COVID-19 RESPONSE AND ECONOMIC RECOVERY OMNIBUS BILL 2020

Second Reading

Resumed from 11 August.

MS L. METTAM (Vasse) [8.02 pm]: As the shadow Minister for Transport, I would like to make a brief contribution to this debate. I acknowledge our support for the bill. It is important that business continues to operate and government continues to govern as much as practicable during this period. Importantly, we support the measures provided under the bill to support agency operations. Seventy-five acts and 11 agencies will be impacted by this bill. For example, there is the challenge relating to the ability of key decision-makers to meet because legislation dictates that they should meet in public or in person.

The DEPUTY SPEAKER: Members, if you want to have a discussion, please take it off the floor.

Ms L. METTAM: There are also the challenges that may be faced when documents cannot be filed because there is a statutory requirement that they be filed in person, approvals and permits cannot be renewed electronically, fees cannot be waived, and courts cannot be in session. Western Australia is following suit from other states and the commonwealth. I understand that the Northern Territory is the only other jurisdiction not to have similar legislation. The Liberal opposition agrees that we need to ensure that these services continue.

This bill deals with the ability of the CEO or chief employees to reduce, waive or refund fees and charges in the transport area. This relates to specific acts, including the Public Transport Authority Act 2003, Road Traffic (Administration) Act 2008, Road Traffic (Authorisation to Drive) Act 2008, Road Traffic (Vehicles) Act 2012, and Road Traffic (Vehicles) (Taxing) Act 2008; and to the validation of fees, which is outlined in the Government Railways Act and the Motor Vehicle Dealers Act.

An important element is outlined in part 2, division 4, "Presence and dealing with documents by audiovisual communication". From a transport perspective, this relates specifically to the Public Transport Authority Act 2003. It provides for the presence of another person executing documents utilising an audiovisual tool—something that we have become increasingly used to utilising since March this year. Under division 2, the decision-maker can set new expiry dates for the authorisation of drivers' licences, learners' permits and vehicle licences. Similarly, the opposition supports the other clauses in the bill. I understand that the bill provides for a time line and these extensions will cease in December this year.

Throughout this period, the Liberal opposition has been very supportive of the measures that have enabled the government to continue to govern during this extraordinary period and that have allowed businesses to operate as normally as possible for the benefit of Western Australians in respect of the restrictions that may continue.

MS R. SAFFIOTI (West Swan — Minister for Planning) [8.06 pm] — in reply: I thank members opposite for their contributions on the COVID-19 Response and Economic Recovery Omnibus Bill 2020. They raised a number of issues during the second reading debate, so I will try to address as many as possible. One of the questions was why am I handling the bill, and I am asking myself the same question! The bill spans many agencies, portfolios and issues. One of the reasons we wanted to deal with it in this way is to consolidate all the issues in one bill and in one parliamentary debate. For efficiency reasons, we decided to put them in an omnibus bill. It started with planning considerations, but then we worked across government and realised that many agencies have similar or comparable issues, and that is why we thought we would put it all together in an omnibus bill. Because I started it and also because of the parliamentary workload of the Attorney General in particular, it was seen that I should carry it through. Of course, during the consideration in detail stage, my ministerial colleagues—those who are still here tonight!—will assist me, along with their advisers. Advisers from all the relevant agencies are available to answer questions.

The need for and the timing of the bill has also been questioned. Basically, as we have outlined, many other states and the commonwealth have passed similar bills. Our parliamentary agenda has been very full and it took considerable work by all the agencies involved. I thank the whole-of-government working group, which worked very well to identify all the issues and, of course, Parliamentary Counsel, who facilitated the drafting of this explanation.

I will address some of the issues raised. The provision for Executive Council meetings to be held by remote communications protects the Governor from exposure to COVID-19 while ensuring that the critical role of the operation of government can continue. As we know, particularly on nights like this, a healthy Governor is very important to be able to receive our bills and give them royal assent.

The issue of various provisions validating a range of decisions was raised. On the matter of the validation of meetings, the bill puts beyond doubt the validity of the process by which meetings are held. It does not validate the merits of those decisions, it is just that a decision made by the process set out in the bill is valid.

On 31 March 2020, the government announced the range of fees that would be varied or waived. This bill requires only the facilitation of a small percentage of those when there is no specific power in the current legislation to do so.

Finally, members raised the proposed temporary modifications to the Mental Health Act 2014. These amendments are limited solely to resolving a conflict between the Mental Health Infection Control Directions and the act. The directions provide for a number of infection control options to be used by practitioners and psychiatrists who conduct assessments or examinations, with audiovisual being only one medium of doing so. These infection control measures are required only when there may be a risk of exposure that is set out in the directions, such as when a patient has COVID-19 or has recently returned from overseas. Without these amendments, a person in those circumstances may not receive the treatment that they need when they need it, potentially increasing the risk to themselves and others. I am sure that this provision will be the subject of further discussion.

I again thank members for their contributions. This is very much a COVID-19 bill. Hopefully, in my response I have addressed the main concerns that were raised. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Point of Order

Mr Z.R.F. KIRKUP: Given the complexity of the bill, and the different shadow ministers required, could I request a slight delay so that we can make sure that we can cover the right areas? I suspect that we would get this done at a more expeditious pace if we did that.

Ms R. SAFFIOTI: Shall we break for 10 minutes? Is that okay?

Mr Z.R.F. KIRKUP: We can continue. That is fine.

Mr R.S. LOVE: Sorry, but I did not hear what the member for Dawesville said.

Mr Z.R.F. KIRKUP: We have to deal with this bill in batches and the minister has to bring her advisers in in groups, according to the theme, I imagine, of the clauses.

Ms R. SAFFIOTI: Can I respond?

The DEPUTY SPEAKER: Yes.

Ms R. SAFFIOTI: Thank you. We have just had further confirmation from the clerks that we cannot deal with these clauses in batches, as we were expecting. I think it would be reasonable to identify the areas on which members want to ask questions and I will make sure that I have the relevant ministers and advisers ready to go. I think that is why a five-minute break may help.

Mr R.S. LOVE: It might take more than five minutes if the minister wants us to advise her on every clause that we want someone to talk to.

Ms R. SAFFIOTI: Tell us which groups the member is very interested in.

Mr R.S. LOVE: We will have to go through it in the normal way. I do not understand what has been asked. I am willing to be cooperative, but it was a flawed process that the government brought into the house.

Mr W.J. JOHNSTON: It is not a flawed process.

Mr R.S. LOVE: It is a very flawed process. It does not conform to the standing orders. We are trying to work through it, but I want an understanding of what is happening now and we need time to consider it. Five minutes is not very much time to go through a bill to decide which clauses we want to talk on.

Ms R. SAFFIOTI: Okay. We will keep going.

Mr R.S. LOVE: We could have a break for 10 minutes to give us time to go through it.

Ms R. SAFFIOTI: We will continue. I thought we had a good understanding. I was trying to be helpful to provide a break, which I was not actually required to do, so that members could sit down and work through and identify the areas they wanted to speak on so that we could do this in a smooth manner. That is what I wanted to do and I offered a 10-minute break to do that. If the member does not want to do that and he wants to have a go at me about it —

Mr R.S. LOVE: I am not having a go at the minister.

Ms R. SAFFIOTI: Yes, you are.

Mr R.S. LOVE: No, I am not. I am suggesting that we will need more than five minutes.

The DEPUTY SPEAKER: Order, members! I think we have had enough to-and-fro. Minister, it is your call. Would you like to break or would you like to continue?

Ms R. SAFFIOTI: I think it would be effective if we had a 10-minute break.

The DEPUTY SPEAKER: Just before I vacate the chair, I remind members that we will go through consideration in detail from clause 1 through to the end.

Sitting suspended from 8.14 to 8.26 pm

Consideration in Detail

Clauses 1 and 2 put and passed.

Clause 3: Primary purposes of Act —

Mr Z.R.F. KIRKUP: Obviously, the primary purposes of the act define the relevant objectives that we are trying to deal with this evening. I am keen to understand whether, as part of bringing this bill before this place, a large number of invalid actions have been taken. Is this bill simply to cover because there was a concern that there may have been, or are there many documented instances of that being the case?

