of the bill:  
second reading, three hours and 45 minutes; Committee of the Whole House, three hours and 20 minutes;  
and third reading, 10 minutes.

*Second Reading Resumed*

**HON MARTIN ALDRIDGE (Agricultural)** [5.36 pm]: I rise as the lead speaker for the opposition on the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill 2022. At the commencement of my remarks, it would be helpful if somebody could provide me with a copy of the motion that we just agreed to, because I did not have a chance to receive it before the vote was put.

This issue has had quite a long history, dating back to the early stages of the COVID-19 pandemic and the subsequent states of emergency that have existed and been extended from time to time over the course of the last two or so years. As members will be aware, a state of emergency was declared under the state Emergency Management Act on 15 March 2020 and a similar instrument was declared under the Public Health Act on 16 March 2020, the following day. Shortly thereafter, for those members who served in the last Parliament, the Emergency Management Amendment (COVID-19 Response) Bill 2020 was introduced and passed over two sitting days, 31 March and 1 April 2020. I recall, at the time and following the declaration of a state emergency pursuant to the Emergency Management Act, a range of deficiencies were identified in that statute that made it less than fit for purpose in terms of pursuing the types of responses that the state was contemplating. That amendment bill provided for some permanent changes and some temporary changes.

We are contemplating those temporary changes in the bill because the initial amendment bill provided for a 12-month sunset clause or what I will refer to as Emergency Management Act section 72A general purpose powers. Members will recall that the government sought the first extension beyond the first 12 months in late 2020, when we were approaching the end of not only the calendar year, but also the parliamentary term, and were approaching the state election in the early part of 2021. At that point, the government sought a six-month extension. The house took the view that a three-month extension should be granted to allow Parliament to resume after the election and to then contemplate whether these temporary powers were still necessary and what form they should take, or whether they needed further amendment. The house, on an amendment moved by my colleague Hon Colin de Grussa, took the view to reduce that six-month extension to three months. If I recall correctly, the amendment was universally supported by non-government members and opposed by government members. Nonetheless, it provided some comfort until 4 July 2021, allowing quite some months for a new government to be formed, Parliament to be recalled and the membership of the new Parliament to contemplate the appropriateness of the temporary provisions.

Since that time, there have been a further two extensions, extending that period to 4 January 2022 and 4 July 2022. Both extension bills were considered in this Parliament, and, indeed, on behalf of the opposition, I had carriage of both bills and presented our position on those six-month extensions. I think it is fair to say that on each occasion on which I was involved with the legislation, a range of issues were canvassed on the operation of the Emergency Management Act and the directions issued pursuant to it. There has been an ongoing conversation about that, and this will be the fifth occasion on which this place effectively has considered the matter before us—that is, the original amending bill and this bill, which has a fourth extension to the sunset clause that applies to the temporary powers.

There is a sunset clause for the section 72A powers as opposed to the permanent amendments made to the legislation at the time because the government, by its own admission, considered these powers to be draconian. The government was quite comfortable characterising these temporary powers in that way. In fact, government members repeated it on several occasions. The sunset clause is one of the inbuilt protections that the government thought appropriate to ensure that—I think to a fairly limited extent—there would be some parliamentary oversight on whether an extension was appropriate or, indeed, not appropriate. Effectively, that is the question members of this chamber will be asked

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during this debate. Members will need to form a judgement on whether this request for a further six-month extension is appropriate. It will be interesting to see whether, and to what extent, answers to the opposition's questions are provided, because on reflection on the briefing I received and on the parliamentary debate that occurred last week, many, many questions remain unanswered that must be answered before we contemplate supporting this bill.

On the previous two occasions during which we dealt with extensions to the sunset clause, I reflected on the need to more broadly review the appropriateness and suitability of not only the Emergency Management Act, but also the Public Health Act to manage emergencies such as this. Of course, it is the government's view that those types of reviews are best undertaken outside a period of emergency, but as this is the fifth occasion on which we have considered this issue, it begs the question: to what extent will non-government members of this chamber in particular receive answers to questions that they ask during the course of this debate so they can be satisfied about the government's intent? It is interesting that, despite the COVID-19 pandemic, the government is undertaking reform in many different ways. It reformed the electoral laws of Western Australia very quickly after the election. In the midst of a global pandemic and the COVID-19 response, in uncertain times, if the government puts its mind to something, it can achieve a result. This government can no longer justify using that excuse and not look at the suitability of this and indeed other legislation to see whether further change is required. Perhaps permanent change is required to better enable our legislative framework to deal with emergencies such as this.

It is interesting to also draw comparisons with what is occurring in other jurisdictions. I note that other states and territories have responded quite differently with their enabling legislative and regulatory framework. I recently became aware of an article published by the ABC on 11 May entitled "What is WA's Emergency Management Act and why have the pandemic powers been extended again?" It is an interesting article for members who may not be aware of it. It draws a comparison with two other states—that being, South Australia and Victoria. It is interesting that these are the two states identified in the article because, of course, they are also governed by Labor Parties—the South Australia government much more recently. I remember when members of this chamber made much of the recent success of the Labor Party in South Australia.

The article from 11 May of this year says —

South Australia's recently elected Premier Peter Malinauskas yesterday introduced legislation to amend its Public Health Act and allow for the state to end its emergency management direction (which is similar to WA's state of emergency declaration).

Those amendments will allow isolation requirements, vaccination and mask mandates in certain places and other rules to continue unaffected.

But lockdowns, broad mask mandates and hospitality restrictions would require another state of emergency to be declared to return.

Victoria's pandemic laws, which have been supported by many experts, go even further with a pandemic oversight committee.

The state's parliament can also disallow measures it doesn't agree with.

Mr McGowan has all but ruled out taking a similar path previously, saying the existing legislation, including section 72A, is adequate for WA's needs.

When previously considering these extensions, I reflected on how little oversight, scrutiny and investigation has occurred in Western Australia on our COVID-19 response. We have seen the other the states, the territories, and, indeed, the commonwealth establish select committees and undertake standing committee inquiries, royal commissions, special inquiries and the equivalent, and standing inquiries in which joint houses have considered any matter considered relevant to their jurisdiction and its COVID-19 response. I am not sure whether members are able to name any such thing that has occurred in a Western Australian context that might even enable members to make an informed judgement about how they should support, oppose or otherwise treat the bill on the fifth occasion on which we have been asked to support the extension of powers that the government itself describes as draconian.

In the early stages of the COVID-19 response, the Leader of the Opposition, Hon Mia Davies, wrote to the Premier and asked him to consider establishing a special inquiry under the Public Sector Management Act to consider our preparedness to deal with a pandemic in Western Australia and also to allow us to better prepare our capability and our resources to respond. We are, obviously, now seeing the pointy end of that response right now.

Another thing of interest is the view of our state's Auditor General. I think we are well served by a very fine Auditor General in Caroline Spencer. She released recently the fourteenth report of the Auditor General, the *Audit Results Report—Annual 2020–21 financial audits of state government entities part 2: COVID-19 impacts*, dated 9 May 2022. On face value, a reader would not necessarily draw a parallel between such a report and the subject that is before us this evening. Having drawn this report to members' attention, I wish to quote directly from the Auditor General's overview on page 3, which states —

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I should stress that to provide a comprehensive report on the management of the pandemic and impacts across the whole community would require a separate large-scale examination, which this was not. However, there would be significant future benefit from a systematic impartial examination of the response to this pandemic by both the State and the Federal governments, and its impact on the WA community. This would capture learnings in preparation for future pandemics and other emerging crises and assist in setting transparent criteria and thresholds for proportionate, risk-based and consequential responses. It would also permit an explicit understanding of the various costs and benefits, including trade-offs over different timeframes and for segments of our community, which would help frame deliberations around any future allocation of resources and the use of emergency powers.

How timely are those remarks of our state Auditor General on 9 May 2022 when we are now considering such emergency powers on 17 May 2022? How much more informed would members of this place be when making a decision about the suitability of the Emergency Management Act, but, more specifically, these broad-ranging general purpose powers that are found in section 72A of the Emergency Management Act?

It concerns me, once again, the way in which Parliament has been treated in this process. Members will be aware that we had a sitting week last week, we have a sitting week this week, and we have one sitting week remaining in June after one was vacated to allow for the ordinary budget estimates hearings to be held by the Standing Committee on Estimates and Financial Operations. I learnt of the intent to introduce this bill, effectively, by Chinese whispers. I was informed of a communication that occurred between the Leader of the House and the opposition Whip that it was the government's intention to bring on such a matter the following day. I draw a comparison between this and the way in which the Minister for Planning personally engaged with Hon Neil Thomson, the shadow Minister for Planning, my colleague next to me, on the government's intention to introduce an urgent planning bill, which was literally occurring at the same time.

I was informed that a briefing would occur the next day and, if I am not mistaken, it was set for 11.00 am. It is interesting because, as members would know, Tuesday mornings are usually when parties meet and form their positions on many things, but, most importantly, on legislation. Because of the time frame that was involved, this briefing occurred after the party room meetings on that day. I recall an occasion in my first term when I moved as a private member an amendment to a government bill. I would probably not see that from too many members opposite in their term as government members, but I moved a private member's amendment to a government bill when I was a member of the government. The response of the Labor Party was that it could not support my amendment, although it thought it had merit, because it had not been considered by its party room and, therefore, it could not form a position on it. I draw that comparison to the situation that the Liberal–National alliance opposition faced last Tuesday. The briefing occurred after our party rooms met and the briefing commenced—I am not sure whether this happened with the Labor briefing—without a bill having been provided to opposition members. The first comment I had in interrupting the presenters of the briefing was that it would be helpful if a copy of the bill was provided to the opposition to help advance the briefing.

Obviously, this bill has been declared urgent, as it was in the other place and as it was, I think, on every other occasion. Of course, in the genesis of this matter back to March 2020, the much more substantial bill passed through both the Assembly and the Council in two consecutive sitting days. I am not sure that this matter really is urgent, given that the sunset clause does not expire until 4 July; there are a number of days between now and 4 July when this matter could be considered with more care and attention. Nevertheless, the government is getting very familiar with the house's new urgent bill provisions as this is not the first time that such provisions have been activated.

We are told that the government is acting on or is basing this upon health advice. We have been told that repeatedly throughout the last two years or so. We have been told ad nauseam by the government that it is acting on or based upon health advice. I had a moment earlier today to review a webpage of a website that I much admire—[wa.gov.au](http://wa.gov.au). It is a hidden webpage, in my view, because it cannot be searched for; one has to know the URL for it. That is where we find the published health advice of the Chief Health Officer to the government. Having reviewed that page earlier today, I noted that this Thursday will mark four weeks since the last advice of the Chief Health Officer to the government was published. If we consider the fairly rapid gestation of this matter, I suspect cabinet gave approval for this matter last Monday; the opposition was informed in one way or another on Monday afternoon.

*Sitting suspended from 6.00 to 7.00 pm*

**Hon MARTIN ALDRIDGE:** Before the dinner adjournment I was referring to the [wa.gov.au](http://wa.gov.au) website. The recess gave me an opportunity to review how easy it is to find the page on the [wa.gov.au](http://wa.gov.au) website where people will find the so-called published advice to government by the Chief Health Officer. I was saying that I did not believe it was easily discoverable. Just a few moments ago I initiated a search looking for that page and was unable to find it. Fortunately for me, I have the URL saved and confirmed that as of seven o'clock this evening the last piece of advice that was provided to the government and published on this webpage was, I believe, on 21 April. As of this Thursday, it will be four weeks since advice was provided to the government by the Chief Health Officer, according to this website.

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I would be the first to say that I doubt that this is the case. Obviously, in the last four weeks we have seen significant COVID-19 activity in Western Australia, and I very much doubt that the Chief Health Officer has not provided any advice to government in the last four weeks; in fact, I suspect that numerous advice has been provided on a routine or regular basis. Nevertheless, that advice is neither available for the public nor the Legislative Council to consider along with the other pieces of advice that exist on that webpage.

At this point, I draw members' attention to a question I asked last Wednesday. Last Tuesday, 10 May, the Legislative Council received this bill because it was passed by the Legislative Assembly on the day of its introduction, which has become the form of this government when dealing with matters like this. It was received in the Legislative Council on Tuesday, 10 May. On Wednesday, 11 May, I asked question without notice 393, of which some notice had been given, to the Leader of the House representing the Premier, which states —

I refer to the Premier's public comments on 10 May 2022 —

Which was the day prior —

when he claimed that the government's extension to the so-called temporary emergency powers under the Emergency Management Act 2005 are on the basis of advice received by the Chief Health Officer and State Emergency Coordinator.

