

Time Limits — Statement by Leader of the House

HON SUE ELLERY (South Metropolitan — Leader of the House) [3.29 pm]: I advise the house that the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill (No. 2) 2021 is a COVID-19-related bill. Accordingly, I have consulted with the party leaders and can advise that the maximum time limits for each stage of the bill, pursuant to the temporary order made on 25 May 2021, are: second reading stage, 150 minutes; committee stage, 160 minutes; and third reading stage, 15 minutes.

Second Reading

Resumed from 10 November.

HON MARTIN ALDRIDGE (Agricultural) [3.30 pm]: I rise as the lead speaker for the opposition on the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill (No. 2) 2021. By now, members of this place, even new members, should be well versed in the content of this brief bill because, if I am not mistaken, this is the fourth occasion, and the second occasion in this Parliament, on which the subject matter of this bill has been considered.

This bill was introduced into the Legislative Assembly on 20 October 2021, and was second and third read on 9 November 2021 before its introduction into the Legislative Council on 10 November 2021. I observe that it is interesting that the Leader of the House has activated the COVID-19 temporary orders at this point, notwithstanding that this bill could have been considered on 10 November, 11 November or 16 November. It is on 17 November, the fourth sitting day on which the bill has been able to be considered by this place, that it has been listed as the highest priority for the government. It is interesting to also note that we sat into the early hours of this morning debating the then number one priority of the government, which was amendments to our electoral system, particularly with regard to the Legislative Council. It is now plainly obvious and indisputable that the COVID-19 response comes second to the government's electoral reform agenda.

As I said, this is the fourth occasion that this subject matter has been considered by the Council, and the third occasion on which an extension has been sought to the powers contained in and relevant to this bill. The original bill's passage occurred in April 2020 and the bill applied for an initial period of 12 months. As members would recall, that was in the immediate response to the then emerging international pandemic that we now know as COVID-19. In late 2020, an extension was sought for a further 12 months, but the Council granted a period of only six months to provide for the period until after the election and the resumption of the houses, and then in May 2021, that was extended until January 2022. This bill now seeks an extension to those provisions to July 2022.

From the outset, I indicate the support of the opposition for this extension. It is most likely that COVID-19 will reach Western Australia, as the government now predicts, sometime in this period of extension to July next year. I pause at this point to reflect on the second reading contribution of the Minister for Emergency Services, delivered on 20 October 2021 in the Legislative Assembly, when he said —

The Delta variant is a serious threat to the community, as we have seen in the eastern states. Due to the virulent nature of this strain, Western Australia is under threat of an outbreak and we continue to require the powers to issue directions to protect Western Australia and to limit and reduce the risk of spread, if and when it arrives.

The minister obviously missed the memo that the government has moved on from crush and kill—that was the election strategy—to a strategy of acknowledging that COVID-19 will arrive in Western Australia, probably in the very near term. As I just said, it is important that these powers are extended for at least the time necessary to manage that period of response. It is fortunate that the government has reflected on the words delivered in the Assembly, having repeated them in the Council. It is good that it has done a little homework in that intervening period. Although the opposition supports this extension for six months, it does not mean that this bill should not be subjected to a level of scrutiny. This is really the only opportunity that the Council has to scrutinise and seek some transparency and oversight over the application of these powers, which the government itself defined as draconian, from the initial periods of introduction of these powers under the former Minister for Emergency Services, Hon Fran Logan. That scrutiny will obviously need to be applied within the restrictions of the temporary orders and the time limits that have been set down by the government, notwithstanding the time line that leads us to this place today.

Unlike the previous occasion when we dealt with this matter in May, I have received some considerable correspondence on this bill. It was interesting to find out from conversations with other members, particularly government members, that their level of correspondence has perhaps not been the same, but I have certainly received a lot of correspondence seeking my opposition to this bill, unlike the previous three occasions that we have dealt with this matter. I think the underlying concern is that application of this bill will be used for mandatory vaccination purposes.

At my briefing, I sought some confirmation around the application of, particularly, the section 72A powers in the Emergency Management Act for those purposes, and I was relieved to hear that the government's intent is to continue

to use the Public Health Act for those types of responses and it is not the intention to use the powers found in temporary section 72A. I suspect that will allow the stages of this bill to progress more quickly, but it perhaps also alleviates the many concerns of people who have written to me about this bill. I would like the government to confirm that to be the case, as I received that confirmation at my briefing. It may allow us to explore that a little further during the Committee of the Whole stage, but I think it will, in the short-term, alleviate some of the contention, as I said.