Ms R. SAFFIOTI: We would not call them invalid, but there may be doubt over their validity. This bill will make sure that we are not subject to challenge on those decisions, which have all been made through proper processes. Proper mechanisms were put in place, but this bill will make sure that the validity of those decisions will not be questioned in the future.

Dr D.J. HONEY: We on this side and, I think, all members in this place, understand the necessity of this bill. We have had special times. Members of the government have been the guys in the hot seat and have had to cope with this and make decisions on the run. We appreciate that that has potentially put ministers in a difficult position in making necessary decisions. This bill is to make sure that there can be no subsequent second-guessing of those decisions.

Does the government have any sort of list or record of what those decisions are? I will discuss the wording that is used in the various sections, as we have already discussed very briefly at the back of the chamber. This is a big act of faith in that we are being collectively asked to authorise actions, but we do not know what those actions were. We do not know whether those actions were illegal or questionable at the time. I am not alluding that this could be the case but, hypothetically, it is possible that actions were taken in which, for example, people did the wrong thing for the wrong reasons. I am not alleging that of any ministers. As I have said in this place, I hold the ministers in this place in high regard for their propriety, even if I do not agree with all their decisions. However, it may be that a departmental officer has made a decision that they simply should never have made or that they made that decision because they were being influenced by someone. I am not alleging that that has happened, but there is no transparency and that is a concern for us on this side. We are effectively signing a blank cheque and saying that we authorise all these things. It does not have to be now, but is it possible for the opposition to obtain a list of what those things are, because it will give us some transparency? It could be embarrassing or whatever, but I guess that is political life and it happens from time to time. I think we all agree that transparency in government is critical, even in a time of emergency. This request is not designed in any sense to hold up this legislation, and it will not. I assume that we will progress this legislation tonight, but can we obtain that list?

Ms R. SAFFIOTI: I will explain. It has been contended that drafting the validation provisions might be interpreted to extend more broadly than merely overcoming procedural issues. This is a misunderstanding of the provision. Parliamentary Counsel's Office drafted this provision very carefully and deliberately so as to not over-validate decisions for meetings to which this applies. It is about validating the procedure used to hold the meetings—those proceedings are covered by clauses 13 to 17; I suppose we are pre-empting those clauses a bit—mostly to use audiovisual methods to conduct meetings. This does not address the merits or substance of a decision. The decision is validated to the extent that it cannot be challenged on the basis that it was conducted in a way provided for in clauses 13 to 17. However, if a decision is flawed on its merits—for example a decision-maker took into account an irrelevant consideration—this validation clause does not cure that. Basically, if decisions are subject to normal appeals and other processes, that would still stand. What this does is just validate that a decision was made.

The meetings held and decisions made under the following acts require validation. The Aboriginal Cultural Materials Committee has met four times since April. It used Zoom to accommodate regional and interstate members. The Conservation and Parks Commission has met four times since 16 March 2020. The Office of the Environmental Protection Agency Authority held four meetings, again virtually, via Microsoft Teams. The Keep Australia Beautiful Council held two meetings by electronic means. Development assessment panels held 80 audiovisual meetings; 86 decisions were made. It was only on 13 July that in-person meetings began, when local governments had the capacity to meet social distancing requirements. The Rottnest Island Board met six times and there have been

four meetings of subcommittees associated with the board. That is an indication of the decisions made and the validation of the procedures for those meetings.

Dr D.J. HONEY: My colleague the member for Dawesville was called out of the chamber urgently. I am not sure whether he wanted to raise any more matters. I will not unnecessarily extend this. We are all busy and we all want to go home.

I appreciate that the way the meetings were held was eminently sensible, but some of this also refers to waivers or fee refunds or reductions in fees. Unless another member wants to talk, I am happy, in the absence of the member for Dawesville, to not unnecessarily extend this. Perhaps when I get to clauses 13 to 17, I will go through that answer.

Clause put and passed.

Clauses 4 to 10 put and passed.

Clause 11: Validation of reductions, waivers and refunds —

Dr D.J. HONEY: Clause 11(3) refers to "a validated reduction, waiver or refund". I will refer to subdivision 1, although I do not wish the minister to comment on it other than in the context of this part. Subdivision 1 describes who can make those decisions and who can waiver or refund those funds. Clause 11, "Validation of reductions, waivers and refunds", does not refer to that preceding part, which defines who is entitled to do that. Clearly, that part is very tight. It is very clear that senior staff are to do that. Were reductions, waivers or refunds made by people other than the people identified in subdivision 1 and subdivision 2 of this part?

Ms R. SAFFIOTI: I will try to explain this as best as I can. Clause 11(4) lists all the fees that we are validating—basically reductions, waivers or refunds. There was an instruction by the Premier and through the Expenditure Review Committee and cabinet to waive a whole range of fees across government. In many instances there was actually no power in the legislation to do that, so this is validating that action for all those fees and charges under those relevant acts. Clause 8(3) will basically apply in the future. It will create, in a sense, the ability to waive or refund in the future, if this ever happens again, under those acts. That is how those sections interact.

Dr D.J. HONEY: Minister, I appreciate that. I am certain the minister has had a busier day than I have, but that section is retrospective, not prospective, as far as I can read it. I do not want to quibble over that point; that is unnecessary. Is the minister confident that the waivers, refunds or reductions that have been given have only been given in relation to that direction from the Premier?

Ms R. SAFFIOTI: Yes. The Expenditure Review Committee and cabinet decided that this range of fees would be waived and then all of us in our agencies had to go about making that happen. In some instances, it was challenging because of the lack of powers to do so.

Clause put and passed.

Clause 12 put and passed.

Clause 13: Meetings under relevant enactments may occur by instantaneous communication —

Mr R.S. LOVE: Clause 13 is titled "Meetings under relevant enactments may occur by instantaneous communication" and with the minister's indulgence, I will ask some question about that section rather than just clause 13. Clause 13 states —

> (1) If, under a relevant enactment, a board, committee or other body is required or permitted to hold a meeting, the meeting may be held in whole or in part using —
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> (a) a telephone; or
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> (b) audiovisual communication; or
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> (c) any other means of instantaneous communication.

I am wondering about recording the attendance of persons. My experience of chairing meetings with Zoom and everything else is it is one thing to know that the person is in the room when the audiovisual equipment is running, but if they are on the phone and they are muted, I do not know whether they are attending or not. What are the requirements to ensure a record is kept of the actual participation and attendance of all the members and to ensure that there is a quorum at all times?

Ms R. SAFFIOTI: The advice I have is that the way people are recorded to be present and how those decisions are made will be governed by the relevant standing orders, procedures and processes of the relevant committees. The development assessment panel meetings note the date, members, officers, applicants, submitters, members of the public and so forth, so all the information for the DAP meetings was recorded as per normal. The relevant committees or boards normally have procedures or standard orders on how to run audiovisual or teleconferences.

Mr R.S. LOVE: Do those bodies have relevant standing orders that deal with electronic meetings? Were they dealing with these electronic meetings before the current COVID period? I find it difficult to believe they were able to do that.

Ms R. SAFFIOTI: I can explain from my personal experience. DAP meetings have not been held in this format, so, to be quite blunt with the member, when this was all unfolding, many agencies worked very quickly to make sure they had the procedures and processes in place to try to understand and facilitate how they could have effective decision-making. At that time, we thought it could be six months, or even 12 months, before we returned to normal, so a lot of processes were changed very quickly. When these sorts of challenges arise, everyone responds very quickly. In my agencies, processes were put in place to make sure that there was still an effective decision-making process and there were rules governing how these meetings were going to be conducted and recorded.

Mr R.S. LOVE: Thank you. As a case in point, are there standing orders that permit each of the development assessment panels to conduct their meetings electronically? Do those standing orders detail how those meetings will be conducted? Are there specific requirements so that a minute taker can be completely be assured that a person is at all times in attendance and how do they deal with things such as recording and taking notes?