I pause there because the day prior, when the government made the public announcement that it was intending to do this, the Premier was cited in a press conference as saying that this action was based on advice that he had received from the Chief Health Officer and the State Emergency Coordinator. I asked —

- (1) On what date was each advice received by government?
- (2) ... please table the advice received?

I pause here again because when members of the opposition receive an answer that is grouped together, it is generally not a good start to the answer of the question. The Leader of the House representing the Premier said—

- (1)–(2) The Premier and health minister regularly meet with the Chief Health Officer and State Emergency Coordinator along with the State Disaster Council, as required, to receive advice and appropriately manage the pandemic in Western Australia. The Chief Health Officer and State Emergency Coordinator have both given clear advice for the continuation of directions issued under sections 67, 70 and 72A of the Emergency Management Act 2005 as part of the day-to-day management of COVID-19. The current baseline measures in place across Western Australia were recommended by the Chief Health Officer and have been applied under directions issued under the Emergency Management Act 2005. The specific health advice related to the current baseline measures is available online, as per normal practice. I now table that advice.

For members' awareness, the advice that was tabled was the advice to government from the Chief Health Officer on 21 April 2022, which members might recall from a few moments ago was the last piece of published advice that is publicly available on this website from the Chief Health Officer. It was a letter from the Chief Health Officer to the Premier of Western Australia with the subject of "Updated public health and social measures, border and vaccination requirements". This is not what I asked for. I asked for the Premier of Western Australia to justify the claim that he had made the day prior to receiving advice from the Chief Health Officer and the State Emergency Coordinator on the six-month extension. This is important because before the dinner recess I reminded members opposite that it was their government that described these temporary powers as draconian. It was their government that felt that these temporary powers were so draconian that they should have a sunset clause applied to them, initially of 12 months, and thereafter of six months. At this point, no evidence has been provided to members of the opposition that would justify the claim the Premier made that this extension of emergency powers was based on advice that he had received from the State Emergency Coordinator and the Chief Health Officer of Western Australia.

I raise this point because on the last two occasions I have had carriage of this bill for the opposition, by contrast, the Parliament of Western Australia has been provided with letters, one dated 27 April 2021 and one dated 30 September 2021. For members' reference, the first letter is Legislative Council tabled paper 222, and the second letter is Legislative Assembly tabled paper 280. On both occasions, they were letters to the then Minister for Emergency Services, Reece Whitby, MLA, from Chris Dawson, the State Emergency Coordinator, and they indicated the State Emergency Coordinator's support for, and in some respects the need for, the extension of powers on those occasions. I have pointed out some of the weaknesses in terms of the brevity of these letters. In fact, one of the letters suggests that the State Emergency Coordinator was just simply supporting a cabinet action, so it was not exactly the case that the government was acting on advice; it was the State Emergency Coordinator, who doubles as the Commissioner of Police, supporting an action of government. It is not quite exactly true to say on that occasion that the government was acting on the advice, rather, the State Emergency Coordinator was supporting the action of the government, so I think there is a distinction.

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On this occasion, no such supporting information has been provided—not in the course of the brief consideration of this matter in the Legislative Assembly last Tuesday, and not to date. This was one of the few questions that I asked of the briefers at my briefing last Tuesday. I would have thought that on the third occasion on which I have been dealing with this matter, I would be provided with a letter signed by one of the two officers whom the Premier cited in his press conference and who had made a recommendation to the Premier some weeks, if not months, prior to this date to support an extension of these temporary powers upon which the government is acting. That has not been presented so far. The response that I was given in my briefing was that the matter was considered by cabinet; therefore, it is cabinet-in-confidence. I would hope that the previous two bills I have dealt with were also considered and endorsed by cabinet. However, on those two occasions, the government found it possible to provide the supporting information to the Parliament at the appropriate stages of the progression of the bill. In fact, I think that on one occasion it was provided prior to the consideration of the bill.

Two things would appear to be correct. The first is that the government simply will not provide the advice. The second is that the advice does not exist. A cynical view might be that the latter is more likely. It will be interesting to see whether that will be provided in the minister's second reading response. I remain hopeful. Fortunately for the Legislative Council, this will be the first occasion on which the minister responsible for this act will be dealing with the committee stage of the bill, because on each of the last occasions the bill was dealt with by the minister representing the minister responsible.

The other matter that I want to draw to members' attention is a question that I asked about advice that the government had received from the State Emergency Management Committee. It is question without notice 333 of 7 April from me to the Minister for Emergency Services. I asked —

I refer to pages 23 and 24 of the 2020–21 annual report of the State Emergency Management Committee, which states —

DFES provided analysis of the use of the EM Act and Public Health Act 2016 to assist with management of the COVID-19 response, 7 May 2021.

I pause to remind members that this was about the most recent annual report of the State Emergency Management Committee and advice that the government had received just one year ago with respect to the analysis by DFES about the use of the Emergency Management Act 2005 and the Public Health Act 2016 to assist with the management of the COVID-19 response. I asked —

- (1) Will the minister please identify the person or persons who provided the advice to SEMC?

One would not think that was a particularly difficult question. I asked also —

- (2) Will the minister please table the advice provided by DFES to the SEMC in relation to this matter?

Keep in mind that the State Emergency Management Committee meets fairly infrequently. I would have thought that a specific number of persons, or possibly just one person, would have been providing specific advice on this one occasion. We are not asking about how many blue biros the Department of Health owns. It is a very specific question. I asked also —

- (3) Noting the annual report's reference to the SEMC monitoring the use of powers under the EM act, will the minister please table any relevant report, advice or document in regard to this?

The reply was —

I thank the honourable member for some notice of the question.

Given the detail required, it is not possible to provide this information in the time provided. The honourable member may wish to place his question on notice.

I did just that. The record in this place will reflect question on notice 729, which was lodged on 10 May 2022 and is effectively that question. I suspect that the answer to that question will not be provided until after the passage of this bill. It has been six weeks since I asked this question, on a matter that is directly relevant to this issue. The Department of Fire and Emergency Services and the Minister for Emergency Services have had six weeks' notice of my interest in this question, which is directly relevant to this bill. I would think that any member who was considering the merits of this bill would be absolutely interested in the expert analysis provided by DFES to the State Emergency Management Committee on the use of the Emergency Management Act 2005 and the Public Health Act 2016 to assist with the management of the COVID-19 response. We could make very quick progress on this matter this evening if that analysis was provided to members.

As I have said on previous occasions, the activation of the Emergency Management Act and the Public Health Act was a matter of contention for the government. I draw members' attention to quite an interesting article penned by Paul Murray on 22 May 2021 about Darren Foster's departure from the Department of the Premier and Cabinet.

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Members who have an electronic device available to them in the chamber might be interested in searching for this article. It is titled “Cracks in the Labor Machine: All powerful McGowan’s second term gets off to a shocker”. That should be mandatory reading for all members of the government. It casts an interesting insight into the initial stages of the government’s pandemic response. I do not think anyone would argue that responding to the COVID-19 pandemic is clearly a public health emergency, yet, having said that, the government chose to activate the Emergency Management Act in the first instance. That matter is canvassed in the article that I have just mentioned and that I encourage as mandatory reading for members when considering this bill.

It is an indisputable fact that the government chose to activate the Emergency Management Act rather than the Public Health Act in the first instance. The government also promised that the section 72A powers would be used only for the purposes of the pandemic response. That was in the same debate on 31 March 2020 in the Legislative Assembly and on 1 April 2020 in the Legislative Council. The government described these measures as draconian and said that they would be used only in response to the COVID-19 pandemic. As we know with many aspects of the government’s COVID-19 response, it did not keep that promise. The government used these so-called draconian powers in response to a cyclone. The government was not up-front about that at the time. That was discovered on the last occasion on which the Legislative Council considered a bill for the extension of these powers. It certainly was not something that the government fessed up to. As I said before, the briefing was welcome, and although it was in extraordinary circumstances, it provided little use. There was some useful information provided with regard to a number of matters, which I will go through, and then some matters were taken on notice, which I am still awaiting a response to.

This issue of the dual activation of the Emergency Management Act and the Public Health Act has obviously been a contentious matter that Parliament has taken an interest in, not just now, but on previous occasions. When this question was put to the meeting, I wrote down the best that I could the response that I received from the advisers. I thank them for the frank advice offered. It was suggested that the government opted to use the Emergency Management Act in this situation because the Commissioner of Police has a role to play and it is more appropriate. That does not really shed a light on the deficiencies that may or may not exist in the Public Health Act or indeed the advantages or disadvantages that may benefit from the dual use of emergency powers under both acts, directed by two different individuals. Keep in mind, it is the Minister for Health who makes a declaration and extends that declaration under the Public Health Act; it is the Minister for Emergency Services who makes a declaration and extends that declaration under the Emergency Management Act. Keep in mind it is the State Emergency Coordinator or a person authorised by him or her who exercises the powers pursuant to the Emergency Management Act and it is the Chief Health Officer or a person authorised by him or her who exercises powers pursuant to the Public Health Act. It is not particularly a neat and uncomplicated way, in my view, of managing this very complex response that has now spanned more than two years. Obviously, that is an area that I want to get a greater understanding of, because to date, very little light has been shed on this matter, apart from what little information we have been able to access through Parliament and effectively *The West Australian* article that I quoted just a short while ago.

One thing we learnt from the briefing was that 563 directions were made pursuant to section 72A of the Emergency Management Act and that only 10 remain in force. That is an interesting indicator of, I guess, the utilisation of these emergency powers and our current reliance on them. I note that the second reading speech cites some examples. In fact, three were also cited in the briefing, which I think were face covering directions, isolation directions and border directions with regard to unvaccinated travellers. That is obviously only three and 10 have been listed. I have helpfully been provided, as supplementary information, a list of the full 563 directions and the 10 that remain in force. As we go through the committee stage, or hopefully it could well be answered in the second reading reply by the minister, it would be interesting to learn that on each of those 10 occasions that those directions exist why the Public Health Act could not provide for such a direction.

One of the problems identified was with regard to quarantine, the Public Health Act apparently requiring a review of a person’s quarantine direction every 24 hours. I do not dispute that fact, but if this is a known problem—this is the fifth occasion that we in this Legislative Council under either temporary orders or urgent bill provisions are dealing with this matter—why have we not turned our minds to addressing these issues? There could well be other issues, and I was told that this was one of the questions taken on notice to identify the other practical implications of not removing the state of emergency. I want to make it clear—I am sure members are clear on this point—that this bill does not remove the state of emergency. We are effectively dealing with a sunset clause that applies to the section 72A general powers that have been inserted into the Emergency Management Act. That is effectively what we are dealing with. I was told that there could well be other practical implications and that those matters would be provided to us prior to commencement of debate. I am not sure exactly what time the Legislative Assembly commenced debate last Tuesday, but the briefing that was attended by other members of the opposition occurred at 11.00 am. Certainly, approaching 7.30 pm on Tuesday, 17 May, one week on, I am not in possession of a list of practical implications with regard to the 10 directions that exist and why they can or cannot be directions issued pursuant to the Public Health Act. If indeed it is the case that our Public Health Act is so deficient that we cannot require somebody to wear a face covering in certain circumstances in the interest of

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public health, why are we again on the fifth occasion extending temporary powers? Why are we not just getting on with fixing the Public Health Act?

I obviously recognise that this bill also has an impact on the Criminal Code with regard to some other provisions that, given the time that is rapidly escaping me, will be further canvassed by my colleague Hon Tjorn Sibma, noting that the shadow Attorney General is away on urgent parliamentary business this week. He is unable to participate in this aspect of the bill that he has responsibility for with regard to the opposition, because this is, in effect, an omnibus bill that will do a number of things, not just the matters that I have canvassed this evening in the time available to me that have largely focused on the Emergency Management Act.