There may be ancillary matters. When the Chief Health Officer issues directions pursuant to the Public Health Act, some vaccine-related matters might be deemed ancillary and the Emergency Management Act directions could be used. A couple that come to mind are, for example, our existing controlled border arrangements, whereby current directions are in place and entry occurs on certain terms. I think there are vaccination requirements in place for entry to occur, but also, as part of the government's transition plan, we are hearing that there may well be increased restrictions on access to public venues, in particular public transport and other areas of high risk. It would be interesting to know the government's thinking around the Public Health Act or Emergency Management Act and the appropriate instrument for enforcing elements of its transition plan, noting that I believe there was some significant tension in the government in the early days of the COVID-19 response about which powers ought to be used primarily in the COVID-19 response.

The other point I raised in my contribution in May that I want to raise again is the need to commence a timely review of the Emergency Management Act. As far as I can tell, this act was last reviewed in 2013 by the State Emergency Management Committee. It is a 2005 vintage act. I think the review clause in it requires the typical five-year review. Section 103 provides for a review after the expiry of five years from the commencement of the act. I think that review was completed in June 2013, as I found it as a tabled paper in the Legislative Assembly. When we last had this exchange, minister, we were talking about 2016, but I think it may indeed be 2013, unless another review was conducted in 2016, but I would find that unlikely. Given that this is the fourth extension of these extraordinary powers, it is time that we consider a review of the Emergency Management Act in its whole form. I do not accept—whereas perhaps I have, previously—that the best time for this to occur is after the COVID-19 response, because who knows when that will be. We may well be onto another disaster or emergency—it may well be another pandemic. I think the government has the resources and capability to review the Emergency Management Act 2005, or at least turn its mind to the recommendations of the 2013 review, which I understand were not acted upon thereafter. I say that because of some of the reforms that are now coming from the government, including local government reform, electoral reform and puppy farming laws—you name it; it is coming. As critical as the Emergency Management Act is at the moment to the state's ability to respond to the COVID-19 pandemic, it should be prioritised by the government for review.

Another point I will make is that there is a body of work on the review of the emergency services acts that goes back some time. I think there are three or four acts, but this act is not one of them. That project goes back eight or nine years and we are still waiting to see the culmination of that project. But the Emergency Management Act is not incorporated in the review of the other emergency services acts that the government currently has underway.

I do not intend to go into this matter of section 72A in great detail, because, as I said, this is the fourth occasion, and the second occasion in this Parliament, on which we have canvassed this issue, so there has been significant consideration of these provisions. Obviously, a significant number of provisions in the bill that originally amended the Emergency Management Act were permanent amendments to that act, but section 72A was a temporary measure. The government said at the time, and it continues to say, that the sunset clause was to apply to ensure that the provision would be applied only to respond to a COVID-19 emergency. The Minister for Emergency Services in the other place said —

These are the same as those considered earlier this year. I will reinforce why it is important that they are extended to ensure that the state can continue to respond appropriately to COVID-19.

He went on to say —

The intent of this sunset clause was to ensure that the section 72A powers were applied only to the circumstances of an appropriate emergency response to the COVID-19 pandemic.

That has been the consistent position of the government, which described these laws as draconian and not being its preference, and as laws that should be used only for a COVID-19 response, and therefore a sunset clause was appropriate.

One thing I learnt that I am sure the minister has been made aware of is that, at my briefing, I asked whether these powers had been used for a response other than for a COVID-19 emergency. I must say that it was with some surprise that I learnt that the answer to that question is yes, they have been used for a matter other than a COVID-19 emergency. It was brought to my attention that, pursuant to sections 67 and 72A of the Emergency Management Act 2005, directions titled Evacuation (Houtman Abrolhos Islands) Directions were issued on 9 April 2021 at 1830 hours. Obviously, these directions were issued for the declaration of an emergency situation arising from tropical cyclone Seroja, which impacted the midwest—in fact, it impacted a significant part, if not all, of my electorate of the Agricultural Region. These directions were reliant in part on section 72A, so I want to understand through

a response from the minister either in her second reading reply, because I do not think this matter was properly ventilated in the other place, or perhaps when we get to the Committee of the Whole, the reasons why, contrary to the consistent position of the government, including the position it outlined in the other place in October 2021 that these powers will apply only to an appropriate emergency response to the COVID-19 pandemic, they were utilised in responding to tropical cyclone Seroja, particularly in directing a class of persons and requiring information from them with regard to their evacuation. That is something I want to flag as part of scrutinising the application of these extraordinary powers before we provide this bill with clear passage through this place. I want to understand how these extraordinary powers will be utilised in the next six-month period that the Council is going to provide for.