Ms R. SAFFIOTI: Do the development assessment panels have rules and procedures? In a sense, they do now because they were forced to for Zoom meetings. The bill facilitates this process and it will then be refined in the future to make sure all the t's are crossed and the i's dotted. From my experience, when COVID happened, all agencies—environmental, water, planning—made sure we had a robust decision-making process that could work. The bill validates the procedures and processes put in place for recording meetings. The process for the way that meetings were run and matters were considered did not change much; it was just how it was done through Zoom and so forth. Therefore, this bill will facilitate actions much more easily in the future should we ever have a similar situation.

Mr R.S. LOVE: Validation is actually dealt with in the next section, so what we are talking about here is the process of running the meetings rather than the validation of the meetings. I am not quibbling about validating meetings when we are trying to lock down processes, but I am trying to understand that there is a transparent—especially for the development assessment panels—understanding of the standing orders or processes and that they actually do lay out exactly how these meetings will be conducted. People need to know how they can participate or observe. If members of the public are required to give evidence, do people know how they go about that? Where do they find that information? Is that information publicly available? If I as member of the public want to observe a process that is important to me, how do I find where to access that meeting? Is there a specific platform or capacity that I would have to have? Could I do it by smartphone or whatever? These are important questions, not so much about validating the decisions that are made—as I said, I have no intention of quibbling over that—but I want to make sure that this has been addressed so the public can have full participation with and confidence in these meetings.

Ms R. SAFFIOTI: To answer the question how do members of the public participate in DAPs if they are run by audiovisual means, the link for the DAP meetings are published on the relevant websites in the same manner that a notice for an in-person public meeting is. Any member of the public is welcome to view the meeting and if they wish to make a statement or ask a question, that is done in accordance with the standing orders for that meeting. The Department of Planning, Lands and Heritage as well as local government offices can and do provide assistance to members of the public to attend DAP meetings via audiovisual means.

Mr R.S. LOVE: This is the last question I have on this matter. Are the meetings recorded, and are they recorded in a minute form or are they held as an electronic record of the actual meeting; and, if there is a recording of the meeting, is it the intention that people may be able to download or view that recording at some time in the future?

Ms R. SAFFIOTI: We know minutes are definitely taken of the decisions, of course, but we will come back to the member about whether they are recorded.

Clause put and passed.

Clauses 14 to 18 put and passed.

Clause 19: Validation of meetings and decisions —

Dr D.J. HONEY: I do not think this needs any response from the minister at all, but I want to make the point that I think that what is being authorised by this clause is very clear, not in the detail but in the types of things that are being authorised. This clause refers to subdivision 1, and it is possibly a better form of drafting than the other clauses. However, the minister made it clear in the previous clause why that could not be the case. For the sake of clarity, I think that is a very good way to put it, but I do not require a comment from the minister.

Clause put and passed.

Clauses 20 and 21 put and passed.

Clause 22: Validation of things done —

Dr D.J. HONEY: Minister, this clause has the same theme—the validation of things done. Again, if we look at subdivision 1, it clarifies and contextualises the public availability of documents. Is the minister or her staff aware of any decisions that were made? This is to do with planning and other acts. Were decisions made whereby the public, in fact, could not view documents in any form? I appreciate that, typically, a paper copy would be available, but I am concerned that decisions were made whereby the public did not have an opportunity to scrutinise documents in any form.

Ms R. SAFFIOTI: In practice, most agencies and local governments already provide documents on their websites, and there is a requirement to make documents available to the public. For example, the Office of the Parliamentary Counsel has all its documents online, and a number of local governments do the same with scheme amendments and development applications. The problem arises, of course, when legislation requires documents to be made available to an office or agency or local government but that office is not accessible. Basically, this allows it to, again, in a sense, validate that in some instances. I think the example was given of a public library, in which things are sometimes required to be available. When libraries were shut, that could not happen, but they were still available online. My sister works in a library; she is a very good librarian. We know that a lot of people who do not have access to computers or printers and so forth at home often go to the library to source public information.

Dr D.J. HONEY: Clause 20(2) defines the relevant enactments and some of them are quite topical areas. The Planning and Development Act, obviously, would probably be at the top of that list. There has been some considerable discussion about the Hope Valley–Wattleup Redevelopment Act over the years, and I accept the explanation the minister gave. Is it the minister's understanding that documents were available in some form for any of the decisions that were made? My concern is pretty straightforward. I would be concerned if decisions were made when there was no possibility of people actually viewing documents to understand what was being done.

Ms R. SAFFIOTI: All the documents were available online for all those decisions that we outlined before.

Clause put and passed.

Clause 23: Presence by audiovisual communication —

Ms R. SAFFIOTI: I will need to bring in some other advisers for clause 23.

Mr R.S. LOVE: This is of interest simply because it has to do with the swearing of oaths, affidavits and statutory declarations et cetera, and the presence of a witness in some way by audiovisual communication. I am just trying to get an understanding as to how that would work, because that is the sort of thing that takes place, I think, in some electoral offices. The Attorney General is looking at me as though I do not know what I am talking about. I do not; that is why I am asking the question!

Mr J.R. Quigley: I'm not thinking that at all!

Mr R.S. LOVE: I am wondering how the mechanics of that process work to ensure that there is a validation that a person has actually witnessed an electronic signature? How would a third party know that that has all taken place in front of a witness? I guess I am concerned, because I imagine that during the lockdown people needed all sorts of documents to be signed in the ordinary course of events, and they could not get down to a JP or the member for Butler's office or whoever it might be to get that done. I just want a bit of an understanding of how that works and how it is validated to the other party who then receives it.

Ms R. SAFFIOTI: Member, the Attorney General is looking at me and judging me, so I will be very careful here. Clause 23 facilitates the process by audiovisual communication, and clause 24 actually outlines what the witness must do if clause 23 permits audiovisual witnessing. For example, clause 24 outlines the three things that have to happen when validating or witnessing the declaration. Under clause 24(2), if clause 23 applies, any requirement upon a witness to sign a document dealt with by person A is met if the witness is satisfied that what he or she is signing is the document signed by person A, signs the document, and writes a statement to say the document was dealt with under this provision. As I have said, clause 24 pretty much outlines the steps required by the witness to ensure that the signature was real and valid.

Clause put and passed.

Clauses 24 to 30 put and passed.

Clause 31: Decision-maker may modify or remove conditions of authorisations during operative period —

Dr D.J. HONEY: I have a very simple question.

Ms R. SAFFIOTI: These are questions relating to water.

Dr D.J. HONEY: It will not be a long question. I feel a bit guilty that the advisers have come onto the floor because it is pretty straightforward. I refer to the title of the clause. It could be quite significant if conditions are modified or removed. Typically, the community relies on the fact that those things are done. Usually there is a fair

bit of contention if they are not done. How does the opposition or other people know what changes have been made—for example, if special conditions or undertakings are waived in areas listed in the table? How would anyone be aware that that has happened? How is that transparent?

Ms R. SAFFIOTI: This is very limited in scope. In relation to a clearing licence under the Country Areas Water Supply Act, it is really looking at the extension of any of the conditions that relate to that. In relation to a licence under the Rights in Water and Irrigation Act, again, it is very narrow. There are certain conditions under the regulations. I understand that they are normally not made public. They are part of the normal operations of the relevant government agency when we are dealing with individual proponents and changing or extending their conditions. This basically facilitates that. It is not something that is made public in the normal course of events.

Dr D.J. HONEY: Thank you, minister. I can see that in those conditions. The next question is just for my education. The third authorisation is a prescribed authorisation. Can the minister please provide an example of a prescribed authorisation so I can understand the scope of that approval that we are granting?

Ms R. SAFFIOTI: It is an act that can be authorised through regulation if required. The authorisation can be added through regulation if required.

Dr D.J. HONEY: Just to be clear in my mind, does that mean that a new regulation can be imposed or does it mean a regulation can be ignored or skipped over?

Ms R. SAFFIOTI: Basically, it allows for another authorisation to be prescribed from another act. If that was done, the conditions or the process attached to this section would apply.

Clause put and passed.

Clauses 32 and 33 put and passed.