Some of the other information, the key things that I sought, have been canvassed. On whose advice was the decision made for the extension? I have well canvassed that, and I am hopeful that if very little is achieved through the course of this bill and the government at the end of the day will use its numbers and get its six months, that we can establish the Premier's claim that he is acting on the advice of the State Emergency Coordinator and the Chief Health Officer. Unlike last time, and the time before, there is hesitation from the government in this respect. What are the current directions relying on the Emergency Management Act and the Public Health Act? As I said, I am grateful that at least with regard to the Emergency Management Act, those 10 current directions that rely on section 72A have been provided. To what extent is the Public Health Act deficient and therefore requiring Emergency Management Act response? Members should keep in mind that the government chose to enact the emergency management powers before the Public Health Act powers. That is when that expert analysis from the Department of Fire and Emergency Services that was offered to the government just over one year ago would certainly help advance our understanding of the interaction of these two pieces of legislation. I think probably the most important aspect is what consequence, intended or otherwise, would arise from section 72A powers ceasing? I am not suggesting that those consequences do not exist, but 4 July is not soon and this is the fifth occasion that we have considered this. I am sure that the government is well aware of those issues but, again, they have not been provided to the opposition at this point.

With respect to my earlier comments, much of the decision-making that has occurred throughout the pandemic has occurred in extreme secrecy. Effectively, I understand that the State Disaster Council meets concurrently with the Security and Emergency Committee of Cabinet. The government claims that every meeting of the State Disaster Council is cabinet-in-confidence. That claim ought to be considered and, indeed, disputed. We are told time and again that these matters are cabinet-in-confidence because of the State Disaster Council meeting at the same time and place as a committee of cabinet. Obviously, the Premier is the chair of the State Disaster Council. We are told that this is the decision-making body of government with respect to the COVID-19 response but we know very little about the information that is provided to this body, the decisions that are made or not made or the expert advice or analysis that is provided to this group.

Another example—I have raised this on numerous occasions—is outbreak response plans. Strangely, Western Australia has a number of outbreak response plans but I have never seen one. Unfortunately, they are state secrets. Heaven forbid somebody would know what our response plan is, let alone the Parliament, particularly in high-risk settings. Once again, these are secret documents of the government. We are not afforded anywhere near the level of transparency that has occurred in other jurisdictions with respect to these matters, apart from the fact that once every six months, we get to ask questions of the government about this very discrete matter. That is what will occur today and this evening.

I want to finish on a question without notice that I asked today. This is really telling and why I am growing in my concern about government decision-making. I heard the president—sorry, the Premier; he might think he is a president but he is a Premier—make a comment last week that the number that matters in the COVID-19 response is the number of patients on ventilators. Unless I am mistaken, I heard that comment very clearly. It spurred me to ask a question today. I asked —

I refer to the state government's response to the COVID-19 pandemic.

- (1) As of today, Tuesday, 17 May 2022, how many active COVID-19 cases are there in WA?
- (2) How many COVID-19-positive patients are hospitalised?
- (3) Of those identified in (2), how many are currently receiving intensive care?
- (4) Of those identified in (2), how many are currently being ventilated?

I will only reflect on the answer to (4), which, interestingly, was —

- (4) The ventilation status of patients with COVID-19 is recorded at discharge. Therefore, it is not possible in the limited time provided to provide an accurate number of patients in WA hospitals that are currently receiving ventilation. Collating this information is a manual process that would require an unnecessary use and diversion of frontline health resources.

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It begs the question that if this is the number that matters, why can the Parliament not know that number? Why would knowing that number require an unnecessary diversion of frontline health resources? These types of questions do not give me nor the opposition confidence in the decision-making processes around the very important matters that are considered by government in the COVID-19 response, particularly when we compare them with other jurisdictions. This is the government's opportunity to demonstrate to the opposition a level of transparency that it has routinely promised and convince us because at the moment we are unconvinced of the need to extend the temporary section 72A powers of the Emergency Management Act beyond 4 July. If there are gross deficiencies in other acts, the government should tell us what they are and we will work with the government to fix them. We will work with the government to build a framework, preferably within the Public Health Act, that allows this state to respond and continue to respond appropriately and proportionately to the public health risk that faces Western Australians.

I am hopeful, as I said earlier, that this will be the first occasion in which the Legislative Council has had the minister responsible replying to the debate and engaging in the committee stage of this bill. I am hopeful that we will be able to make progress on this bill and understand some of these issues that, to date, have not been forthcoming.

**HON TJORN SIBMA (North Metropolitan)** [7.40 pm]: Following on from Hon Martin Aldridge's contribution to this debate on the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill 2022, it behoves me to disclose that it is very difficult to add meaningfully to the stellar contribution that he has just made to the chamber. For me, there were some key themes and some key terms that are worth our contemplation and cogitation. One of them is about the proportion of this as a response. Another word that I would add that I think is material to our contemplation of a bill, the like of which we have seen four previous versions, is one of proportion—proportion to risk and proportion to the set of circumstances that we actually deal with. First and foremost, this jurisdiction has both benefited and lost from the executive powers that have been brought to bear to manage the COVID-19 pandemic in Western Australia. I have acknowledged on the public record that Premier Mark McGowan and the McGowan government dealt with COVID-19 exceptionally effectively, at least insofar as the first phase of the management was concerned. I think things became concerning—again, I made some very public remarks on this—when there was a reneging on the original commitment to open the border. I will only touch on that in my contribution.

It was very clear towards the end of last year, when we were dealing with the fourth version of this bill, which was the third extension of the extension, that perhaps we as a chamber should apply more scrutiny and we should apply ourselves more diligently to having the government explain the necessity of this instrument. Throughout his contribution, but particularly in his summation, Hon Martin Aldridge also alluded to the fact that in this jurisdiction, we have had an inversion of the onus of proof. Never comprehensively, consistently or meaningfully has the government explained why we are in a state of emergency. That explanation was easy to provide, particularly in the early days of COVID, and particularly when this chamber first started being energised by the issue as early as March 2020. In March 2020, COVID-19 was an absolute mystery, not only to ourselves, but also to people around the globe. It was prior to the emergence of a variety of variants and prior to R&D trials on a range of effective vaccines.

We are dealing with a set of scenarios that are markedly different from the situation we faced in March 2020 or November and December 2020 or even throughout last year up to November. We are absolutely in a different phase of management. Hon Martin Aldridge pointed to a fact that is often lost when our colleagues in the fourth estate consider these matters, which is that we have dual state of emergency declarations operating concurrently, and have had unbrokenly for two years. One was made under the Emergency Management Act and the other under the Public Health Act. Both respective acts enliven a range of different powers. It is not true to say that we live under one state of emergency; we live under two. The powers enlivened by a state of emergency under the EM act 2005—dare I use a phrase to describe this in a way that makes me look like an unreconstructed male—are more muscular and more assertive. They provided the scope for the hard border to be implemented. I will use this opportunity to again say that the hard border was absolutely the right decision. Irrespective of the pain and discomfort that that caused people, that was the right, prudent course of action to take because it was to the benefit of the community's safety, particularly when the vaccine rollout was embryonic. But once we got to the point at which we crossed the 95 per cent vaccination threshold, those sorts of COVID-zero policy settings were a nonsense and anathema to proper administration, proper legislation and proper action in this state. We are being asked again to basically take on trust that we are in a state of emergency. Hon Martin Aldridge is right; these are distinct but related issues. We are dealing with a bill that attempts to extend certain powers under section 72A of the EM act for another six months, but they can be operative only so long as a state of emergency is declared under the EM act.

Is the perpetual, unbroken chain of EM act state of emergency declarations appropriate? When the EM act 2005 was debated, it contemplated a future pandemic, but it was largely grounded in natural disasters like cyclones and bushfires. In 2005, obviously, it was post-September 11, post-the Bali bombings, and post-the discovery of active Jemaah Islamiyah agents in Western Australia, so if the act was not to be used for a natural disaster contingency, it was to be used for mass casualty terrorism incidents. Is it appropriate for a verbal piece of advice to be provided



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to an emergency management minister by a police commissioner or some other person that we are in a state of emergency in those circumstances? Abso-goddamn-lutely! But the act never contemplated a successive, unbroken chain of fortnightly state of emergency declarations. That has never been contemplated. Is it appropriate, taking a broader view, that that should happen? The historical records suggest that no, it is not. We do not have to look at our own formation as a self-governing colony or the construction of the Australian Federation. We can go way back, if members like, to the penultimate but glory days of the Roman Republic some 2 000 years ago when the Romans recognised that the republic had to deal with certain scenarios, the response to which would be delayed only by contemplation and argument in the Senate chamber, so the office of dictator was established. I use the word “dictator” advisedly and do not bear any reflection on the current Premier. There was a recognition that dictatorial powers would be needed to transition through an emergency, but they were certainly circumscribed. They were time limited to six months. In a sense, this government has gone backwards beyond the example set more than 2 000 years ago because we are still in a state of emergency.

My very honest question to the Minister for Emergency Services is to describe how we are in a state of emergency. It is one thing to say to say that we are still in the midst of the dynamics of a global pandemic. That is true, but this pandemic is—I hate this phrase—the new norm. By definition, it cannot be an emergency because an emergency is something atypical, temporal and time limited. It shall pass. Never was the Emergency Management Act designed, and absolutely a state of emergency declaration power was not designed, to be used as a permanent or perennial state of affairs. That is simply wrong. It is wrong in law, wrong in practice and wrong in principle, yet it provides the government with the most expedient way of dealing with circumstances as the government sees fit. Obviously, governments deserve some latitude. They are elected to govern and have executive responsibilities to fulfil. However, it is not an untrammelled right. It is not something that should be utilised beyond the scope of transparency and accountability or constraint. In every other Australian jurisdiction, a sensible adult position has been adopted that the perpetual use of these kinds of powers is extraordinary and is generally not a good idea. There is the transitioning of our nearest neighbour, South Australia, to actually end its state of emergency and deal with the dynamics of COVID-19 as something akin to a perpetual serious public health management issue. There will be differences in the way that South Australia deals with it, but generally that principle is right. It is a principle that I think we should learn something from.

From my perspective, I am absolutely unconvinced that we are in a state of emergency as contemplated by the Emergency Management Act. We are not. It is simply a nonsense to assert that—absolutely it is. Where, then, is the responsibility on the executive government? The responsibility, I think, should be on explaining why we are indeed in a state of emergency. That explanation has to get to the nature of the emergency and it need not and should not be founded on the fact that powers available under that invocation are convenient to us. That is a very, very risky argument to run. It is a dangerous precedent to establish, and it has been established.

I am, strangely, agog. I will, for a temporary period, make a broader political observation. As a student of Australian politics, as a weird child in the 1980s and an adolescent in the 1990s, I always thought it was almost a rule of nature that someone on the left wing of the Labor Party, that sort of civil libertarian and social justice strain of the left, particularly those of a loyally inclination, would find it an absolute aberration and outrage that any jurisdiction could be governed through extensions of states of emergency. Something has happened to the political left. Obviously, the desirability of this state of affairs has been invoked. I put it to members this way: if a centre-right government proposed to continually roll out states of emergencies in this jurisdiction without justifying why, the left would raise merry hell, and guess what? They would be absolutely justified in doing it. So, where are we then? I take as read, because he is a person of virtue, the minister’s sincere declaration that when he says that he gives contemplation to approving these extensions of the state of emergency, he takes that job seriously, as well he should. My humble piece of advice would be, however, to have a paper trail for making those decisions, because these are extraordinary powers. These are aberrant; they are an aberration from the natural course of affairs. I think that should be an expectation.

My simple question is thus: after the government has opened the borders and has reduced the majority of restrictions as they relate to mask wearing, personal gatherings and the like, and as we have a population that is, if not the most, among the most vaccinated globally, how would it not manage this issue now as an ongoing public health management issue? In dealing with COVID-19—this is not to diminish the serious health challenge it presents, particularly to a class of vulnerable individuals—why would the government not have used the last two years to move these powers and its responses to their appropriate home, which is under the Public Health Act? The argument from the government is likely to be that the Public Health Act does not provide it with the kind of scope and latitude that it would prefer. That is always going to be the case. The government is always going to want more powers than it needs. That is not a sufficient argument. My observation is that I think it has neglected the opportunity of the last two years—to be fair to the government, the last six months—to start making more appropriate legislative transition arrangements than it has been wont to show. If the Public Health Act is in any way deficient—enormous

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scope and power is provided to deal with states of emergencies declared under that act, but also serious health issues and the like—why do we not work together on ensuring that the act is fit for purpose?