I might move on from the Emergency Management Act to the Criminal Code. I say at the outset that I am no expert in the Criminal Code. It does not fall within my purview of responsibility and I am sure that it will be taken up further by the shadow Attorney General at a later stage of this debate. It is interesting to compare some information on these provisions. Members will be aware that the original Criminal Code Amendment (COVID-19 Response) Act 2020, which we are amending, provided for an amended form of sections 318 and 338B of the Criminal Code. Members have to turn to the original 2020 act to see the contents of the changes to those provisions in sections 318 and 338B. Section 318 is titled “Serious assault” and subsection (1A) states —

For the period of 21 months beginning on the day on which the *Criminal Code Amendment (COVID-19 Response) Act 2020* section 4(1) comes into operation, subsection (1) applies as if amended by inserting after paragraph (l) —

(la) to imprisonment for 10 years if —

- (i) at the commission of the offence the offender knows that the offender has COVID-19; or
- (ii) at or immediately before or immediately after the commission of the offence the offender makes a statement or does any other act that creates a belief, suspicion or fear that the offender has COVID-19;

It then goes on with other subsections. Section 338B deals with threats. I might have to come back to that provision, but I understand that that provision has not been used in the context of the COVID-19 pandemic. That is based on the information that I was provided in both my briefing that occurred on 6 May and my briefing that occurred just recently on 29 October, which confirmed for me that between those two dates, 6 May and 29 October, the number of charges laid under section 318 or section 338B has remained consistent at 16 persons charged with 24 offences.

In that period between May and October no charges were laid under these provisions I have just mentioned. Perhaps that is not surprising. It was made clear to me in the briefing that during that time we substantially lived without COVID-19, whereas in some of those earlier periods there was some community spread of the virus and perhaps an increased anxiety about it. We saw a number of charges laid during the period; 16 persons were charged with 24 offences.

The amendments to the Criminal Code simply increase the ability to apply higher penalties of the court. As I understand from looking at this, and I will probably explore this further in Committee of the Whole House, of the 16 persons charged, 11 have been sentenced so far. Sentences ranged from a \$300 fine to 12 months’ imprisonment. If I am not mistaken, the ordinary provisions of section 318 of the Criminal Code well exceed 12 months’ imprisonment. I am happy to be corrected, but I think it is fair to say that even if these higher penalties had never existed, the 12 months’ imprisonment would still have been likely under the existing section 318 provision. It was put to me at my briefing that these higher penalties act as a deterrent for the circumstances, and I am not sure whether the circumstances have been detailed in my supplementary information. There were circumstances put to me of charges that had been laid when people might have been coughing on healthcare workers; there may have been some spitting offences, and offenders then went on to claim they had COVID-19, whether they did or did not, and in that context they were charged under section 318 of the Criminal Code. It was put to me in my briefing that these people who might commit these despicable acts will be more deterred from committing them because of the higher penalties that apply. I am not completely convinced. I know it is a line that governments like to use, but I am not that sure that the types of people who commit these despicable acts, largely against our police officers, healthcare workers and those types of public officers are that versed in the inner machinations of the Criminal Code and the higher penalties that apply through this extension of expiring provisions bill or that it is an active consideration when they commit these offences. I would be interested to know whether there is some better justification for that, but a case of a much more serious nature may occur in the future to which those higher penalties could perhaps be applied. In contemplating the Criminal Code and extension of expiring provisions, the minister could provide some clarity about whether the bill has been applied to the charges laid so far or whether the ordinary section 318 of the Criminal Code has sufficed. I understand that the increased penalty for section 318 has been increased to 10 years’ imprisonment, so obviously the 12-month conviction that has occurred so far is the highest penalty. It would be interesting to know what the maximum sentence would have been without the higher penalty being available to the court, notwithstanding that it was not used on this occasion.