Clause 34: Extension of certain time limits under relevant schemes —

Mr R.S. LOVE: I do not think the minister needed to get her advisers. I am sure she can answer the questions off the top of her head.

This clause deals with the extension of development approvals granted on or after 8 April 2020. That is what I am reading. The approvals remain valid for two years after the day on which they would have normally ceased. Has this not already been dealt with in another bill that the minister brought to Parliament? Can she explain why this particular measure had to be introduced as part of this omnibus bill? I thought it was in the previous planning bill she introduced.

Ms R. SAFFIOTI: In the Perth, Peel and greater Bunbury area, there are two planning schemes—a regional planning scheme and a local planning scheme. Most development undertaken in those areas requires two approvals, one under each type of scheme. In the majority of cases, when an approval is issued for a development by a local government, it is given under both schemes. Some proposals also need development under only regional schemes—for example, when they are in a regional scheme reserve. These approvals are issued by the Western Australian Planning Commission. To assist with the economic recovery and reduce the regulatory burden for people who have valid development approvals they are yet to act upon, a two-year extension to the substantial commencement period for all local planning scheme approvals under section 78H of the Planning and Development (Local Planning Schemes) Regulations 2015 will be granted. No similar provisions can be used for extending approvals under regional schemes, so the provision in clause 34 ensures that the timed commercial development under the regional scheme approval aligns with the local scheme approval. This facilitates a consistent approach in planning development impacts across the regions and the city.

Ms L. METTAM: Clause 34(3) states —

> Despite anything provided in a development approval or in the relevant scheme under which it is granted, the development approval —
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> …
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> (b) lapses if the development has not been substantially commenced before that day.

Can the minister define "substantially commenced"?

Ms R. SAFFIOTI: There has been a bit of case law around "substantially commenced". Like the phrase "due regard", this concept is well understood and has a long history. The phrase goes back several decades to the Town Planning Regulations 1967. The definition of "substantial commencement" in the local planning scheme regulations is —

> ***substantially commenced*** means that some substantial part of work in respect of a development approved under a planning scheme or under an interim development order has been performed;

The test to be applied is best summed up by the High Court decision of Day v Pinglen Pty Ltd 1981, when the court observed at paragraph 299 —

> The facts must be such as to lead naturally to the conclusion that the commencement is not merely evident, but is substantial, that is, of considerable amount. A substantial commencement involves a commitment of resources of such proportions relative to the approved project as to carry the assurance that the work has really commenced.

It is an interesting case. I remember reading this out during debate on the Planning and Development Amendment Bill 2020. In the case of Day, the matter concerned the construction of six townhouses. The developer had laid down 11 per cent of a concrete slab costing $2 127 out of an estimated $350 000 for six townhouses. The works were also done out of sequence as excavation should have occurred first. The court heard that the project had not substantially commenced and in fact was a sham. As I said, a lot of case law explains "substantially commenced" and it means that some substantial part of work of a development approval under a planning scheme has been undertaken.

Clause put and passed.

Clauses 35 to 37 put and passed.

Clause 38: Act modified —

Mr Z.R.F. KIRKUP: Why is it considered necessary for this change to be brought before the house?

Mr J.R. QUIGLEY: This modifies the Bail Act 1982 to permit someone to enter into a surety by video link when it is impracticable for them to attend in person. Currently, sureties can be entered into over video only when a surety lives interstate. This measure will now allow a surety—that is, the person who signs on behalf of or gives an undertaking that the accused will present—to be in the state, but it is impracticable to attend the court in person. This is very important in regional areas. This will operate only until 31 December 2021, unless there is an extension.

Mr Z.R.F. KIRKUP: Have there been any instances when surety could not be granted during the COVID-19 pandemic because of the lack of an audiovisual link to provide that?

Mr J.R. QUIGLEY: I am not aware of there having been an instance of it at the moment, because, fortunately, there is no community transmission. This is a protective measure in case there is an outbreak and we do not want the remand population going through the roof because sureties cannot attend.

Mr Z.R.F. KIRKUP: Given how convenient this would likely be for regional and certainly remote communities in Western Australia, is this an amendment the government might see continue beyond the pandemic period and the prescribed time frame?

Mr J.R. QUIGLEY: A number of Bail Act provisions are under review by the department. We will monitor the efficacy and performance of this particular provision and then look at it. This also is important given the Chief Magistrate's directions that justices will no longer be doing court work. That will be done remotely. We have appointed two extra magistrates to account for that workload. This whole area of regional and remote justice is under active review. That is why we have it through to 21 December next year, and it will be closely monitored for its efficacy and reliability.

Mr R.S. LOVE: I am not sure whether it is clause 38 or clause 39, but it is in the same part. To pick up on that matter, proposed section 43A(2) states —

> This section applies if —
>
> …
>
> (b) it is impracticable for the proposed surety to enter into a surety undertaking in person before a relevant official.

I would like to make a couple of comments about what we have just heard. First, the member for Dawesville asked whether there had been any circumstances in which this had been a problem and the Attorney General's answer was no, because there had been no community spread. But we also had the period during which biosecurity zones were imposed and people were unable to travel throughout remote areas, plus there were regional boundary lockdowns. There may well have been circumstances, but it was very difficult indeed for people to travel. There has also been a problem with the availability of public transport as air or road transport has been interfered with or stopped in some circumstances. I can see that there may very well have been circumstances in which people found it impracticable to get to a court. I just put that on the record. We reiterate the question: have there been any circumstances?

Does the definition of what is impracticable in this provision rely only upon there being a disease or pandemic influencing factor, or is it considered to be impracticable because it is really quite hard for someone to get to a court, even though it is actually no harder than it was two years ago?

Mr J.R. QUIGLEY: In relation to the latter part of the member's question, the answer is no. It is not limited to just a pandemic situation; it is to generally try to deliver more efficient and better justice services to the regions, given the size of our state.

In relation to the first part of the member's question about instances in which there might have been difficulties and the person might not have been able to be released because a surety could not be entered into, that data has not been collected. That happens in the court sometimes: "Where is your surety?" "I can't get it." It is not recorded at a separate data point.

Mr R.S. Love: So we don't really know.

Mr J.R. QUIGLEY: We do not really know. But going forward, we will have better vision of that with people using the service.

Mr R.S. LOVE: I had no intention of asking this until the Attorney General raised the issue of justices of the peace no longer being able to deal with certain matters in the court. In my electorate, a number of court proceedings used to take place in front of a JP, but it is now necessary for a magistrate from Geraldton or some other place to visit a town. A case in point is Leeman or Jurien Bay, where the magistrate visits from Geraldton. Is this provision in response to not just the COVID situation, but the change in JPs not being able to attend those meetings? Is it the Attorney General's intention that clause 38(3), which deals with postponing the cessation of subclause (1), is quite likely to be brought to the fore?

Mr J.R. QUIGLEY: Of course, it is related to COVID because of the limited duration and the sunset provision for December 2021. As to my comment about JPs not being in court, a lot of proceedings will now take place by way of video link. I understand the opposition of the Royal Association of Justices of Western Australia, and we thank the JPs for their many years of voluntary service. However, the processes have become much more complicated, and I say that because it is not just traffic matters now; it is each-way offences, whether a person is going to be tried summarily or go up to the District Court on indictment and issues surrounding bail, which goes back to the Ward case in which the person died in the van and there was an unsatisfactory bail consideration by the justice in Laverton. If national cabinet can be run by video link, we believe that a bail application can be run by video link as well, and that might necessitate a person going surety entering into a surety remotely.

Mr R.S. LOVE: What the Attorney General is saying is that he would see this being used more frequently over time. How will the person who needs to front court access the video process? Will they have to be in a particular place or will they be able to do it from any sort of device, rather than having to front up at the local police station or some other town? They could be in a remote community where there are no facilities to speak of.

Mr J.R. QUIGLEY: They will not have to go to a particular location, as long as video communication can be established over the internet. The critical thing will be that the court considering the bail application can establish that all criteria for the surety are met and that the surety is properly entered into. As I said, if national cabinet can be run by video link, we can do bail applications. Sorry; I said "the court". It will be a surety approval officer. The person can be bailed for $1 000 with a $1 000 suitable surety at the Central Law Courts, where there is a surety approval officer. As long as that officer can establish that the criteria have been met, the surety can be entered into over video link.