Perhaps I will make another contribution from the cheap seats. Now that we understand that a pandemic is not a speculative thing—it is a very real thing—why do we not have pandemic-specific provisions within the Public Health Act? It would be absolutely naive of us to assume that this is the only pandemic that we will have to deal with. It is juvenile, stupid and naive to consider that we will not be in a similar set of circumstances again. Why do we not prepare the ground, as it were, to do that? Unfortunately, the Minister for Health was not in a position to answer questions without notice today. This is no reflection on that; it is just a statement of fact. I might just put my intended question to that minister for the record. Perhaps this is something that the Minister for Emergency Services might be able to address in his response, although it does not relate specifically to his portfolio but is obviously adjacent to the contingency that brings us here. I ask the minister regarding the government's utilisation of the Public Health Act 2016 during the COVID-19 pandemic whether a review of both the act's effectiveness and whether it has actually been used effectively to deal with the dynamics of COVID-19 has been undertaken? If that work has not been done, I suggest in all modesty to the minister that that is probably an important piece of work that the government should give contemplation to. Following on from that, would the government ever give consideration to creating more explicit provisions within that act to deal with a pandemic the likes of which we are still experiencing?

I say that because I think we need to—I use this term advisedly—demilitarise our response. Pandemic management should not be a perpetual police operation. The task force assigned to Operation Tide has diminished. I think there is a smaller force than the full complement that was given to it prior to the border coming down. It is naive to assume that if a pandemic is a hazard, we need hazard management officers and they are likely to be sworn police officers. That is not to say that police should never be involved in a pandemic, but primarily it should not be an ongoing police operation; it needs to be a public health management matter. This is where other jurisdictions have gone. If that requires the introduction of bespoke legislation, as is the case in Victoria and is likely to be the case in South Australia, or it requires, in the go-your-own-way Western Australian style, looking at how we use the Public Health Act better, I suggest that that is the way we do it.

The government will obviously say that the passage of this bill is a life or death matter. I would argue that when it brought in the very first iteration of this bill, that was absolutely true. But it is important to deal with the facts as they are and not grandiose, speculative, fearmongering assertions that people will die if this bill does not pass. This bill will pass and, unfortunately, due to the nature of the virus, people will still die. But the facts bear repeating to ensure that our legislative response is proportionate, and they are thus: over 450 000 Western Australians—probably now approaching 500 000 people—have contracted COVID-19. That in itself may be an underestimation, but let us just say that that is valid. How many of those have been hospitalised? It is not a trivial issue to be hospitalised; I am not saying that. It might be, cumulatively, since the borders came down, between 2 000 and 3 000. My assertion bears correction, but I think that correction is to the elevation of this chamber, so we are dealing with tangible numbers. Of that number, I think between 40 and 50 unfortunate individuals have landed in an ICU. Again, that is no trivial issue. As we learnt from a report in WAtoday last week by Heather McNeill, an unfortunate dozen have been placed on respirators, and, obviously, many people have passed away. When we take all those numbers together and deal with the sad facts of life, do those raw numbers, in the context of an exceptionally highly vaccinated population, of themselves justify a perpetual state of emergency and, therefore, largely justify the passage of this bill? I put it to members humbly, and not without some trepidation, that no, that is not true. I do not think that is justified. Is there a better way of protecting the most vulnerable members of our community that does not treat this as an ongoing police operation? I think there is and I have provided the options. There are options to do that. We understand that we are under a time-limited debate. There is a view that this legislation needs to be in place to take us from July to January. That is the claim that the government will make, but the onus has to be on it to prove it.

Throughout the debate, as we have transitioned, the justification has shifted. The facet of the bill that I will concentrate on now to hopefully get some outcome in either the minister's second reading reply speech or certainly in committee deals with the foreshadowed amendments to the Criminal Code to introduce increased penalties, and I think that is dealt with in clauses 4 and 5. Just in summary, this is not to trigger the Leader of the House, but I am doing my best to channel —

**Hon Stephen Dawson** interjected

**Hon TJORN SIBMA:** Okay, minister. It might invoke some contemplation or remarks from the other side, but I will do my best to channel Hon Nick Goiran in his absence.

Several members interjected.

**Hon TJORN SIBMA:** See? I knew it would elicit some response! I would be disappointed if it had not!

Several members interjected.

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**Hon TJORN SIBMA:** No, no! I think that member has absolute merit and is an exemplary parliamentarian, and I know he will be taking a very close interest in these proceedings.

Several members interjected.

**Hon TJORN SIBMA:** Well, I am my own man, after all! The member has conceded that. I shall do this in a jovial way, just as an invitation to elicit some sort of meaningful contribution so that we can actually assess the government's assertions that this bill will actually do what it says it will. Let us focus on clauses 4 and 5. I am very happy that my friend the parliamentary secretary to the Attorney General is here for this piece, because I think he will probably have something to add. That is not an invitation to unruly interjection, but I think there are some very basic questions that need to be answered. Forgive me that I am not amongst the government's learned colleagues. I avoided law because it was my assessment that it was a repository for the aimlessly clever, and that assessment has largely been proven correct over time, but perhaps even I will look forward to a post-parliamentary career in law—who knows? I might have to remediate that lack of knowledge.

I will make two observations. Clause 4 proposes to amend section 318 of the Criminal Code by extending the temporary maximum penalty of 10 years' imprisonment by a further six months for what I think are described as "COVID-19 assaults". I think I have categorised that on certain people, but this is generally aimed at protecting police officers, as far as the minister's second reading speech was concerned. This issue was canvassed in the briefing we received from the officials: as I understand it, on average, over the course of COVID, only one charge has been laid every month—I will stand corrected, if I should be corrected—but no person has been sentenced, when found guilty, to a penalty that is anywhere near approaching the current penalty under the Criminal Code, which is seven years' imprisonment, let alone the extension to 10 years that is contemplated under clause 4. In any event, I want to know whether this amendment is strictly necessary, given that charges can still be laid under the current Criminal Code. That begs the question: if penalties are not going to be applied by the courts in this way, what satisfaction should we take from the fact that the maximum penalty exists as a hypothetical maximum?

I have been slightly confused by the government's political orientation in respect of the utilisation of state of emergency declarations, and whether it is consistent with what I understand of the political left. However, I very much know that the government does not support mandatory sentencing, so it can provide absolutely no reassurance that a 10-year penalty will ever be applied. The judiciary is certainly not applying the seven-year penalty that is currently provided for under the Criminal Code. If, indeed, that is true, then any justification for the passage of this bill that rests on some sort of notional additional support for police officers is absolutely fallacious. If that is the argument, it is not something that is likely to be the case, because the current arrangements, with a seven-year maximum, are not being implemented to the full by the judiciary, so what level of protection actually is there for serving police officers?

Similarly, I am given to understand from the briefing and from a close reading of the bill that clause 5 will amend section 338B of the Criminal Code, again by extending the temporary maximum penalty of seven years' imprisonment by a further six months for what is colloquially described as COVID-19 assaults. These are not trivial assaults; it is a very peculiar and pernicious kind of threat to make, and I want to underscore that. It is absolutely atrocious that someone would threaten an officer who is attempting to apply the law by saying, "I will give you COVID"; there is absolutely no dispute about that. Where the disputation arises is whether the purported increased penalties would ever be applied, if we give consideration to how the currently relevant operative section of the Criminal Code is applied to similar circumstances. Indeed, let us talk about the volume of these kinds of assaults. We can do this in this chamber; members in the other place cannot. They are given to cant, invective, ego and all that sort of stuff. That is their nature in the lower house, and I do not expect much more of them, frankly.

Several members interjected.

**Hon TJORN SIBMA:** Oh, it is universal; I condemn everyone equally. I am an equal opportunity employer when it comes to my disdain for most people generally; certainly most people in the lower house. This transcends parliaments, by the way; it absolutely bears no partisan allegiance. I am one of those kinds of people who sort of look down their nose. But we in this chamber have an opportunity to actually give some rationality, contemplation and rigour to the kind of legislative product that we are served up and asked to pass without demur. Again, I would love to be corrected, and I hope I am corrected—who knows; you might change my mind, but I still possess mastery of my own domain and it would be to the benefit of this chamber—but as I understand it, with respect to this clause 5 provision and how it relates to the current Criminal Code, only one relevant charge of this nature has been laid over the course of two years. Again, this goes to understanding the risk threshold and what it is we are actually trying to deal with. We want to give police officers and other hazard management officers in this state absolutely every protection they deserve. That is beyond question. Do we wish to imperil them more than they are already imperilled in the discharge of their daily duties? Absolutely not. The thin blue line that keeps order in our society is probably not heralded enough, in my view. They are commensurate with members of the ADF, who keep our borders protected.

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But we need to not act on sentiment and feeling alone; the arguments have to be justified, and they have to be based on the facts. This comes back to the central criticism elaborated exceptionally well, masterfully and comprehensively, by Hon Martin Aldridge. What a debate on the facts would necessitate is disclosure of the facts in a timely way.

The government has won all the political prizes; truly, it has. There is absolutely no need to perpetuate COVID-19 management as an act of political management rather than as a public health issue. The only way in which we can have proper debate and proper contemplation is by presenting the facts, and these facts generally have been withheld, time and again. A government that does not trust the public with facts is a government that invites itself not to be trusted as an act of reciprocity. At the moment the government is trusted, but it cannot bank on that lasting forever.

I have already made mention of the piece by Heather McNeill from 11 May in *WAtoday*, titled “The unexpectedly tiny COVID-19 number WA Health didn’t want you to see”. For me it is not so much the size of the number, because I was talking about proportion. It is the lengths that the bureaucracy goes to, so I am not roping ministers into this necessarily. I just made a speech in contribution to the budget debate in which I said I thought there needed to be a systematic review of the Public Sector Management Act. Guess what? If the government wants political transparency that is worthy of the name in this jurisdiction, we certainly need more transparency out of the senior echelons of the public sector. They are people with enormous power and enormous influence, who, frankly, take a lot of pay home. They have not suffered throughout COVID-19 as people who run a small business have. They have been protected. I will not read in that article, but the lengths, the subterfuge, that a department and ministerial staff will go to to prevent a journalist from obtaining information that is, frankly, not life threatening and does not compromise the security of the state bears reflection by every sensible and thoughtful person of this chamber. My first job was in the defence establishment. I have some understanding of what national security means, what confidential and sensitive information is and what the impacts of unauthorised disclosure might be. None of those numbers should be a state secret, but they were treated as such. That should shame a government of any hue, and it should shame a government that purports to set new records in openness, transparency and accountability.

I have one last bit to sum up on. Finding my way through government bills over the course of the last five years, I have learnt to read everything in conjunction with other things. The political inclination and, strangely, the weakest part of the bill can be found in the media statement that announces the tabling or the reading in of the bill. The media statement of Tuesday, 10 May, which is called “Bill introduced to provide certainty on COVID-19 response measures”, begs an obvious question with its first point. It states —

- The Bill seeks to provide six-month certainty for COVID-19 legislative amendments

It then goes on to say that the state of emergency does not extend of itself, because it cannot, obviously. It is renewed fortnightly, the reasons for which are never published, justified or provided and are taken verbally. Let me posit a hypothetical, because we have learnt to deal with hypotheticals in the last two years. What would the government do if all of a sudden the Minister for Emergency Services was unconvinced over the course of, say, the next month to extend the state of emergency? Would the dynamics of COVID-19 change very much? Would there still be a threat to police officers attempting to implement the legislative instruments they have been asked to implement? How do we transition beyond a state of emergency if, indeed, the government says not to count on the fact that there will be a state of emergency in six months? I hope there is not, but the longer a scenario has continued, the more likely it is to be perpetuated.

I suppose this is the plea. This bill is going to pass. Those who oppose the passage of the bill will be diminished, hectorated and defamed, as has been the Premier’s wont over the last two years. We are used to it and I do not care. I will not launch defamation action. It is just part of the slings and arrows. How about this: How is the government going to deal with COVID after the state of emergency? What are the minister and the cabinet going to do when the Chief Health Officer and the Commissioner of Police one day decide amongst themselves, “Guess what? We don’t think there’s a state of emergency anymore”? I do not attempt to give a flippant contemplation, but that might happen. If that is likely to happen, if they are unconvinced—obviously, under the terms of the act, the minister has to be unconvinced—how will the government deal with COVID-19 after that? It will be with us for years and years, and the sooner we get around to dealing with it as an unfortunate state of affairs, the better. I look forward to debate in the Committee of the Whole House stage of the bill.