A number of prosecutions have not changed. My supplementary briefing information from 6 May to 29 October says that of the 16 persons charged, 11 have been sentenced, so despite the fact that there have been no new charges laid between May and October, five persons have not been sentenced. It surprises me a little bit, but perhaps it is normal that those delays are experienced in the court system with these criminal matters. I would like to see whether there is any clear advice about the matters remaining outstanding for sentencing. I understand that of 16 persons charged, only 11 have been sentenced so far, ranging from penalties of a \$300 fine to 12 months' imprisonment. The other discretion I have identified in the briefing material after the hearing is that the range of sentences is said to have narrowed between 6 May and 29 October. On 6 May, there were 11 sentences listed, and in updated information on 28 October, that number decreased to nine, so we seem to have lost two sentences along the way. Could the minister clarify the correct information on those examples of sentencing?

The other question I asked was about prosecutions and infringements issued pursuant to the Emergency Management Act. The government has again provided some helpful information. I will not have time to read it in, but it shows a reduction in the number of prosecutions or infringements issued between information provided in May and October, and that is probably pursuant to the environment that existed in Western Australia during that period, which is not to say that that will remain the case in the near future.

The last point I want to make, because I think I nominated 30 minutes for my second reading contribution, was about the advice received by government. On the last two occasions during the course of the debate the government provided information from the State Emergency Coordinator about substantiating the period for extension. On the first occasion, it was by way of a letter dated 27 April 2021 from the State Emergency Coordinator, Chris Dawson, to the Minister for Emergency Services, and then on the most recent occasion it was a letter from 30 September 2021. When we consider the context of both of these letters, it would appear that the State Emergency Coordinator, who doubles as the Commissioner of Police and triples as the Vaccine Commander, on both these occasions endorses a cabinet submission. Rather than this being a position of the government taking a decision based on the view of the State Emergency Coordinator, it is the State Emergency Coordinator endorsing the state government's cabinet submission on the period of time. The letter states —

... I endorse the submission for the sunset date to be extended by no less than 6 months.

I would be interested to understand, if it was not the State Emergency Coordinator's advice that at least six months was required that led to the drafting of the cabinet submission, whose advice was it that at least six months was an appropriate extension of the sunset clauses with respect to the Criminal Code and the Emergency Management Act?

The last point I will make is that if members are of a mind, and I am not sure that any are, to oppose this extension requested by the government, as of 29 October there have been 413 directions issued that rely partially or to some extent on section 72A of the Emergency Management Act, and 98 of those are current directions. In effect, there would be nearly 100 directions; I have a very long list of them. Many of them relate to the restrictions that are put in place for lockdowns and matters related to lockdowns, which are called the Closure and Restriction (Limit the Spread) Directions. The other common one is the Controlled Border for Western Australia Amendment Directions, many of which remain active. As members can imagine, as each state and territory in Australia is assessed differently based on a risk matrix, that affects the government's response to the control measures placed at the interstate border. Those directions would not be able to be enforced without the extension of these provisions. As we enter this next period between now and July next year, I do not think there will be a more critical period in which those powers are going to be required in order to manage the transition that the government is talking about with COVID-19 entering Western Australia.

With all that said, the opposition supports the bill before the Council.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [4.01 pm]: I would like to make a reasonably short contribution in this time-limited debate on the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill (No. 2) 2021. It is not a long or particularly complex piece of legislation. The bill before the house effectively, in a few short clauses, simply extends the existing legislation and regulations by six months, shifting from 21 to 27 months. It adds six months, so the expiry date will be 4 July for both the Criminal Code Amendment (COVID-19 Response) Act and the Emergency Management Amendment (COVID-19 Response) Act. As the opposition's lead speaker, Hon Martin Aldridge, said, we are very supportive of this legislation.

To work backwards from that, obviously we support the extension of the powers in this case, particularly the powers that are relayed under part 3, which is an extension to the Criminal Code Amendment (COVID-19 Response) Act 2020. This is the part that allows control for acts of spitting et cetera. Obviously, everybody deserves to be in a safe workplace, including all public sector workers, the police and health workers. The opposition is fully supportive of those parts of the legislation—in fact, of the legislation.

I want to focus my relatively short contribution today on the second reading speech provided by the government. It started out with a fairly bold statement. I quote —

... Australia continues to face an unprecedented emergency with COVID-19...