Mr R.S. LOVE: This is my final question on this. Again, we are seeing a more rapid uptake of technology, caused by the COVID situation. National cabinet may well be run remotely, but I suggest that the participants are better resourced and have a more sophisticated understanding of the use of that technology. I hope, and want the Attorney General's assurance, that people who have less experience with using this sort of technology will not fall into the situation as we have seen when people complain because their bills arrive online and they have to do it on the computer. I would hate to think that a person facing a bail situation who has very limited language skills or limited access to or understanding of how to use electronic devices is put in a difficult position because they do not know how to fully participate in the process.

Mr J.R. QUIGLEY: The current provisions for interstate sureties require a visual link, and I think that is a reasonable safeguard, but it can be by any audiovisual link. If a person had an iPad, for example, they could do a FaceTime link, and they would have the vision and the audio. I am a bit dumb about Android devices, but I am sure that a similar service is available on Android devices. It does not have to be high-end technology like that used in Dumas House. As long as the surety approval officer can see the person entering into the surety, that will be sufficient to meet the requirements of the legislation, and going forward we will have a better idea of how often it is used and its efficacy.

Clause put and passed.

Clause 39 put and passed.

Leave granted for clauses 40 to 44 to be considered together.

Clauses 40 to 44 —

Mr Z.R.F. KIRKUP: Clause 42 will insert proposed section 48(5) into the Mental Health Act. Is it correct that, effectively, this provision allows a necessary mental health assessment to be conducted using audiovisual communication, possibly for involuntary admission?

Mr R.H. COOK: This clause modifies section 48 of the Mental Health Act to provide than an assessment may be conducted using audiovisual communication if the practitioner is satisfied that it is necessary to do so to comply with the directions. The member will recall that the directions are those made under the Public Health Act, subject to sections 157 and 190 of that act, on 6 April 2020. They apply to those specific directions made on that date.

Mr Z.R.F. KIRKUP: Thank you, minister. Does this provide any capacity for a patient who has been assessed to be referred for involuntary admission?

Mr R.H. COOK: Yes, that is my understanding. It is subject purely to those directions; it is not a permanent shift.

Mr Z.R.F. KIRKUP: I appreciate that. I have gone through the Mental Health Infection Control Directions, which seem relatively straightforward. The concern that I have, which I expressed during the second reading debate, is that a practitioner will now be able to refer someone who has been assessed in the metropolitan area via an audiovisual link only to be involuntarily admitted for a significant period. That is quite a considerable feat. I understand that there are similar provisions for a practitioner to assess a patient in a regional setting, but in the metropolitan setting, that seems to be quite a significant change. Why was this considered necessary to be brought before the house as part of the COVID-19 omnibus bill?

Mr R.H. COOK: I thank the member and appreciate the comments he made in the second reading debate. The measure was introduced to respect people's liberty because, under the Mental Health Act, on occasions we have to deprive people of that liberty. However, I stress that it does not detract from the primary objects of the Mental Health Act, which include providing a person with mental illness with the best possible treatment and care with the least restriction of their freedom and the least interference with their rights and respect of their dignity and protection of the person and the community. The member is correct that this is an extraordinary change in extraordinary times. The inclusion of this amendment to the Mental Health Act is simply to take account of the specific directions that were made on 6 April. This is not intended to be a permanent feature. It is true that, ultimately, we consider that someone having a face-to-face consultation in any clinical setting is the rolled-gold situation. We are in extraordinary times and these measures are being taken simply to make sure that we are carefully balancing the person's rights with the need to protect infection control and other measures associated with COVID-19.

Mr Z.R.F. KIRKUP: Thank you, minister, for that response. Within the act itself, which I have read, and the reason I became concerned, is that the act already contains provisions to make an assessment from behind the door. Having read the Mental Health Infection Control Directions, I argue that that would be a perfectly fine way to assess a patient. If the act contains provisions for a practitioner to assess a patient from behind the door—in a secure manner, I imagine—why would the Mental Health Infection Control Directions restrict that from occurring? I am trying to imagine the type of scenario that I suspect the Mental Health Commission has thought about to understand why the use of audiovisual links would be required when the act currently provides that a practitioner can, at a distance, assess a patient who has been involuntarily admitted.

Mr R.H. COOK: I respect the member's perspective, and he is quite right. The Mental Health Act does envisage situations when there is not face-to-face or across-the-table consultation. Under the provisions of the Mental Health Infection Control Directions, it is anticipated that practitioners themselves are subject to isolation measures. Therefore, this measure provides that not only the person being assessed is subject to enclosure, for want of a better description, or being constricted, but also the practitioner is the subject of a quarantine order of some nature. The measure envisages all the variations of the one theme. The member is quite correct that the Mental Health Act envisages certain circumstances, from a safety perspective, when there might be a door between the two. This clause envisages a case when either the person being assessed or the practitioner is the subject of a quarantine order.

Mr Z.R.F. KIRKUP: Thank you, minister. Under that type of circumstance that we might find ourselves in, when this bill passes and becomes law, will a protocol be established for how a practitioner might assess a patient? Understandably, we have heard from the Attorney General about the surety process. I understand that a surety officer might FaceTime the patient. Obviously, when we a talking about involuntarily detaining someone for up to six days at a time, that is a significant undertaking. I appreciate that this bill has not yet become the law of the land, but has the minister been advised whether an established protocol will be put in place? To extend the Attorney General's example, will the process to detain someone involuntarily for six days be much easier in that someone will FaceTime a patient and say, "Here's Zac Kirkup. He needs to be admitted", and then look at me on the phone through an eight-megapixel camera? I appreciate that the usual safeguards are in place for practitioners to act responsibly. However, given the requirement, understandably, to follow the Mental Health Infection Control Directions, has the minister been advised what the protocol might be for involuntary admission once this bill becomes law?

Mr R.H. COOK: Obviously, this provision does nothing to detract from the rights and, to ensure that we have checks and balances, the individual's deprivation of liberty can be examined by the Mental Health Commission as part of the normal protocols. The use of telehealth for mental health assessments and examinations is well understood in the regional context, which provides the frameworks around the protocols and processes. I stress that a practitioner or psychiatrist must still have regard to the objects of the Mental Health Act and the Charter of Mental Health Care Principles. The charter is a rights-based set of principles and includes such principles as the protection of human rights and a person-centred approach. Importantly, these amendments were made after consultation with the Mental Health Tribunal, the Chief Psychiatrist, the Mental Health Advocacy Service and the Department of Health. It is important to remember that these are done on the basis of simply informing the interaction between the practitioner and the person who is being assessed. Nothing else detracts from all the safeguards and protocols in the Mental Health Act.

Mr Z.R.F. KIRKUP: I appreciate that a practitioner in that position has to adhere to a range of obligations they have to the patient that are set down already. The obvious concern I have is that surety in the case of what the Attorney General said is just maintaining a visual focus, confirming identity and providing surety or not. The assessment that is required for a patient to be involuntarily admitted is obviously a significantly different assessment. I entirely appreciate that there is an assessment protocol for telehealth in the regions. There are plenty of telehealth hospital rooms across the state's health facilities. In the metropolitan area, we have yet to embark on that. I am concerned what that will look like in practice in the metropolitan context. Undoubtedly, other jurisdictions provide such an operation. For whatever it is worth, and I appreciate that the minister will disabuse me of the notion and say that everything is fine, I genuinely feel ill-at-ease about the idea that even though they may be only as far apart as the minister and me, the doctor could, effectively, be in an office there and the patient here, and that individual could be assessed as someone who should be involuntarily detained. That loses a sense of connection with the person and, over time, might remove the gravity of what is occurring. I worry about that, for whatever it is worth. I appreciate that this is only a temporary measure. I would feel entirely uncomfortable if the state were looking into this as a permanent arrangement.