**HON SOPHIA MOERMOND (South West)** [8.15 pm]: I rise today as the lead speaker for the Legalise Cannabis Western Australia Party to contribute to the second reading debate on the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill 2022. As we know, this bill will amend the Emergency Management Amendment (COVID-19 Response) Act 2020 to extend the sunset date that applies to section 72A of the Emergency Management Act 2005. The powers under that provision will be extended to this government for a further six months beyond the current sunset date of 4 July 2022. Section 72A allows relevant officers to take or direct a person or a class of persons to take any action that the relevant officers consider is reasonably necessary to prevent, control or abate risks associated with the emergency, in this case COVID-19. It also allows a relevant officer to direct a person

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to provide certain types of information. Given we are extending these very serious powers again, it makes one wonder how long an emergency is for, really.

This legislation also seeks to amend the Criminal Code and the Criminal Code Amendment (COVID-19 Response) Act 2020 to ensure that high penalties continue to apply to serious assault and threats against public officers committed in the context of COVID-19 for a further six months beyond the current sunset date. Anyone who is working at the moment in any sort of official capacity should not be assaulted while they are at work, so this is important to keep those people safe. Those provisions sought to highlight the seriousness of offending against public officers and certain other officers delivering frontline services, including police officers, doctors, nurses, ambulance workers, bus drivers and prison officers, when the offender has COVID-19 or makes a statement or does any other act to create a belief, suspicion or fear that they have COVID-19. It includes a maximum penalty of 10 years' imprisonment for certain serious assaults and a maximum penalty of seven years' imprisonment for threats to injure, endanger or harm certain categories of persons by exposing them to COVID-19. Again, given that we now have a better understanding of the disease and how it works, do we really need these hysterical, over-the-top types of penalties relating specially to COVID-19? I am not sure that we do.

The Legalise Cannabis Party is not the government, but we are also not the opposition. My colleague, Hon Dr Brian Walker, and I are here as members of Parliament to do what we think is in the best interests of our community, and not just the cannabis community, many of whom, I might add, are out and about at the moment during this federal election campaign putting forward a positive and exciting message about the potential for the legalisation of cannabis in Australia. WA could do far worse than see someone like Nicola Johnson, the Legalise Cannabis Australia Party candidate for the Senate, get elected. But as I was saying, we are here as members to represent all voices in our community, and many in my community have come to me and said that they do not believe that Western Australia needs to continue to live in any sort of emergency situation anymore. What we need to do is to learn to live with COVID, just like we do with many other diseases such as the flu. A state that continues to have its citizens living with their rights curtailed, where they are expected simply just to bow down to the government and do what they are told and where their privacy is lost, is not a state I want to live in. That is not what the state of Western Australia is about. We are a free and open society that is known across the world as being a beautiful place to live and work and where people have the freedom to be themselves.

The pandemic has seen Premier Mark McGowan and health minister Sanderson overstep the mark by a long way. Many of these steps have been backed in part by the legislation we are debating here today. These powers have meant that the government has treated us like children, making decisions that are apparently in our own best interests, yet with very little—or mostly no—consultation or transparency. Whenever anybody speaks out or does not do as they are told, this group of ministers, from this government, instantly become the mother of our childhood: they are not angry; they are disappointed in you. It is condescending in the extreme. WA has been out of step with the rest of the nation from day one of the pandemic, whilst places like Victoria, which has been worst hit by COVID-19 and the associated hysteria that has accompanied it, is getting its citizens to take off their masks and reopening its economy. WA is still feeling the effects of a hard border and is further distancing itself from the rest of the nation. Whether this Premier and his government ministers are listening, the public has not been 100 per cent in lockstep with them on these issues—by no means. We have seen protests. We have seen community members speak out against the restrictions imposed by this government. During the most harrowing of times, we have seen heartbreaking stories of loved ones disconnected, businesses going broke, people committing suicide and an increase in domestic violence. Many disagree with how this pandemic has been handled and how we should continue to deal with it in the future. There are people who did not want the government to force them to be injected with an untested vaccine or risk losing their job. They did not want to see the creation of a two-tier society based on medical information. There were people who did not agree with lockdowns or hard borders.

I am one of many who have tried to amplify the voices of concern from within my community. They come from all quarters and all walks of life. I constantly get members of the public contacting me and my staff every single day. They range from single parents to employers and employees to business owners. They are concerned about the current restrictions, the stress they cause, and the confusion associated with them. As soon as anyone speaks out on these issues or starts questioning the data behind the decision-making process, they are labelled as dangerous or an alarmist, an anti-vaxxer or anti-science. I can tell members that I am none of those things. Do we really want to continue to give this government these powers every six months when it asks for them? Are we going to just blindly renew these measures that give away our citizens' rights like this?

During the Committee of the Whole House process, I will move amendments that I think will allow for people in this house to still give support to the government if they wish, whilst also providing a clear path forward as it relates to these important issues. My first amendment will insert the word "Final" at the beginning of the parentheses so that the title would then read: "COVID-19 Response Legislation Amendment (Final Extension of Expiring Provisions) Bill 2022". Today should be the very last time that we do this, if we do it at all. By adding the word "Final" to the

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bill's title, it indicates that we heading towards an end point. No-one likes lockdowns. No-one likes restrictions on our freedoms. Lockdowns and vaccine mandates affect people's livelihoods, our wider economy and our mental health. They weigh heavily. We all want it to go back to the way it used to be before the pandemic.

I understand that blindly ending restrictions does not lead us back to the way that it used to be or lead us to where we want to be in the future, but there must be some sort of compromise. Restrictions have been imposed on communities wherein a careful balance has had to be struck within different human rights, and I am not sure we have that balance exactly right here in WA. On the one hand, we have the right to life and the important right to health; and on the other hand, we have rights such as the freedoms of movement, association and peaceful assembly and the right to privacy—something that I believe has been trampled on during the last few years across Australia. Some restrictions on human rights may be required to avoid serious risk to public health. I understand that. But is COVID-19 still a risk that large that we need to give up these rights? Any limits on human rights must be reasonably necessary, proportionate and evidence-based. Again, in the last few years, I reckon we have been a little iffy on all three of these measures. The government should look at pandemic-specific legislation that can futureproof WA against not only COVID-19, but also other such pandemics. All states across Australia have declared a state of emergency or equivalent, giving governments and health officials broad powers to limit individual rights and freedoms under the guise of protecting public health. These emergency declarations were designed for a short-term health crisis. That is why I have called for pandemic-specific legislation, meaning that this would be the final time that we extend these provisions as they relate to COVID-19 and we can think about writing legislation that covers us for not only COVID-19, but also other such pandemics.

My other four amendments seek to change the date of sunset on these laws and bring the dates forward to 20 November or 21 November depending on the amendment. This would give the government time to draft new laws and have a proper public debate about how we will move forward. It would also allow for those people still affected by current restrictions to know that next year they will have a “clean slate”, if you wish, to run their businesses and lives as they want to. As a side note, my second amendment will serve as a test for amendments 3, 4 and 5. Any laws should include things such as ensuring that Western Australian human rights are at the centre of government decision-making; having much clearer communication to the public about any restrictions; and having effective and accessible avenues of review, particularly for individuals who are subject to detention orders. The government needs to be much clearer about how it will protect private information and limit how that information can be used. Such information should be used only for public health reasons and should not be made available to the Western Australia Police Force or anyone else for that matter. The right to protest and to assemble peacefully should be limited only when absolutely necessary, with the focus of a pandemic response being a health response and in no way a law enforcement-based response, with police being more educated on how to use discretion and warnings. These are the sorts of things that we need to enshrine into pandemic legislation, which seeks to ensure that WA can live through COVID-19 or any similar pandemic.

I urge the government to listen to the concerns of the community and accept my amendments, which I will have more to say about during the committee process.

**HON JAMES HAYWARD (South West)** [8.28 pm]: I rise to make a contribution on the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill 2022. As has been said by a number of speakers already, we know that Western Australia has had these state of emergency powers in effect for around two years and are now set to be extended for a further six months until 4 January 2023. This is the fourth time that the government has sought to extend these powers since the pandemic began.

I appreciate that we are currently experiencing a surge in the number of COVID-19 cases in WA and that public measures are necessary to minimise the health risks that the virus presents, particularly to the vulnerable members of our community. However, I urge the government to investigate other avenues to enforce restrictions. The Public Health Act could potentially be used. Again, this has been outlined by previous speakers. I note that South Australia has also recently moved to introduce legislation to amend its Public Health Act to allow for the state to end its state of emergency declaration. That is an important thing to do. We should be looking at having legislation that is fit for purpose and that will enable the government to do what it needs to do to roll out these measures. I understand and expect that the government will tell us today in its response that there are certain elements for which there is no legislation at the moment, and that is the reason that it needs these emergency powers. However, at some point, these things have to come to an end, and the government needs to take responsibility and bring them to an end. I certainly hope that at the very least, this will be the last time that we have to debate these emergency powers in this house.

I would suggest that rather than us still being in a true state of emergency, we are adapting to the new COVID normal. For as long as we remain in a state of emergency, we risk undermining the nature and purpose of the legislation. We also send a message that an emergency is not in fact always a true emergency. I question whether it is in the public interest to subject Western Australians to a constant state of emergency in which the parliamentary scrutiny and oversight that underpins our democracy has become weakened.

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When this COVID stuff first started, we watched on the television news every night pictures out of Italy and India of absolute horrendous circumstances. The vision that the community was seeing was like that of a war zone. We also saw news about the massive number of deaths in the United States, where there were so many dead people that they could not fit their bodies into the morgues and were putting them in freezer trucks. It was absolutely frightening vision. It scared the community. There is no question that in those early days, the absolutely appropriate step to take was to declare a state of emergency and prepare Western Australia for what looked to be a very serious onslaught and problem that it could potentially face. However, today our community does not feel the same way. If we think about a real state of emergency, it is what we are seeing on television about what is happening in Ukraine. If we were experiencing anything like what the people of Ukraine are experiencing tonight, we would all say that we are in a state of emergency. However, the problem is that I do not think the community believes that we are in a state of emergency. Some of us have already had COVID. Many of us have loved ones who have had COVID. My son had COVID some weeks ago. Fortunately, because of the good measures and good preparation of this state with people being double and triple-vaxxed, most of the people who have been vaccinated and get COVID get a fairly mild dose. I am very fortunate because my son was not that sick at all. I know that for others, that is not the case, and I certainly feel for them. The reality is that we are living with COVID. The fear that existed a year and a half ago is simply not here now. We know that we have a strain that is far less devastating in its effect on people, albeit I acknowledge that some people will ultimately succumb to this disease, and that is a tragic loss. The point is that people are not in the same mindset that they were in. The government has a responsibility to understand where people are at now.

I want to give members a couple of examples. I lived in the north west for quite some time in my role as a television journalist and reporter and went through a number of cyclones. I worked closely with police and other emergency services and watched the way those things are managed. Cyclones are given a rating from category 1 through to category 5. A category 1 storm has a maximum wind speed of up to about 88 kilometres an hour. We get those in Perth all the time. People who live in Karratha or the Pilbara know that under the building code, buildings have to withstand a category 3 storm. A category 1 cyclone does not pose much risk to communities like Karratha or Port Hedland. It will bring some rain and a bit of wind, and bring down a fence here and there, but generally it is not a big problem. However, by the time we get to a category 5, the wind speed might be over 200 kilometres an hour and even exceed 280 kilometres an hour. That is a completely different kettle of fish. I have seen the aftermath of a number of category 5 cyclones. The devastation that is unleashed on the community is horrendous.

It is interesting. I will bring it back to what we are talking about in a moment. We are talking about managing an emergency. When the authorities know that a cyclone will reach only category 1 or 2, they put the community on blue alert, which tells people to be aware that this could happen in the next 24 to 48 hours. They then go to yellow alert, which means that in the next 24 hours they could be impacted. However, they often do not go to red alert. If it is only a category 1 or 2 storm, often they will stay on yellow alert. They do that because they do not want people to think that this will be the worst of the worst and get all their mates around to have a few drinks and have a cyclone party. The reality is that because a category 1 storm is quite mild, people do not get the sense that it is life and death. I know people who have been out in a category 5 cyclone and have had to drag people out of houses that have been disintegrating. It is frightening. When we see the aftermath of a category 5 storm, it is massively devastating. The reason the authorities do not go to red alert is that they do not want people to get complacent or to think that this is what a red alert is all about. When the authorities manage a cyclone—the Minister for Emergency Services would be full bottle on this—they manage that on a number of different levels. There is a response that is appropriate to a cyclone that may be only category 1 or 2, and a response to a more severe cyclone that is category 3, 4 or 5. These things are managed differently. We are not seeing that in what is being rolled out with this state of emergency legislation. I agree that the state government has been making decisions as it goes along, and many of those have been the right ones. I am not saying it is all being managed in the same way. I am saying that the legislation that underpins it in this instance has not changed, and I am not sure that is what we need right now.