Perhaps the word “unprecedented” might be a little bit of a stretch here. Those who looked at and explored the effects of the Spanish flu, for example, might suggest that this is not unprecedented in its impact. The Spanish flu, as I understand it, killed somewhere between 30 million and 50 million people worldwide in a population that was much smaller than it is today. Although it is absolutely important and I do not want to diminish the impact that COVID-19 has had, it is not necessarily an unprecedented emergency. Perhaps what is unprecedented is the worldwide response to this pandemic. I suspect that this is the first example of the world responding to a pandemic in a way that I think will set a standard for the future. It is going to be interesting to see the next pandemic. For members who are optimistically thinking this is the last one —

Hon Stephen Dawson: Let’s hope it is another 100 years away.

Hon Dr STEVE THOMAS: Let us hope it is. I would have thought, biologically speaking, that as time goes by and population density increases, the intervals are likely to get shorter rather than longer, minister. That is the nature of biology and epidemiology. It is more likely that it will happen sooner than the last significant pandemic. I suspect the next one might be an influenza virus that has an even more intense transmission than COVID-19.

Hon Dan Caddy: You’re a bundle of joy!

Hon Dr STEVE THOMAS: My advice to everybody is, “Be prepared.” We have been discussing, in biological circles, the next pandemic for a long time. I suspect this one might be the practice run!

Hon Martin Aldridge: I’m not going to your dinner parties!

Hon Dr STEVE THOMAS: At my dinner parties, you might be more likely to catch animal diseases than human ones, but that is a whole other story from my work!

Hon Tjorn Sibma: We really sat far too long last night!

Hon Dr STEVE THOMAS: Yes. Veterinarians are subject to a whole range of diseases that are probably of more concern.

Hon Dan Caddy: No more war stories!

Hon Dr STEVE THOMAS: No more war stories; it is a very time-limited debate.

The question I really want to address is the set of statements on the first page of the second reading speech. I quote —

The government has released the safe transition plan in line with expert health advice.

It sort of has. The second reading continues —

It outlines the state’s path forward to ease WA’s controlled border for international and interstate travel from all jurisdictions, with testing and vaccination requirements.

We have sort of been able to tease that out a little bit. The following line is —

It provides certainty on how businesses and WA’s way of life can continue safely with the introduction of public health and social measures once COVID-19 enters our community.

That line is utter nonsense. To suggest that businesses have been given certainty around the plan to have an exit plan, which is known as *WA’s safe transition plan* in this state, is absolutely ridiculous. I would like to see a bit of certainty delivered. I would like that line to be true, I really would. It is not the case that second reading speeches are delivered under oath, but I would really like that line to be true. It is obviously not.

Over the last few weeks, I have been asking a range of questions about what the transition plan is going to look like. I started that process to simply try to find out the legal situation that small businesses, in particular, face. If COVID-19 enters the premises of a small business and one of their staff members or a customer is infected, I would have thought it would be incumbent upon the government to work out the legal parameters and inform the business community. However, of course, the government hid behind the defence that legal advice cannot be sought in questions in Parliament. That is fine, except that there is then an obligation on government to explain its legal position. The government is claiming it has given small businesses certainty. It is in the second reading speech, so it must be true. It is almost as good as being in print! But that is not the case. Business has no certainty and does not know its legal requirements. We got into a debate in the house. I remember that the Minister for Regional Development gave us the advice, handed on, that businesses should seek their own legal advice. Rather than having certainty, as directed by the second reading speech, we have the government’s advice that, to obtain certainty, they all need to get their own legal advice. I do not consider that to be providing certainty for businesses.

We did not stop there. I asked a range of questions. On 9 November, I asked question without notice 896 on how businesses will be assessed for compliance with the policy. I also asked what the government expects businesses to do with employees who refuse to get vaccinated. How will the government assist those employees? The answer to a couple of questions that I asked in a very similar vein was this —

The government is currently consulting with affected industries on the mandatory vaccination requirements announced on 20 October 2021. That consultation will inform the drafting of legal directions and implementation issues such as compliance.

The problem is that this was a week ago and a set of mandates are coming in at the end of this month, and at the end of next month.