Mr R.H. COOK: The member's concerns are well founded. I would be disappointed if he did not raise concerns about these sorts of provisions. These are, as the member observed, extraordinary changes. I made the comment that they come at an extraordinary time. I hope the member can gain some comfort from the experience that we have had so far with the use of telecommunications in the WA Country Health Service. Anecdotally, it is suggested that the response to audiovisual use has been very positive. An audiovisual option is better than no access to treatment or care at all and, in that context, better than the commute or the disruption that might be required if we were to say that despite all the infection controls, we will put both people together and have them both wear a mask and face away from each other or whatever. With all the best intent, this is the best option in a difficult set of circumstances. I thank the member for his observations about the directions. They seem pretty commonsense and they are done with the hope for a minimum of disruption. As the member also observed, they are limited to those directions at this time.

Mr Z.R.F. KIRKUP: This is my final question on this set of clauses. I appreciate the minister's indulgence in giving us very full answers on these. The Mental Health Tribunal provides an annual report, I believe, or there is an annual reporting about its decision-making process. Will the minister provide some assurance that any decisions that are made through this new change will be reported in a similar way so we will have an understanding about what has occurred as a result of these changes?

Mr R.H. COOK: I will certainly undertake to provide some transparency, whether it is through the Mental Health Tribunal or the Mental Health Commission. I understand that the Mental Health Commission's use of audiovisual communication is in accordance with these amendments and will be tracked. I cannot give the member an analysis of how many people have undertaken this measure to date, and I apologise for that. However, I can tell the member that a range of jurisdictions around Australia have utilised similar means, although not necessarily by a legislative response to switch to an audiovisual or videoconferencing arrangement for these assessments. I can commit that the Mental Health Commission and/or the Mental Health Tribunal will have some commentary on the extent to which it was used and any issues that may have arisen. I will write to both and ask them to make observations.

Mr Z.R.F. KIRKUP: I thank the minister for the undertaking. Just to clarify the minister's comment, I may have misheard him, and I apologise for that. The minister suggested that we could not quantify how many times this has been done up to this date. I imagine that this cannot have been done up to this date. There cannot have been any patients who have been involuntarily admitted through an AV link in the metropolitan area up to this point.

Mr R.H. COOK: I can confirm that on or after 7 April some people have been detained using this measure or may have been. The member will observe under clause 44 that there is a validation of assessments and examinations taken to date. The advice that we have received from the State Solicitor is that it is legally sound, but this legislation puts it beyond questioning if we undertake this validation clause at clause 44.

Mr Z.R.F. KIRKUP: That is a little bit concerning, unless I am reading the minister wrong.

Mr R.H. Cook interjected.

Mr Z.R.F. KIRKUP: That is right. Are there patients who have been audiovisually assessed and involuntarily detained already?

Mr R.H. Cook: Yes.

Mr Z.R.F. KIRKUP: Do we not have a quantum of the number of patients to whom that has occurred?

Mr R.H. COOK: People would have been required, under the directions of 6 April, to have undertaken these measures, all of which were considered. We do not have a number for the member or if there has been a number. It will be the role of the Mental Health Commissioner to provide that report to us. One impact of these amendments is to facilitate and another is to validate. Clauses 40 to 43 are about facilitation—to make it plain in a statutory sense. Clause 44 is about the validation of assessments that have taken place since 6 April.

Mr Z.R.F. KIRKUP: I promise that this will be my final question.

Dr D.J. Honey: You said that before!

Mr Z.R.F. KIRKUP: I did, indeed, member for Cottesloe.

I appreciate that undertaking to provide that information in such good faith to the Parliament. For whatever it is worth, it concerns me perhaps more than anything else that some actions have been taken by practitioners who otherwise would not have been entitled to do so unless they knew that this legislation was coming.

Mr R.H. COOK: Those practitioners would have had to have complied with the directions under the Public Health Act. They would have been undertaking a lawful act because it would have been consistent with the directions that were provided under the Public Health Act. The advice that we had was that in the event that we got to the point at which we would be able to legislate, it would be good to put that beyond question, but also to validate those actions that have taken place. It does not bring into question the validity or the legality of those acts that have taken place consistent with the directions.

Mr R.S. LOVE: The member for Dawesville has covered most of what I was wondering already. I am just wondering about the references the minister made to these examinations already taking place through the WA Country Health Service. Is that for the same purpose that this provision covers? If so, why is it acceptable in country areas for this to have been occurring until now if it was not actually contemplated that there would be a validation in the future?

Mr R.H. COOK: That is a great question, member. Sections 48(3) and 79(3) of the Mental Health Act 2014 allow, and I quote —

> … people located in non-metropolitan centres to be assessed or examined using audio-visual means (videoconferencing) if it is not practicable for the practitioner and patient to be in each other's physical presence …

It is simply part of the current act that was passed in 2014.

Mr R.S. LOVE: That wording is similar to what we heard from the Attorney General about bail. Turning to the clauses that we have been presented tonight, these will have effect when there is a mental health infection control direction. This provision is a long-living provision; it is not a short-term provision. It will stay in the legislation for a very long time, but it will fall away when those health directions are either set aside or some replacement direction is brought into place. I think that is what is going on here. For the recommendations made under these provisions, if the direction is set aside, does the effect of that examination and the order carry on until its ordinary expiration or does it fall aside as soon as the health direction is no longer enforced?

Mr R.H. COOK: Forgive me if I do not answer the full extent of your question; I will be very happy to follow up. The effect of this legislation is to facilitate the examination and the assessment of a particular client. That may result in orders being applied to that person. Ultimately, this will validate the consultation that has taken place, albeit in this case by videoconferencing or audio consultation. From that perspective, it is to validate the orders that are created rather than necessarily the process. From that perspective, if the directions then fall away, the orders themselves will not fall away; that person will still be subject to those orders. But if there was a refreshment of those orders, if there was an ongoing assessment, as there usually is in this particular case, or if the Mental Health Tribunal was to conduct one of its regular reviews of that person, in that instance, and the directions have since fallen away, it would have to be face to face; that is correct. Is that what the member was asking?

Mr R.S. LOVE: Yes, it is very much what I asked. Thank you. To also enlighten me, if someone is examined in this way, is it expected that upon their presentation to some facility, they will be re-examined quickly or will that be done as though they had had a physical examination in the first place?

Mr R.H. COOK: I am informed that anyone who is subject to compulsory orders has access to the mental health advocacy service and it will be provided with that information. In addition, there will be a compulsory review from the Mental Health Tribunal and then regular reviews from the Mental Health Tribunal. In addition, the person can request a review of their situation. This is certainly not a set-and-forget system. In the event that someone may have been subject to orders consistent with the directions that were provided on 6 April and those directions fall away and there were subsequent reviews, they would certainly be face-to-face reviews.

Clause put and passed.

The ACTING SPEAKER: If there are no more questions until division 4, we will wait for the Attorney General to come to the table.

Clauses 45 to 48 put and passed.

Clause 49: Section 14B inserted —

Mr R.S. LOVE: This clause is very similar to the bail situation. I would like to know where the Attorney General envisages these requirements and circumstances will be used? I am talking about audio link sentencing referred to in proposed section 14B. I understand that this will cease on December 2021, so in what circumstances will the audio link for sentencing apply? Is there some sort of requirement for a disease, or will a judgement have to be made that it is impracticable for a person to attend court?

Mr J.R. QUIGLEY: This will apply for just the coronavirus period, although it is not limited to circumstances of coronavirus, but during that period. It allows remote sentencing by audio link for non-custodial sentences, so that people who are convicted of traffic offences or whatever—lower end offences with a non-custodial sentence—can be sentenced by audio link, which facilitated sentencing. The accused person must consent to that process. If the accused wishes to be present, he can be.

Clause put and passed.

Clauses 50 to 53 put and passed.

Clause 54: *Administration Act 1903* amended —

Dr D.J. HONEY: This is not a complex question. Part 5 refers to permanent changes, which, although they may be relevant to the COVID period, are forward-looking and will exist forever. I suspect the Attorney General can answer this himself: has the acceptability of this been discussed with the Law Society of Western Australia lawyers and others? As I understand it, this will entrench a variety of legal, court and tribunal processes in using electronic means and I want to be satisfied that there is no contention amongst the Attorney General's legal colleagues with that and it is something that is widely accepted as being a reasonable position for the future. As I say, there is no sunset clause on this provision, and so it applies forever until the law is amended.