I will give members another example. When we drive along the freeway, we may come across signs that are flashing a speed limit of 40 kilometres an hour. It has happened to us all, I am sure. We obviously think that people are doing some roadworks, but when we drive past we discover that it is a broken-down car that is five metres off the road, and we wonder why we have to drive at 40 kilometres an hour. It is because the emergency is not real. The danger is that the next time we see a sign that flashes 40 kilometres an hour, there may well be people working on the road. The problem is that when it is a false alarm, we send a message to the community that perhaps it is not as bad as it might be. That is a dangerous place to be. I do not think we want to be in that place. It is the government's responsibility to make sure that what it is doing in this space is appropriate and that the messages it sends to the community are in line with the community's expectations under this state of emergency.

At some point, we need to bring the state of emergency to an end. I accept that sometimes there are things where the t's are not crossed and the i's are not dotted. It may not be possible to stop the state of emergency today because there are still parts of the working machine that are not quite right. However, this should absolutely be the last time that we do this. I encourage the government to go away and make ready legislation that will enable us to deal with

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an ongoing pandemic without requiring this constant state of emergency. I urge the government to use the next six months to do the research and commit to an alternative measure for dealing with COVID-19 as we transition to living with the virus within our community. Thank you.

**HON WILSON TUCKER (Mining and Pastoral)** [8.39 pm]: I would like to begin by stating that I agree that the emergency powers contained within the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill 2022 should be renewed today, given that we are seeing a large number of active cases in the community. We are seeing around 15 000 cases today, and some of the up-to-date modelling indicates that a spike is likely to come in the next couple of weeks. We all know that we are in a vulnerable position with hospitals and our ambulance service. Given the state of affairs with hospitals and the ambulance service, I do not think it is the right time to flip the script too much, and we should continue with the norm by renewing these powers and this legislation.

The point I would like to make today is around the responsibility that the government has in managing expectations throughout this pandemic. We know that the government plays a very vital and major role in managing the pandemic. It also has a role in managing public sentiment and setting expectations throughout the pandemic. If the government does not manage that sentiment correctly, it can turn and have negative consequences. Based on some of the decisions that the government has made throughout the pandemic, we are seeing that play out with a level of discontent and an erosion of trust in the community.

Given how late we are in the pandemic, it is surprising that we are still seeing some mixed messaging from the government on the state of the pandemic and where WA is on this life cycle and this journey of COVID. On one hand, the government is saying that WA is open for business, we want tourism, we want people to migrate here and we have a lot of struggling industries that could certainly use people coming back into the state, and on the other hand we have a state of emergency without a clear end date. We know that immigration to WA is a good thing. We certainly want people to come back to WA. We know that one in 10 people who migrate to WA are tied to the construction industry. We have a significant labour shortage, certainly in construction, which is creating a bottleneck that is attributing to higher housing prices and a greater increase in the cost of living. That is a very topical issue right now that is affecting a lot of people in Australia, certainly here in WA as well. Some other industries are struggling, including tourism and hospitality. A lot of small businesses in those sectors have been doing it particularly tough for two years, and they can certainly use some people to come back to WA to take up positions in regional towns and to spend some money in this state.

We have had this proverbial axe, if you will, hanging over our heads for two years. Admittedly, the axe has been rather blunted recently. We have seen some of these restrictions lift. We are no longer having to check in on SafeWA, which is a good thing. We no longer have to use G2G PASS, which is also a good thing, and some mask restrictions have also lifted as well. Be that as it may, we still have this axe looming over our heads. There is an underlying fear in the community that at any time this axe could fall, the rug could be swept out from under our feet and we would be basically back at zero.

The good news is that WA is in a very fortunate position right now. We have a lot of good things going for this state, and certainly the government's response in the early phases of the pandemic can be attributed to some of those. We have a very low unemployment rate and cheaper housing in comparison with other capital cities in Australia, though not in relation to wages, but certainly compared with other state and territories, Perth is still relatively cheap. We have a lot of sun here. Perth is a very sunny city. We enjoy a very relaxed lifestyle here in the west. Arguably, it could be better if we had daylight saving, but that is probably an argument for another day. We had an amazing window of opportunity during the pandemic when all the other states were locked down and in WA we were living a rather unencumbered lifestyle. It was not completely unrestricted, but we were enjoying more freedoms than the east coast. In my opinion, it was a squandered opportunity that was not fully realised. The good news is that we still have another opportunity to act and encourage people back to WA, but that means we really need to forge a path out of this pandemic and help restore some of that broken trust that we have seen in the community, and signal to the east coast and the rest of Australia that WA is ready for people to come back in and we are indeed open for business.

I am advocating for the government to use the emergency powers, but only for the length that they are needed. I would expect that after two years the government should have some accurate modelling to predict COVID, when the peak will happen, when cases will drop off and when we will have fewer active cases flooding the hospitals so that, with a bit of a buffer, it can use that date to expire the emergency provisions, rather than just the standard blank cheque that we have seen every six months, again and again and again. Certainly, I understand that we are in a pandemic and there are a lot of unforeseen circumstances and situations that can arise, which we have seen with the various strains that have come along. But if government picks a date, this bill expires and some unforeseen situation arises such as a new strain comes along or something else that we need the emergency provisions for, that is perfectly fine. That is why we have the emergency bill provisions that we can rush through. I think the government would get bipartisan support for that. It really comes down to a trade-off, when we are potentially using a bit more of the government's time in Parliament to renew a bill, again, if necessary, versus choosing a date and communicating that with the public to then signpost to everyone that this is the date when we think that the pandemic will end,



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bringing some of that trust back and basically choosing a date when the government will think that the pandemic essentially becomes endemic.

I think this comes down to a question of trust. At some point we will have to trust the public to do the right thing. As we move from a pandemic to endemic, at some stage we will end up treating COVID like the flu. It will happen. We trust people to manage the flu or the cold or their symptoms and take appropriate action, to not go to work, to not travel on public transport, to not go out and mingle with people when they are sick, and at some point, we will have to give the public that same level of trust with COVID. Do I think that the time is right now to give that trust to the people, considering the vulnerable state that the hospitals and our ambulance service is in? No, I do not; not right now. Do I think that will be within the next six months? Yes, I do. To really summarise my suggestion and argument, it is my opinion that the government should not be asking for more time than it actually needs, to give an indication to the public for how long it intends to use these emergency provisions under the existing conditions and using its modelling to make a more informed and intelligent response, rather than just “six months and we will see”.

I would like to put one other argument. The longer we keep using the emergency powers, the more weight and credence we give to some of the disenfranchised and marginal groups, and certainly some of the right-wing factions that continue to make noise and prove right in their minds about the government’s overuse of the powers. The pandemic is a very contentious issue, not just in WA but certainly globally. This pandemic has certainly fuelled a level of mistrust in governments around the world and certainly here in WA as well. The longer we keep extending the powers unnecessarily and enforcing things like mandatory vaccinations, the more divided our community becomes. Rightly or wrongly, those people feel marginalised by the government. It is my firm belief that the government has a role to play in bringing us together as a community and not dividing us further than needed. That comes in the form of using the emergency powers only when they are required, setting expectations, being transparent with the community and also instilling a level of trust for the WA public.

**HON NEIL THOMSON (Mining and Pastoral)** [8.51 pm]: I was not going to speak on the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill 2022. Due to the time limitations, we have had rather succinct presentations by members of the crossbench. I would like to make a couple of points because I think the legislation is important. Hon Wilson Tucker made a couple of points that I would like to address. I want to put on the record that some of the surveys out there show that the opposition towards some of the issues around mandates and other aspects of the disease can be seen across the political spectrum. In fact, some of the polls out there show that Liberal supporters have the highest degree of support for some of the restrictions. To contextualise the issue as a right-wing or left-wing process is not completely accurate. That is just an aside.

My address is to academia, senior businesspeople, health practitioners and any person of curiosity. I am not here to try to convince those on the other side of my argument because I think their minds are set. I accept that and that is fine. Hon Wilson Tucker felt he had a position on the timing of this legislation. I do not believe that we are in a position to make a decision on that because we have not been provided with the evidence. When the evidence is not provided, I believe it is unfair for anyone of curiosity to make a decision. I was very inspired by the speech of my colleague who sits next to me, Hon Martin Aldridge. He read a quote from the Auditor General. I want to reiterate this because I am going to tell a little story that I think is pertinent. Maybe members opposite might learn a little more about me and my views on this matter in the process. Hon Martin Aldridge quoted the Auditor General, who said —

I should stress that to provide a comprehensive report on the management of the pandemic and impacts across the whole community would require a separate large-scale examination, which this was not. However, there would be significant future benefit from a systematic impartial examination of the response to this pandemic by both the State and the Federal governments, and its impacts on the WA community.

Recently, I had the opportunity to meet with some of my former colleagues with whom I worked at the former Department of Agriculture and Food when I was involved in research. I had not met with my master’s supervisor for nearly 20 years. He is a professor at the University of Western Australia. We had a very interesting discussion. I hold a master’s degree in science; it happens to be an agriculture economics degree. It is probably not my greatest piece of work. It was done some decades ago. It is not a piece of research that I would necessarily base a life on but I believe that I am a person of curiosity. I am a person who has been trained in the area of science and I believe I can speak just as much as anybody in this chamber on matters of evidence-based assessment. We are here today to make an assessment. I appeal to those in academia, in those senior roles, to think about this. Again, we are expected to deal with a bill that provides little evidence on why it is required. The title of my thesis was “Economic Evaluation of Public Sector Pest Control: Sheep Lice in Western Australia”. Members opposite are having a little snicker. They might get some more laughs about this shortly. The thesis was about the control of sheep lice in Western Australia.

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Again, I will not compare this with the complexity of the management of the public health issue because the issue of public health involves a fair degree of more complex mathematics than maybe I was managing at the time I did my thesis. The elements within that thesis that I believe hold true, all things being equal, go across a broad range of matters relating to epidemiology and economics. That thesis, notwithstanding the rather mundane subject of sheep lice eradication—I know that Hon Dr Steve Thomas as a former veterinary scientist —

**Hon Dr Steve Thomas:** Current veterinary scientist.

**Hon NEIL THOMSON:** Current, should I say. He has also studied in the area of epidemiology in relation to animal sciences. As someone studying in the area myself, I published in the *Journal of Veterinary Science*.

**Hon Dr Steve Thomas:** Step right up!

**Hon NEIL THOMSON:** There you go—step right up.

**Hon Dr Steve Thomas:** An august publication.

**Hon NEIL THOMSON:** Yes, it is an august publication. That study involved two parts of a bioeconomic model—the optimisation of the control of other spreading pests and disease and its control in relation to impacts from the economy.

Coming to this point about matters that I raise with those who might choose to listen and those persons of curiosity, who think about what is before this place without evidence of any substance being presented, three major principles stand true. The first relates to exotic pests—generally in a controlled environment; let us call it disease, and we talk about a public health issue. The control of diseases that are of an exotic nature—those that may be prevalent within the confines of other jurisdictions and the investment into a quarantine barrier—generally in the main has a much higher rate of return and is of paramount importance. We know that these things hold true in a general sense, all things being equal across all forms of control.

We saw in the context of the COVID-19 pandemic that the control of the barrier at the border was the highest and most important value—namely, the hard border when the disease became more prevalent in the other jurisdictions of Australia and, prior to its prevalence in Australia, the control of the international border. We saw COVID escape through some of the challenges we had because of its infectiousness and our inability to control it because some people were coming into this country out of necessity. We saw, though, the significant benefit that was provided to the community, and that significant benefit was not unexpected.