I turn to the second reading speech of this bill. I do not have the date on which it was delivered. It would be interesting to know the date. Maybe members can tell me. It says that the safe transition plan “provides certainty on how businesses and WA’s way of life can continue safely”. We should bear in mind that Tuesday, 9 November was last week. Since we have been dealing with other bills, I suspect that about the same time we got one second reading speech that said certainty is being provided, we had an answer to a question that suggested the government was currently consulting with industries and it would eventually get around to drafting legal directions as a result. I fail to see how that is delivering certainty. I would have thought that certainty would have had a fair bit more meat on the bones of this argument that has been delivered in the Parliament or to the business community of Western Australia.

The government should not get too excited and say that business is incredibly comfortable with this legislation. I understand that large industry representative bodies in particular are in favour of mandatory vaccination programs. Guess what, Mr Deputy President? I have stood in this place and said, “So am I.” I am not opposed to mandatory vaccination programs. That is not my argument. My argument is: how does business deal with it? The industry bodies may well be in favour of these programs, and they should be. The problem we have is that individual small businesses have no idea how they will manage the process. What will be the compliance mechanism? If someone runs a small business in the state of Western Australia and one of their employees refuses to get vaccinated and they do not immediately terminate that employee, what is their next step? Or if they immediately terminate that employee, who do they notify? How will compliance be maintained? Will compliance officers carry out any checks? During the early stages, we had this debate to some degree. The minister said, “Well, there will be some sort of compliance if there’s an outbreak in your business.”

Hon Kyle McGinn: The same with normal compliance like OHS et cetera.

Hon Dr STEVE THOMAS: Yes, but these are not normal circumstances, member. There is a long slow paperwork trail around that sort of normal compliance of OHS or registering employees and all those components. The employee would be taken off. There is an urgency here that is not being recognised by the government. There is an urgency here that small business owners are immensely concerned about. It is not just me. I am contacted by business owners all the time who say that they are not certain of the rules. They do not know what the rules look like. Apart from the threat that if they do not sack employees, depending which tier they are, either by the end of this month or the end of next month or the end of the month after that, 75 per cent of employees in the state of Western Australia—we do not know what that looks like, apart from being told—could be threatened with a \$100 000 fine. They are concerned about the impact on their employees. They are concerned about the impact on their businesses. What would happen to someone who runs a small business if one of the people they have to sack is a critical member of the staff, they are in an area in which they cannot immediately have someone walk in and walk out and they do not potentially have any control of the field in which they might replace that person? There is an enormous amount of uncertainty around businesses that will try to continue to operate.

I understand that some businesses, in anticipation of the issue, have already closed down, but that is anecdotal only. I have not inspected shops. A story about one of those businesses was running in the media last week. It involved a gluten-free organic baker. Two of the staff members refused to be vaccinated and the shop had to be closed down. Again, it was a media report; I do not know how accurate it was. We are only trusting. The information is as good as the media report.

Hon Kyle McGinn: But the ports have been through transition.

Hon Dr STEVE THOMAS: Some industries are further down the path than others.

Hon Kyle McGinn: And they transition quite well.

Hon Dr STEVE THOMAS: It might surprise the member to learn that the ports are not necessarily small businesses. I would have thought that a member of the Maritime Union of Australia would know that they are a reasonable size. Businesses the size of the port of Fremantle are not necessarily of concern; small businesses with one or two employees are concerned about how these laws will be managed.

I received an answer to a question without notice from the Minister for Mental Health representing the Minister for Health yesterday, which said that there were very high vaccination rates ostensibly amongst health staff in Western Australia. On the assumption that that represents all health staff, I think the government can probably take a measure of success out of that. Just to prove that the opposition is not always appositional, that answer looks as though the government has gone a long way in the health department. I know that Hon Colin de Grussa has been trying to get a similar total vaccination rate out of education staff. It is a little hard to tell from the survey. Ultimately,

the minister may have further information down the track. It might be a matter of refining the questions to get the totality across staff.

Hon Sue Ellery: It's still happening now.

Hon Dr STEVE THOMAS: It is still going on, which makes it more difficult. The health staff obviously started in that first tier, which was a lot easier. Those numbers are probably a bit further down the track. The Minister for Mental Health might be able to ask the minister he represents about this at some point. A media article today suggested that the reason the number was so high and that the number of people who refused vaccination was so low is that a whole group was taking holidays instead, and they would come through. I would have thought that if they failed to get vaccinated, even if they were ostensibly on leave, they would still fall foul of the regulations. I wonder whether that is a valid argument. The minister might take that up with the health minister and inform us of the validity of that at some point.