Mr J.R. QUIGLEY: The Supreme Court already has provision for electronic filing and processes not because of the coronavirus period, but because electronic filings and processes were brought in some time ago. This issue was not discussed with the Law Society; it was discussed with the heads of jurisdiction of the lesser courts to bring them onboard with the process of the superior court. It will be permanent. It has been discussed with the heads of jurisdiction. It is working well in the superior court, and it will bring other courts, such as the Coroner's Court and tribunals et cetera, up to speed with the Supreme Court.

Dr D.J. HONEY: Thank you, Attorney General. I was trying to ascertain whether there was a universal acclamation that this is the correct way to go or was there contention amongst the heads of court that were consulted?

Mr J.R. QUIGLEY: The advisers just clarified to me that up to 90 per cent of the courts are already operating under this system and this bill is bringing into the fold, as it were, the courts mentioned in this clause.

Dr D.J. Honey: That's fine. I wasn't suggesting controversy or looking for it.

Mr J.R. QUIGLEY: No, it is not; the bill is just bringing the other courts up to speed with the superior court.

Clause put and passed.

Clauses 55 to 71 put and passed.

Clause 72: Section 27 amended —

Dr D.J. HONEY: Welcome, Minister Kelly. I apologise for these very mundane questions. I am afraid that these may not exercise the considerable talent of the minister's advisers.

Clause 72 inserts proposed section 27(1)(f)(fa) into the Rights in Water and Irrigation Act 1914. Does this proposed section replace the service of paper bills for when people require them for notices or does it just provide an electronic service option of notices, and paper bills will still be available?

Mr D.J. KELLY: It is an option; it does not replace the other forms of service or notice.

Clause put and passed.

Clauses 73 to 80 put and passed.

Clause 81: Section 222 amended —

Dr D.J. HONEY: Clause 81 inserts proposed section 222(2)(j)(ja). I understand that the electronic notices are proof of service. Is that the case and does that mean there is no other requirement for proof of service? My general concern is that, in my world, given all of the communication available, electronic communication is the least effective form of communication and I am sure the minister gets much more than I do! But is that of itself proof of service?

Mr D.J. KELLY: I thank the member for the question and he has every right to ask about the veracity of methods of service. This amendment inserts a head power to enable regulations to be made. The regulations would cover things such as proof of service, which could, potentially, be scrutinised by Parliament, and so the concerns the member has raised would need to be dealt with.

Clause put and passed.

Clause 82 put and passed.

Clause 83: Various provisions amended —

Mr R.S. LOVE: I will not be very long. I thank the minister and the advisers. Again, we are dealing with the electronic serving of notices to do with bail et cetera. Clause 83 takes away current restrictions on the issuing of bail notices electronically as a matter of course. The explanatory memorandum states that these regulations outline the circumstances in which that notice is presumed to have been received. Therefore, there is no need for any change to regulation to enable this change. Will this change mean that bail notices will be sent only electronically? Does that mean that the person who is to receive the notice must have some sort of electronic device? How will we know that a person is in a position whereby they are able to receive that type of thing, given that some people live in areas where electronic communications are less than perfect? Will there be consideration to other means being used in some circumstances, even if the electronic issuing of bail notices becomes a matter of course?

Mr J.R. QUIGLEY: Regulations 7AB and 8B of the Bail Regulations 1988 already outline that a notice to an accused by electronic means may be achieved by fax, email or text message. Regulation 9AC provides that a notice to surety electronically may be received by fax or email. The regulations provide that if a notice is sent by electronic means, it is presumed to have been received on the day it was sent, if it was sent before 4.00 pm on a working day. If the notice was sent after 4.00 pm, it is assumed to have been received on the following day.

Section 32 of the Bail Act states —

> **Notices under s. 31, service and proof of**
>
> (1) A written notice to an accused under section 31(2) —
>
> (a) shall be given to the accused personally; or
>
> (b) shall be sent to the accused by post to the accused's address appearing in the records of the court; or

Electronically, as I have already explained.

Mr R.S. LOVE: I thank the Attorney General, but the explanatory memorandum outlines that this is taking the electronic service of bail notices from being something that is done in certain circumstances to being the norm, in which case there will not be any mail service to a person. Either this is misleading or I am not quite getting the picture here. Will there continue to be a hard copy mailed to people in circumstances where it might be difficult for them to receive that electronic service? Will the courts try to ascertain whether this is the best method of contact with a person? Why on earth is the adjudicator even referring to faxes? I have not used a fax for—I do not know—25 years.

Mr J.R. QUIGLEY: It is because the court is provided a form by the accused, who will indicate on that form whether he has an email address or not. If there is no email address, then it will go by post.

Mr R.S. LOVE: That will continue?

Mr J.R. QUIGLEY: That will continue.

Mr Z.R.F. KIRKUP: Attorney General, obviously, I appreciate that, especially in this environment, Australia Post is not particularly reliable as a delivery mechanism. But if the recipient claims they did not get the notice because it was caught in some sort of filter or blocked by the email client, would that nullify the service that has been delivered?

Mr J.R. QUIGLEY: Under section 51 of the Bail Act, which deals with the enforcement of bail undertakings, an accused who, without reasonable cause, fails to comply with the requirement of his bail undertaking mentioned in section 28(2)(a) commits an offence. The reasonable cause might be that the notice never got to them because it went through to the junk filter or something like that, so they would have the defence to a charge—that is, if they can establish reasonable cause—that it never got to the terminal or got lost in the post.

Mr Z.R.F. Kirkup: It's the same.

Mr J.R. QUIGLEY: It is the same thing. There would be a defence to the charge.

Mr Z.R.F. KIRKUP: Of course, Attorney General, we are dealing with these amendments because there are some concerns over the continued operation of government during the COVID-19 pandemic. How has the postal system presented an issue for the government during this time that warrants this amendment?

Mr J.R. QUIGLEY: The amendment comes forward not because the government or department has found a problem with the postal service, but because the accused themselves would prefer the notice to come by email. It is easier for them and they get it straightaway. They do not have to wait for snail mail. It is an accused-driven amendment rather than there having been some fault in the postal service. Also, I am reminded that the court reminds accused people who have indicated that they have a mobile number of the requirement by text service, so they have these prompts as well.

Mr Z.R.F. KIRKUP: I thank the Attorney General. I draw his attention to the second reading speech of the bill, which provided that this bill will allow —

> … specific new operations for government agencies to continue to operate in a COVID-19 environment.

Apparently, that is the purpose of all the amendments we find in this bill that we are trying to deal with this evening. More people than ever were getting things delivered to their home, because they were in isolation, or, for whatever reason, they were in lockdown restrictions. The postal system was working just fine. If this change is accused driven, I would argue there is probably no reason for it to be brought before the chamber under the guise of COVID-19, because the system was already in place and people were wanting things delivered to their home in any case. If the intent of the legislation is, as the minister who presented this bill said, to ensure that Western Australia is open for business and mitigate damage to the economy flowing from the government not being able to function effectively due to pandemic restrictions, what were the restrictions that would now warrant email as an option for such an important document in someone's life?

Mr J.R. QUIGLEY: If an accused is isolated at home, with all the stuff coming through, they would find it more facilitating if it can be received by email than maybe having to go down to the letterbox or the mailbox or whatever. It keeps the system running better during this period and going forwards, especially for people who are not in the metropolitan area.

Mr R.S. LOVE: I would remind the member for Dawesville that the packages might not be sent by the post service. There might be other delivery services coming into play that are far more efficient than the post service. Certainly in my electorate, as people will find during the election period when the postal votes go out, people do not get them in time, so there is a real problem.