The second type of disease is more epidemic in nature, again, all things being equal. There is a lot of complexity to it but I will not waste time tonight because I am speaking in a general sense to persons of curiosity who may want to think about whom they will support in a future election. Epidemics can have a whole range of particular conformities. Some are cyclical; they come and go. Seasonal flu has periods when it is epidemic. It is epidemic for a short period in the wintertime, for example, and trails off to a background level. In a general sense, all things being equal, in the epidemic nature of diseases, the next highest in the league of importance is those for which the spread needs to be delayed, because investment by the state will usually result in a benefit–cost ratio that is greater than one by delaying the disease. I am speaking in economic terms. I do not underestimate the pain and suffering. Again, I am speaking to people of curiosity who ask questions. I do not mind what qualifications a person has. I say to persons of curiosity that there is a demand by people of curiosity in the state for answers from the government, but we are not getting those answers.

The third type of disease—Hon Wilson Tucker mentioned them—are those that are endemic in the community. We understand that the endemic nature of diseases can include shades of grey. Sometimes they are not completely endemic. As I said, the background levels of some diseases can come and go due to seasonal factors. In the main, the control by public means of those diseases generally results in a much lower rate of return from an economic perspective, looking at it just from that side of things. That is underpinned by social factors and, obviously, in the case of public health, by the significant challenges to individuals and even, sadly, the death of people with pre-existing conditions or those who are near the end of their life. I do not mean to discount or diminish that, but the reality is that it does not matter what the government does in that situation because sometimes it makes very little difference.

In finishing my point, they are the three factors that exist, all things being equal. It does not matter what this government thinks or tries to achieve, or whatever the State Emergency Management Committee conjures up, or whatever Mark McGowan thinks is beneficial from a political point of view, those principles exist and are true. I speak to the people of curiosity who might be taking the time to watch this or who read *Hansard* on this matter. All I will say is that we—those who deserve to know the answers—have not been treated with respect. This Parliament has not been provided with the proper modelling on these matters. The data has not been provided.

I am a person of curiosity. I might not be the most academic person in the world, but I spent time on and put effort into my studies. I believe that any self-respecting person who believes in the science and the evidence would say that the Liberal Party is the party of evidence and the party of science. All we get is spin from the other side. All we get is legislation rammed through on a purely partisan, political basis, and I am fed up with it. There is a part

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of my own story that I have not yet presented. I trust that although some people might not agree with me, they will at least have some respect for my position. I believe that the position the opposition is taking on this matter is fair enough and totally respectable, given the lack of evidence presented to the contrary. Thank you.

**HON DR BRIAN WALKER (East Metropolitan)** [9.05 pm]: I had not originally intended to stand and speak on the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill 2022, because the topic has been so excellently covered by previous speakers, particularly Hon Martin Aldridge and Hon Tjorn Sibma. I also doff my hat to my colleague, Hon Sophia Moermond, who has put our position as a party very clearly. However, as the only active doctor in the chamber—one of two in the house—I think it is appropriate that members hear from an active doctor how we see what is going on just now. There are a number of issues that we need to deal with.

The first question we have is: is this actually an emergency, and what needs to happen when an emergency is declared but the situation is under relative control? I am going to give an example from my own personal clinical life. Sometime back, when I was working in the wheatbelt as a lone doctor, certainly with plenty of help from the nurses and ambos, a woman was ejected from a car that was travelling at 100 kilometres an hour, at night. She lay for one night, or 12 hours, severely wounded in the dark. She was brought into my emergency department and I saw what was happening. I heard how the accident had happened. That was a major problem. Calling the Royal Flying Doctor Service was fine, but it had to get there. I had an emergency on my hands and someone could very easily have died. We could not sit around with a cup of tea wondering what we could do and look at the options. No; we had to act, we had to take action and we had to get clarity about what was going on. My primary investigation was to look at the urgent areas, which we looked at. It turned out to be a fracture of the neck, other vertebral fractures, rib fractures, a large laceration and possibly a chest contusion. She was losing consciousness and becoming increasingly confused. It was dangerous.

The first things I did, of course, were the emergency procedures. I put in a line and got all the observations done. The nurses knew it was an emergency because at times like that my voice is very quiet because you do not want panic during an emergency. When voices get loud and people start shouting, confusion happens. Clarity is required when managing an emergency, as is getting an idea of exactly what is going on to judge the situation. The secondary review of the patient, once she had been relatively stabilised, reassured me that although she might die, everything possible to keep her alive had been or was being done and things were on the mend. Yes, she was continuing to lose consciousness and there was an effect on the brain, but I could not affect that because I am not a neurosurgeon and there were no facilities there, but help was on the way. She had been stabilised. I had great pleasure seeing her some months later completely well, having been very well managed in the trauma ward at Royal Perth Hospital. That is what an emergency demands. It demands clarity. What is the actual problem? What needs to be done? How is the progress monitored? We had exactly the same situation here when COVID-19 came out. I will not take much time. Hon Tjorn Sibma mentioned the views we had of Italy, America, China for that matter, and elsewhere. The bodies were piling up.

I have further practical experience because I was also an active general practitioner in Hong Kong when SARS reigned. That had about a two or three per cent death rate as well. Members will note that COVID is actually a SARS virus. It is very similar. At the time, with people dying in quite large numbers, including doctors and nurses in the hospital, the territory of Hong Kong went into an emergency mode.

Things were done then that mirrored much of what has happened in this state. I have to give thanks to the McGowan government for what happened, because very good measures were taken. Our state was kept well and safe. We ought to give thanks where thanks are due for excellent management. But the question that remains is: is it right now? I said initially that we need clarity, and for clarity we need information. In that emergency case I saw, the information we got from the observations and my examination—this is a likely thing happening—was the information I needed to then give clarity. Then there was transparency. I needed to explain to the staff what would happen to the Royal Flying Doctor Service: “This is the situation; you will come here as a priority 1.” The information and the transparency was critical to managing an emergency. Once she had been stabilised, there was no emergency. It was a critical situation, but it was managed.

The critical situation we have had in our state is being managed. Do we need further emergency measures or do we have perfectly adequate legislation in the Public Health Act 2016 and the Emergency Management Act 2005? I put it to members that we do. They are perfectly sensible measures that need no further action at this moment. We have a Chief Health Officer who is perfectly capable of enacting the provisions in the existing legislation to declare a state of emergency, at which time, once it has been managed, we can take it further if we so need.

I am very disturbed that the information is a point of contention here. I am going to give members facts, because the scientific approach is needed. We need good science. The foundation of all good science is asking a question: what is the problem? Then we need to define the problem: what do we actually have? Then we formulate a hypothesis and then we move on to asking the question: what happens if? We put it out and study it and then we get an answer. We were right, or we were wrong and we put out another hypothesis. We ask a question. The whole foundation of our scientific knowledge starts with a question. Every item that we see today has been touched at some time by the

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question: what would happen if? What would have happened if we had sawn the wood in a certain way a thousand years ago to make the panelling we have in this chamber? Everything starts with a question, yet I have colleagues in this state and elsewhere in the nation who have been banned from work because they dared to ask a question that flew in the face of current perceived wisdom.

They asked for the scientific underpinning for going for, say, AstraZeneca rather than Pfizer and why the South Australian vaccine was not permitted. They asked about the values, whether it actually worked and whether there were side effects. I do not know the answers to those questions, but I will happily ask them because I, too, am a man of science. However, colleagues of mine have been suspended for referring to a scientific paper that gave evidence to the contrary. The very foundation of our scientific community has been threatened with sanctions for daring to ask a question. On behalf of all my colleagues, I would like them to be able to freely and openly ask questions that demand answers. Indeed, I did the same thing with our current Minister for Health. I asked a question on behalf of people who are concerned that mothers who have been immunised have a higher level of early pregnancy loss. I did what I had to do—I asked. Rather than asking in open Parliament, which could have caused embarrassment, I asked privately in a letter to the health minister. I got a most insulting reply, saying that I should know better than to ask such stupid questions. This is the same health minister who refused me access to the Chief Health Officer, who has the information I need but has been prevented from giving it to me. The questions I ask are being met with a wall. This troubles me, because if I am being treated with such disrespect, what is happening to the people of Western Australia?

If the foundation of our science—that is, asking a question and getting an answer on which the next question can be based so that we can move forward in our knowledge—is being obstructed, we have a systemic problem that needs to be addressed. But it does not mean that we have an emergency. It simply means that the systems in place now are not meeting the needs.

I will be putting forward the understanding that I oppose this measure. I will stand against it. Although I respect and welcome what the government has done so far, there has to be a time when we declare a limit. I think we have reached that limit. The government has done very well. However, I am open to being informed of other information—for example, the modelling. We spoke earlier about transparency. The modelling that we need to see what is likely to happen has not been made public. It has not even been made available to members of this house. How can we hold the government to account to review what needs to be done if the information we need to make a reasoned, rational decision is being withheld? This troubles me greatly. It troubles me deeply. I think this needs to be taken into account by a government that so far has treated people like me with disrespect, and I resent that.

By definition, therefore, our science is flawed because we are unable to question openly and receive open answers that allow us to move forward. The science is flawed. Transparency is non-existent. The modelling is absent. The only doctor in the upper house has been refused access to information so that he can tell his constituents that he is supporting the government because. Bear in mind, colleagues, I did at the very outset say that I will do what I can to support the government. I will do what I can to ensure that the emergency that we have is best managed, but that offer has callously been ignored. It is unimportant. This is the hubris of a government that does not need people like me to support it because it has the numbers. Indeed, it has the numbers to pass this bill.

Although I will praise the government, rightly so, for what it has done, I will also ask that it consider openly and sincerely whether the time for emergency measures has passed and we need to move forward to prepare for the next pandemic, because it will surely come, if not this year, then in the next decade or in the next hundred years. We need to be prepared. There are things happening in our microbiological world whereby it is going to go very bad very quickly if bad luck hits. I would prefer that we moved away from this idea of ongoing rolling emergency measures towards creating a proper pandemic response. This is a scientific approach to doing that. It is the medically authorised approach to dealing with this. It is good sense. I ask that the government consider seriously that this be done.

**HON STEPHEN DAWSON (Mining and Pastoral — Minister for Emergency Services)** [9.18 pm] — in reply: I thank all those who made a contribution to the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill 2022 tonight. As Hon Tjorn Sibma said, he is to be convinced on some of these issues. I am under no illusion that I will be convincing the opposition to do anything other than what it wants to do tonight. Just as it has done for the last two years, it will continue to play politics on this issue. Every step of the way over the last two years, we have been condemned by the opposition. It has spoken out against us, yet the proof is in the pudding. Although we have had 201 tragic deaths thus far in Western Australia, we have escaped the brunt of this pandemic that other states and other places around the world have had to deal with. As we sit here tonight and debate this bill, there are currently 88 710 active COVID cases in WA. There were 15 674 new cases as of 8.00 pm last night. We had 325 people in hospital with COVID-19, 11 of whom were in ICU as of 8.00 pm last night. We have had 576 315 cases since the COVID-19 pandemic began in Western Australia. Although the opposition does not believe we need the state of emergency, the Commissioner of Police and the Chief Health Officer certainly believe that we do.

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Why are we continuing to use the Emergency Management Act rather than solely managing COVID-19 under the Public Health Act? The benefit of the Emergency Management Act is that it provides the appropriate framework and was designed for a significant and coordinated multi-agency emergency response. Declaring a state of emergency under the Emergency Management Act has the benefit of establishing a comprehensive emergency management framework. This enlivens powers under the act to assist the hazard management agency and combat agencies to manage the emergency. The powers available under this act are complementary to those under the Public Health Act and are essential to maintaining community safety throughout this pandemic emergency. The Emergency Management Act allows the WA Police Force to focus on the enforcement and maintenance of health restrictions, while the hazard management agency has been focused on combating the health emergency, which is the COVID-19 pandemic.

There were some other comments made by various members. I make the point that opposition members were last week offered a briefing on the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill 2022 at a time that suited them, so it was not us who said 11.30 am; it was the opposition that told us that that time suited it. The bill before us has sat on the table here for a week for honourable members to consider. Although I have declared it urgent today, members have had a week within which to consider it, and it is essentially a continuation of a bill that has been before this house on other occasions.

I am not here tonight to discuss the merits or otherwise of the Public Health Act, and I make that point now.

An opposition member interjected.