We have spent a lot of time trying to determine exactly how business will manage this particular process. On 10 November, a week ago, I was still asking questions about this particular issue. Interestingly, I asked about public servants because I thought that would be interesting. I asked how many public servants are expected to choose not to be vaccinated and therefore be dismissed or resign. The answer was that there is no blanket policy and everyone eligible is encouraged to get vaccinated. It is very difficult to get information about the success of the process out of this government.

Once again, on 10 November—again, a week ago—in a follow-up question to the Leader of the House representing the Premier, I was told about one industry in particular—the one that probably includes abattoir workers, who are probably part of a bigger industry more likely to be further down the path and more organised, and therefore I suspect they are not too bad. Private sector businesses are engaged in that first tier of workers who will be required to have their first immunisation by 1 December. That is a couple of weeks away. I am still trying to find out when we will see the legal directions. At that point, legal directions were still being drafted. Some had been drafted but there is no complete plan. At the same time, I asked what the plan would look like if Western Australia, in a terrible set of circumstances, failed to reach the 90 per cent double vaccination rate set by the Premier. Other states have already got there. I suspect they have largely got there on the basis of outbreaks, which have encouraged people to go down the vaccination path.

Western Australia has had a very low infection rate and largely kept COVID out. Perhaps the government would argue that it has been the victim of its own success in keeping the disease at bay, and that is keeping vaccination rates low. I see that 80 per cent of Western Australians over the age of 16 have now received their first dose. We would assume we would get to at least 80 per cent double-dose compliance. We are not rapidly running to that 90 per cent mark. There are some concerns about both the rate at which this will happen and the impact of this on the opening up period. What is plan B? What will happen when we get to an 88 per cent vaccination rate and it stops? I keep asking these questions—I have asked a lot of them in the last month—and the answers do not cut the mustard. The government has an obligation to explain how all these things will be managed—the plan needs a bit of substance to it—but it does not. This is a trust-me situation. The government says, “We have kept you safe. Trust us. We will continue to keep you safe.” But that is not enough. Business needs to understand what the COVID release plan will look like and under what circumstances. We have now been going through this COVID-19 pandemic since early 2020. It is nearly two years old. I would think that that has been enough time in which to develop a reasonable and sustainable plan. But the reality is that we are still guessing. The government is still drawing up legislation. Business does not know how it is supposed to respond, what compliance should look like or how it will be policed or whether it will be policed. At this time of the pandemic, I just think that that is not good enough. The words in the second reading speech—the plan to have a plan “provides certainty”—I think are a misnomer. I would like certainty to be provided. This bill is a fairly simple extension of time for what is currently occurring to go on for another six months. That in itself is not a plan; that in itself is not a transition plan out of COVID restrictions. We still do not know what that transition plan will look like. We do not know, and it is time the government told us. I say, surely, enough is enough.

HON TJORN SIBMA (North Metropolitan) [4.21 pm]: The content of the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill (No. 2) 2021 is no stranger to this chamber. As Hon Martin Aldridge outlined in his contribution, I think that this is the fourth time the substance of the issues at hand have been debated and passed and that this is the third occasion upon which the chamber has granted an extension of the expiring provisions. In normal circumstances, these provisions would be extraordinary in terms of their reach and their power. I want to talk to some issues foreshadowed by the government in the second reading speech, as well as some issues that are germane to the bill itself. But I will commence by acknowledging what should be a simple, self-evident fact; that is, the first responsibility of any government is to protect the lives, welfare and property of its citizens. I think in large part this legislation has been successful in discharging that obligation over the course of its different iterations.

We have in this participatory democracy a process by which we confer legitimate authority on a minority of legitimised individuals and institutions. That is done on the understanding that it is done through an orderly and legal process and that power is granted for protection and there are mechanisms of accountability and transparency when it comes

to the execution of those powers. Quite obviously, it is also self-evident that there is a division of powers in this parliamentary democracy that are distributed among the executive, the judiciary and, us in here, the legislature.