In answer to my earlier question about whether people would have the option of delivery by mail or by electronic means, the Attorney General said that they would still have that option. Yet, when I read the provisions that are being amended—section 13B(1)(c), section 32(1)(c) and section 45(1)(c)(ii)—they delete the words "in urgent cases or with the accused's consent". I would have thought that if it were up to the accused, the words would be "or with the accused's consent", leaving that option open. It seems to me it is taking the option away from the accused. Can the Attorney General explain that?

Mr J.R. QUIGLEY: The accused's consent is removed because it will occur only when the accused has provided an email address. If the accused does not want to receive it by email, they simply do not tick the email box, so it does not need the accused's consent. The accused is indicating their wishes by doing that.

Clause put and passed.

Clause 84 put and passed.

Clause 85: Section 45A inserted —

Mr W.R. MARMION: Clause 85 relates to Executive Council meetings. It obviously opens up the option of conducting the entire Executive Council meeting by remote location or a mix of in person or by remote communication. It is quite obvious what it says. Executive Council conducts very important meetings within government. When there is remote communication, there are issues about having people set it up for the individual. There is also the possibility of recording and security around what occurs in Executive Council meetings. Will there be substantial regulations or procedures on how Executive Council will be run when remote communications are invoked? Presumably, the Governor may not even have to be in his residence; he could be elsewhere in the state, or even overseas and, likewise, the ministers. Will safeguards be in place around the security of information? Maybe the Attorney General can explain how it might operate.

Mr J.R. QUIGLEY: It will be the same as the current Executive Council meetings. The member should not forget that he has sat on Executive Council. He probably got the file relating to Exco to take home the day before the meeting. The security would be his responsibility. A minister takes an oath of office when sworn in as a minister to not divulge anything that they are bound to keep secret. Nothing has changed, except meetings can now be conducted by audiovisual link. Ministers are bound by their oath of office. If someone is making a cup of tea in the minister's kitchen, they would have to leave by reason of the oath of office that was undertaken. That will continue to exist. The Queensland Executive Council has been meeting this way for a little while now under these same sorts of rules. The Executive Council meetings will now be the same, but it will be by audiovisual link. The member would remember that usually present would be the secretary of the Executive Council, ministers, His Excellency, and usually someone from the Department of the Premier and Cabinet passing files and minutes to His Excellency. It will all be the same, but it will be by audiovisual link and we certainly would not want to expose His Excellency to the virus should it come back into Western Australia, for whatever reason.

Mr W.R. MARMION: This could obviously be a COVID-related issue, but will this not be an option forever? It will be another efficiency option for Exco for the future. Obviously, while COVID is around, it is a valid and important option, but will this be an ongoing option for Exco now and into the future?

Mr J.R. QUIGLEY: That is correct. The event of the pandemic has changed so much, has precipitated change in the way we meet and will be precipitating it going forward. I noticed on the agenda for the commerce ministers' ministerial meetings that going forward it will all be via video link, precipitated by the virus and the pandemic. It has called on people to rethink how we meet going forward and increase the efficiency of our administration.

Mr W.R. MARMION: The Attorney General mentioned getting the file of the agenda. Would he envisage that for an electronic meeting the file would be electronically conveyed to the Governor and also the members? What would the protocols around the transmittal of those papers be?

Mr J.R. QUIGLEY: It is possible in the future that we can get secure links. I know that in other areas of government secure locked iPads that can be handed over are being contemplated. It is happening right across our economy. I went for a flight not so long ago in a helicopter and the pilot had all the information by Airservices Australia in a locked iPad that was mounted on the screen. I think this is catching up with the economy. That is envisaged going forward, but at the moment members will still get the file. The Executive Council will go the same way, but we will not necessarily be sitting in the Exco room at Government House. That would be a shame, because we get those little sweet biscuits and a nice cup of coffee.

Mr W.R. MARMION: Fortunately, whenever the Attorney General answers a question, he provokes another one. This will be my last follow-up question, just to get it on the record.

Mr D.A. Templeman interjected.

Mr W.R. MARMION: I only want to say one sentence, member for Mandurah, if I can get that one sentence out. I actually promote technology. Members will have received the file, it is all secure and they can have a special number so they can access it, but then it is on their computer. The next step is how to make sure that the Exco papers are then destroyed like they are in *Mission Impossible*—they explode after the files are read! I will put that on the record.

Mr J.R. QUIGLEY: This is not happening yet; we have hard copies. What is contemplated going forward is not transmission over the internet or anything like that, but physically receiving a locked device.

Mr R.S. LOVE: As someone who has never attended an Executive Council meeting, perhaps one of the ministers might want to comment on the quality of the sandwiches and offerings that may no longer be enjoyed by those ministers and how they will be compensated for that!

Mr J.R. QUIGLEY: We get a cup of tea or coffee, some lovely little biscuits and a very erudite conversation on United States politics!

Clause put and passed.

Clauses 86 to 89 put and passed.

Clause 90: Act amended —

Mr R.S. LOVE: I have a question about this division, not just clause 90. This deals with giving evidence and appears to relate especially to a situation in which a child is involved. Can the Attorney General outline why this particular provision has come through in a COVID-related bill, because it does not appear to have any relationship whatsoever to the current COVID situation? I think it would be an admirable provision for a bill, and "COVID-19" appears in this division from time to time, but can the Attorney General outline why this provision has had to come in at this particular juncture? It deals with some very grave matters, and I am not sure that it will get the attention it needs in an omnibus bill.

Mr J.R. QUIGLEY: It has been needed for some time, but the COVID pandemic has increased the need for it. Although it has been needed for some time, the advent of the pandemic has made it more crucial to introduce. We have introduced it now to cope with the pandemic situation and the increased demand for it. It has been needed for some time and it would have been on the legislative agenda, but further down the line and not a priority at this time. It has been advanced because of the situation we find ourselves in. Allowing a child to give evidence close to where they live not only reduces the risk to health and the risk of transmission, but also makes use of the technology that now exists and reduces the strain that these proceedings have on children and their families. It was on the horizon to do in the longer term, but the pandemic and the need to reduce travel has increased its urgency, if you like.

Clause put and passed.

Clauses 91 to 106 put and passed.

Title put and passed.

Third Reading

MS R. SAFFIOTI (West Swan — Minister for Planning) [10.34 pm]: I move —

That the bill be now read a third time.

MR Z.R.F. KIRKUP (Dawesville) [10.34 pm]: I would like to take the opportunity to thank the advisers who have been helping us in the chamber this evening. It was obviously a very difficult logistical process. We worked through what was otherwise spread across five or six different agencies. I would like to reflect on the work provided by the advisers to help support the ministers. I thank the Minister for Transport's chief of staff, Mr Farrell, for his cooperation in helping to facilitate this as much as possible.

MR R.S. LOVE (Moore — Deputy Leader of the Nationals WA) [10.35 pm]: Acting Speaker —

Mr D.A. Templeman: I thought you were getting up to get a boiled sweet!

Mr R.S. LOVE: I have got up to give a very lengthy speech!

I would like to also reiterate the thanks to the advisers, who have been a tag team throughout the evening. I know we are coming to the end of a long, long day and week and people want to go home, so I will not say anything further except the fact that this bill has six different parts, two of which contain measures that really have not that much to do with the COVID situation. We have taken on board some of the lessons learnt through the increased use of technology. It highlights the need to have a whole-of-government review about the lessons being learnt from this extraordinary period we are all facing so that we can improve processes generally throughout government, and to least get some benefit from these extraordinary times.

MS R. SAFFIOTI (West Swan — Minister for Planning) [10.36 pm] — in reply: I thank the opposition, the Liberal Party and the National Party, in respect of how we have handled this bill. It has been a bit difficult. Thank you for indulging us. It has involved a number of initiatives across government. I thank my ministerial colleagues for how they have handled it. Thank you to all of the advisers who have been patiently waiting since 11.30 this morning.

Mr Z.R.F. Kirkup interjected.

Ms R. SAFFIOTI: I think everyone got a gig!

Mr D.A. Templeman interjected.

Ms R. SAFFIOTI: No; only one did not—the Transport adviser did not get a chance! Maybe in the upper house. Anyway, thank you very much.

Question put and passed.

Bill read a third time and transmitted to the Council.