**Hon STEPHEN DAWSON:** You have had your chance to speak. Now listen to me. I listened to you in silence. Thank you.

In respect of other comments that have been made tonight, I disagree with Hon Sophia Moermond that the Premier and the minister have overstepped any mark. The government has very different views on the pandemic from hers, as we have heard from her over the past few months, and we stand by the decisions we have made. I alluded to the 201 tragic deaths that have taken place in Western Australia since this pandemic began. That number contrasts with 2 986 in New South Wales, 3 158 in Victoria, 952 in Queensland and 405 in South Australia. We have managed the pandemic very well in this state and fewer people have lost their lives, although every life lost is tragic.

I acknowledge the support Hon Wilson Tucker has given to the bill before the house tonight. He suggested that government should be better managing expectations in the community. I have to say that we had an election last year, and it was very clear from the community that the government's handling of COVID-19 has been supported. We continue to rely on the health advice as we negotiate our way through the pandemic. It is an extraordinary time, but we will continue to rely on that advice to enable us to keep Western Australians safe and to minimise the tragic number of deaths.

I am not sure what Hon Neil Thomson's contribution was. All I took away from it was that he has a master's degree in dealing with exotic pests. Everyone in this place is obviously entitled to put their views on the record, and he has done that this evening.

Hon Dr Brian Walker's contributions in this place are always considered, and his contribution just showed that doctors are not a homogenous group, just like anyone else in society. Doctors, like others, have very different views on the pandemic. He said we have to be prepared for the next pandemic. That is correct; we do. But we also have to continue to deal with the pandemic that we are living in at the moment, and that is what we will continue to do. As has been pointed out, this bill does not guarantee that a state of emergency will continue. It will allow me as Minister for Emergency Services to make an informed decision every 14 days about whether we need to stay in a state of emergency. I would love to not have to make that decision and for things to move back to what was normality, but, unfortunately, the pandemic is here and we are living in it at the moment. People are dying and people are still getting sick. There are thousands; as we heard, there were 15 000 cases yesterday.

With regard to the modelling, the Chief Health Officer and the Minister for Health have previously spoken to the media about modelling. We have not seen in Western Australia the peaks and drop-offs of other states. I am told that that is partly to do with the fact that our vaccination rate is so high, so the drop is a lot less steep than what we have seen in other places, but it is still here and we are still living with COVID-19, so we still need the legislation before us.

Noting that there will be a range of questions in Committee of the Whole, I will leave my comments there and commend the bill to the house.

*Division*

Question put and a division taken, the Acting President (Hon Dr Sally Talbot) casting her vote with the ayes, with the following result —

**Extract from *Hansard***  
[COUNCIL — Tuesday, 17 May 2022]  
p2297b-2319a

Hon Stephen Dawson; Hon Martin Aldridge; Hon Tjorn Sibma; Hon Sophia Moermond; Hon James Hayward;  
Hon Wilson Tucker; Hon Neil Thomson; Hon Dr Brian Walker

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Ayes (16)

Hon Klara Andric  
Hon Sandra Carr  
Hon Stephen Dawson  
Hon Kate Doust

Hon Sue Ellery  
Hon Peter Foster  
Hon Lorna Harper  
Hon Jackie Jarvis

Hon Ayor Makur Chuot  
Hon Stephen Pratt  
Hon Martin Pritchard  
Hon Rosie Sahanna

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

Noes (7)

Hon Martin Aldridge  
Hon Steve Martin

Hon Sophia Moermond  
Hon Tjorn Sibma

Hon Neil Thomson  
Hon Dr Brian Walker

Hon Colin de Grussa (*Teller*)

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Pairs

Hon Dan Caddy  
Hon Samantha Rowe  
Hon Shelley Payne  
Hon Alannah MacTiernan

Hon Dr Steve Thomas  
Hon Peter Collier  
Hon Donna Faragher  
Hon Nick Goiran

Question thus passed.

Bill read a second time.

*Committee*

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

**The DEPUTY CHAIR (Hon Dr Sally Talbot):** Members, we are in committee on the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill 2022. I draw members' attention to supplementary notice paper 1.

**Clause 1: Short title —**

**Hon MARTIN ALDRIDGE:** I thank members who contributed to the second reading stage of the bill and I thank the minister for his reply, which addressed only a limited number of issues that were canvassed by members during that time. I must express my disappointment at the minister's characterisation of the opposition opposing the government every step of the way, because I do not think that that could be further from the truth. As I pointed out in my second reading contribution, this, indeed, was not the first time that we have dealt with the substance of this matter, and on each of the four previous occasions, we supported the government. Therefore, it is not a correct statement to make.

Minister, on 10 May, the Premier, in announcing this legislation at a press conference, made a statement that the extension that the government would pursue was based on the advice of the State Emergency Coordinator and the Chief Health Officer. Just now in his reply, the minister made a similar reference. Obviously, I do not have the uncorrected *Hansard*, but it was something to the effect of the Commissioner of Police and the Chief Health Officer believing that the powers are needed. Is the minister in a position to provide to the chamber, as the government has done on the two previous occasions, the advice of the Chief Health Officer and the State Emergency Coordinator to support the claims that he and the Premier have made?

**Hon STEPHEN DAWSON:** I will make the point that cabinet made a final decision that this was the course of action that we would take—that the government would seek Parliament's approval to extend the expiring provisions that have previously passed in this place. It has also been made clear a number of times over the course of the last few debates on this issue and in parliamentary questions before this place in recent times that I take advice from the Commissioner of Police acting as the State Emergency Coordinator. I meet with the police commissioner every two weeks, and the police commissioner advised me of what he believes is the need for emergency management declarations to be extended. The police commissioner has said to me that the expiry provisions of the bill should be extended by six months. The police commissioner also meets regularly with the Chief Health Officer, and the advice from the Chief Health Officer helps the police commissioner decide what advice to give to me. I have been advised that the Chief Health Officer has advised the State Emergency Coordinator that an extension of six months is warranted because we are still dealing with the COVID-19 issue on a daily basis.

**Hon MARTIN ALDRIDGE:** If I can summarise the minister's response, the minister obviously has an interaction with the State Emergency Coordinator—one would expect—every 14 days in line with him having to form a view and sign a document that is an extension of a state of emergency pursuant to the Emergency Management Act. Through the course of those conversations, the State Emergency Coordinator has expressed a view to the minister on the need to extend these powers, and that view has been informed by the view of the Chief Health Officer in his exchange or

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interaction with the State Emergency Coordinator. My point remains, though, that on the previous two occasions, the State Emergency Coordinator wrote a letter to the then Minister for Emergency Services. One of those letters was on 27 April 2021; the other was on 30 September 2021. Those were the two most recent occasions that these extension bills were considered by the Parliament. On both occasions, the government provided this information, including tabling those letters in the Assembly and the Council, and I referred to the tabled paper numbers during my speech in the second reading debate. Apart from those verbal interactions that the minister in his capacity as the Minister for Emergency Services has had with the State Emergency Coordinator, has the State Emergency Coordinator formalised his view to the minister in the same way that he did on the previous two occasions?

**Hon STEPHEN DAWSON:** I am not presenting any documents here tonight, but I will put on the record that it was as a result of advice from the State Emergency Coordinator to me that the provisions be extended for six months. It was on the basis of that advice that I took a submission to cabinet and cabinet agreed to support the submission that I brought forward—that the expiring provisions be extended for six months. In terms of the consultation that might have taken place across government and agencies, the Department of Fire and Emergency Services, the Western Australia Police Force, the State Solicitor's Office, the Department of Health, the Department of Justice and the Department of the Premier and Cabinet were all consulted as part of the cabinet process. Therefore, it is a government decision, but it is based on the submission that I brought forward to cabinet that these provisions be extended, which was based on advice that I got from the experts who are dealing with this on a daily basis.

**Hon MARTIN ALDRIDGE:** The minister said that he does not have access to a document or the document this evening. This was a question that has been raised in every briefing that I have had on these extension bills. Certainly, it was raised last Tuesday, so the minister's advisers would have had notice of this matter. Is the minister saying that the written advice exists, but he does not have access to it, or is the minister saying that the written advice does not exist?

**Hon STEPHEN DAWSON:** I am saying that I took a submission to cabinet to bring this bill before us, so any advice that I may have received as part of it is part of the deliberative process of cabinet, so I am not tabling any letters.

**Hon MARTIN ALDRIDGE:** This is exactly the problem that we have. The explanation that has just been provided by the minister runs contrary to the experience that this chamber had with his predecessor when on both occasions in 2021 this was not a state secret, whereas it now appears to be. No further explanation can be given apart from two things, really. Firstly, these are all deliberations of cabinet and are therefore cabinet-in-confidence, notwithstanding that they were not in 2021. Secondly, the only thing we have been able to substantiate so far, not even 10 minutes into the debate on clause 1, is that it would appear that this extension bill is based on verbal advice from the State Emergency Coordinator to the Minister for Emergency Services, and possibly based on advice that the State Emergency Coordinator has received from the Chief Health Officer. Effectively, on the basis of the verbal point of view of potentially two, or maybe three, people, this Legislative Council is being asked to support the bill.

I reiterate that this certainly was not the experience when we dealt with the two bills in 2021. In fact, I think we are taking a massive leap in the wrong direction with regard to transparency around these matters. Minister, is it still the view of the government that the section 72A powers that this bill will extend for a period of a further six months remain draconian?

**Hon STEPHEN DAWSON:** I am happy to say that we have had to make some extraordinary decisions during the last two years when dealing with this pandemic. I have made the point in this place previously, and I will make it again: there has not been a book that we could take off the shelf that says how to deal with a pandemic, certainly not one that has killed millions of people around the world. This legislation before us has proven to be the right legislation to enable us to deal with the COVID pandemic. The proof is in the pudding. We have seen how the legislation in this state has helped us keep cases numbers low and the number of deaths down. Although the laws go further than what has gone before, they are absolutely right and absolutely necessary.

**Hon TJORN SIBMA:** Respectfully, minister, I disagree that at this stage of the management of COVID there is no book to refer to. We have witnessed on a global scale the biggest real-time experiment in modern human history in dealing with a pandemic. What frustrates me as a legislator—this applies in our local jurisdiction, and even more nationally—is that although there must be localised responses, we seem to be almost agnostic or wilfully ignorant of the experiences of COVID globally over the last two years. It also seems to suggest that we ourselves have not learnt how to be more adaptive in our own local response settings.

I will grant the minister this, and I thought I was at pains of doing this during the second reading debate. The government has acted absolutely soundly and appropriately, at least insofar as when the border was opened. That action received our support. In fact, I was quite encouraging of the government, in my own unique way, to stick to its original commitment. However, the issue is not whether the bill that we are contemplating now was appropriate in the two years leading up to this point. The issue that we are trying to grapple with, minister, respectfully, is whether the bill that we have been presented with this evening is appropriate to manage the COVID-19 response in the

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Western Australian jurisdiction for more than likely the next six months, which is the forecast. Therefore, when my colleague Hon Martin Aldridge asks questions about the advice upon which the minister dutifully relied when he took his submission to cabinet, why is there even a greater resistance on the minister's behalf, if I can put this respectfully, to provide the written briefing or the written advice upon which the minister relied, and which his cabinet colleagues agreed with, that this bill is appropriate for the future circumstances, than has been the case on at least the last two occasions? Has there been a shift in decision-making or a shift of internal policy around the disclosure? Would it be problematic, should this document exist, to table it? There is a series of questions there, but, specifically, was written advice attached to the submission that the minister took to cabinet that clearly articulated the risk profile that both the Chief Health Officer and the Commissioner of Police were trying to deal with, because that would assist us in our understanding?

**Hon STEPHEN DAWSON:** This was in a cabinet submission. The member has been in this place long enough to know that what is said in cabinet is sacrosanct; therefore, the submission will not be disclosed. It will be disclosed in the future, years later. I also did not suggest that we have not learnt over the course of the pandemic. We have learnt over the course of the pandemic, and, yes, we have looked to see how other states and jurisdictions around the world have dealt with COVID-19. Yes, the closed border did allow us to get our vaccination rates higher than anywhere else, certainly in Australia, and potentially in many places around the world. The advice has been evolving over time. We have had the Alpha, Delta and Omicron strains, and goodness knows what will be next. It is fair to say that no other jurisdiction that has had the virus introduced into it has had the same vaccination rates that we have in Western Australia, so our good work has placed us in a good spot.

**Progress reported and leave granted to sit again, on motion by Hon Stephen Dawson (Minister for Emergency Services).**

*House adjourned at 9.46 pm*

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