I want to reflect a little bit on what this bill means, because it is now timely to contemplate some of these issues. They are not the short-term immediate issues that this bill is asking us to give attention to, but issues that might cause us to think about some of the medium to longer term implications. I think it is true to say that every Australian jurisdiction—the commonwealth, the states and the territories—has responded to the challenges of COVID-19 in its jurisdiction according to its own particular circumstances, but largely in the same way. This essentially has involved an extension of executive powers with a broadening and deepening of their reach. I think it is also true to say, although I do not ordinarily take a fixed-eye view of the universe, that somebody's benefit should not come at the expense of somebody else's detriment. I think it is a largely a defensible proposition that the extension of executive power that we witnessed not only in Western Australia, but also in Victoria, New South Wales, Queensland, South Australia, Tasmania or the territories, has largely come at the expense of legislative oversight. I think it is a defensible proposition that the role of the legislature has been diminished, particularly through the most acute phases of COVID-19, particularly in Victoria and New South Wales, which have had a horrid time over the last 18 months.

I do not think we have given full contemplation to the kind of situation that we have normalised out of necessity. One reason I say that this has come at the expense of oversight and transparency is largely because of the extenuating circumstances that prevailed last year in the fortieth Parliament, when we were dealing with the unknown to some degree. There are instruments, such as the temporary order for COVID-19-related business, that apply in this chamber. This debate itself is circumscribed and timed down in a way that may have been defensible, quite frankly, last year, but which I think is now possibly not as justified. The reason I put that to members is that if indeed this were an urgent bill that needed to pass by the end of this week, I would have expected it to be prioritised. I will not reflect on what occupied us yesterday and into the early hours of this morning, suffice it to say that if this was an urgent bill that we needed to get through today, the Leader of the House has the power under the temporary order, under which we are discussing this bill, to deal with all stages of this bill this evening. If that were the case, there would have been an opportunity as well to have dispensed with the consideration of committee reports that proceeded this debate.

Hon Stephen Dawson interjected.

Hon TJORN SIBMA: I am just saying: you take the priority of this bill to its logical conclusion and apply a consistent approach. There is non-government business that I look forward to debating tomorrow. There is also private members' business that I am delighted to listen to tomorrow. But, again, those forms of business proceedings under the temporary order are potentially dispensable, if indeed I were to take seriously the government and the urgency of this bill. I know that will not happen because the opportunity to make that clear has passed.

I dwell on the issue of timeliness for good reason. The bill is essentially the rolling over, or the extension of, sunset clauses. When it comes to this bill, the sun never sets. The sun does not seem to set on the sunset clauses embedded in this bill. It does not. I say that not to make gratuitous observation; I think it is central to some of the issues that have been discussed. The fundamental question I put is: will this chamber be necessitated or obligated to consider a similar extension of provisions bill next year? I want to know—I seek advice from the government—whether the set of circumstances that necessitate the further rolling over of this bill will take us from July next year into January 2023. I think that is to some degree intimated in the second reading speech in a factual sense and also in some of its closing paragraphs.

I want to reflect on how indeed the contents of this bill relate to a declared state of emergency. The provisions that will be extended by virtue of the passage of this bill are related to, enlivened by and activated by a contemporary state of emergency being declared. They are rolled over. These have been rolled over time after time and time again. We have normalised in this jurisdiction, for understandable reasons, a perpetual state of emergency since April of last year. Yes, we live in unusual times. I do not think they are any longer unprecedented times; this has become the new precedent. It is well and good to have a precedent that preserves public safety, but I am absolutely concerned by the long-term consequences of the normalising of an extended—almost perennially extended—state of emergency declaration, because what does that really mean?

I am not putting words into this fine, upstanding public servant's mouth. The now Vaccine Commander, Commissioner Chris Dawson, has effectively admitted that we have been living in a benign police state since April of last year. We have, and that should give us some reason to feel a little less comfortable than we have become. I do not think that what I am saying is necessarily a very popular sentiment; it certainly does not dissuade me from the wisdom in ensuring that this bill passes. Again—I reiterate—the opposition believes very much in the merits of this bill and believes very much that it should pass, but it should not just pass on the nod. It should not just pass without due scrutiny and transparency. I say that because we are in an interesting phase of COVID-19 management in Western Australia. I will not reflect much on the Premier's announcement of what is referred to as the safe transition plan.

Debate interrupted, pursuant to standing orders.

Extract from *Hansard*

[COUNCIL — Wednesday, 17 November 2021]

p5523c-5531a

Hon Sue Ellery; Hon Martin Aldridge; Hon Dr Steve Thomas; Hon Tjorn Sibma

[Continued on page 5540.]