

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

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Dr Brian Walker) in the chair; Hon Stephen Dawson (Minister for Emergency Services) in charge of the bill.

Clause 9: Section 2 amended —

Committee was interrupted after the clause had been partly considered.

Hon MARTIN ALDRIDGE: I refer to the list of 10 directions that have been provided and note that the substance of the 10 remains, although new versions of them have been issued. One of the directions I want to ask about was revoked and reissued—the COVID Transition (Testing and Isolation) Directions (No 14). This direction is issued pursuant to sections 67, 70 and 72A of the Emergency Management Act. Obviously that is three sections, but only section 72A is subject to the sunset clause. Is the minister able to provide advice on the aspects of the direction that rely on section 72A?

Hon STEPHEN DAWSON: Section 72A allow us to direct a class of people. Without section 72A, a direction could be made to a person but not a group, essentially.

Hon MARTIN ALDRIDGE: That is one aspect of the temporary section 72A powers. I understand that another aspect is the provision of information, so the government can compel someone to provide information to a relevant person, pursuant to section 72A. Is that not the case?

Hon STEPHEN DAWSON: The member is correct. Section 72A also contains an important information-gathering power. The aim of the provision is to obtain necessary information to assist with an emergency management response. Persons who provide false or misleading information may be subject to an offence, the penalty for which is found at section 89 of the Emergency Management Act 2005. An example of its use during the emergency response to COVID-19 is the requirement under the “closure and restriction, limiting the spread” directions for certain venues to maintain information about their patrons on a register, which is to be provided to an authorised officer on request; for example, to assist with contact tracing. The information-gathering power supplements the existing information provisions in section 72 of the Emergency Management Act. Those provisions allow relevant authorities to obtain information only for the purposes of emergency management from emergency management agencies and only a very limited range of information from a person directly.

Hon MARTIN ALDRIDGE: Does this direction require certain persons in certain circumstances to provide personal information to the Department of Health?

Hon STEPHEN DAWSON: Yes, it does. I will give the member an example. If they have a positive rapid antigen test, they are required to provide that information to the Department of Health.

Hon MARTIN ALDRIDGE: I will make two points here, minister. The first is that this clearly illustrates that we cannot separate a COVID-19 response into an emergency management response and a public health response. They are intermixed. Throughout the debate so far, what concerns me is maybe it is an intention of the government to silo these issues to avoid answering the opposition’s questions because I am not the Minister for Health. It demonstrates, by this one example, that we have a direction issued pursuant to the Emergency Management Act under the pen of the acting Commissioner of Police that compels a person to comply with a number of requirements, including providing personal details to an agency that is not the police or the Department of Fire and Emergency Services, but the Department of Health.

The second reason that I raise this matter is that I know that members have been busy today, but they may have missed an important paper that was tabled this morning during formal business by the President. It was the fifteenth report of the Auditor General titled *COVID-19 contact tracing system—application audit*. I certainly will not profess to have read the full contents of this report, because we have been engaged in debate on this bill for most of our sitting period today. However, I do want to quote from the Auditor General’s media statement of today, 18 May, that states —

Significant information security weaknesses in COVID-19, contact tracing system raise privacy concerns

The Auditor General today tabled in Parliament the *COVID-19 Contact Tracing System—Application Audit* report.

WA Health’s Public Health COVID-19 Unified System (PHOCUS) collates highly sensitive personal and medical information of COVID-19 positive individuals and their close and casual contacts, from multiple sources for contact tracing purposes.

Auditor General Ms Caroline Spencer said this system contains some of the most sensitive and consequential data in the State over the last 2 years.

‘I expected to find robust access controls for such sensitive medical and personal information however we found a number of significant weaknesses.

‘WA Health has provided an external vendor with unnecessary system access and it did not adequately log and monitor who had accessed information to detect inappropriate changes or snooping.

‘In the absence of comprehensive privacy legislation in Western Australia, WA Health must ensure their privacy practices protect the confidentiality of information stored in PHOCUS and are consistent with the Commonwealth *Privacy Act 1988*. Similar concerns were raised in my 2021 *SafeWA – Application Audit* report.

‘Also concerning is that WA Health has told the community little about the types of personal information PHOCUS collects to support contact tracing, and that this information is stored indefinitely. This lack of transparency can lead to unintended consequences, including erosion of trust in government institutions,’ Ms Spencer said.

The recommendations in the report will help to protect not only information in PHOCUS but future information if the system is used for other diseases. In any emerging crisis, government responses should consider impacts on trust and confidence in government and the importance of upholding the universal human right to information privacy.

WA Health has prioritised and addressed many of the audit’s findings during the audit, and has agreed to all of the audit’s recommendations.

Members, this is quite a significant report of the Auditor General. It is a matter that is directly relevant to the bill that is before us because it relates to a direction enabled by section 72A of the Emergency Management Act. Those powers are available only whilst the Minister for Emergency Services declares there to be a state of emergency and for as long as this chamber keeps extending these section 72A powers. Therefore, my question to the minister is: in light of the Auditor General’s report today, what action is he taking to ensure the privacy of personal information of Western Australians?

Hon STEPHEN DAWSON: I have not seen the report. I am happy to look at it otherwise, but this is not question time. It is not a question before the bill.

Hon MARTIN ALDRIDGE: That response is remarkable, and it is exactly the reason why the opposition cannot support this bill on this occasion. The issues that have been raised today by the Auditor General in this report are very significant. I have been engaged in this debate for most of today, and, as I said earlier, I have not been able to read the report in full, but, certainly, the Auditor General’s overview and the media statement were sufficient to raise this matter in the context of this debate. It is directly relevant because this information is compelled by section 72A. I remind members who were not involved in the initial crafting of these so-called draconian measures—so named by the government—in 2020 that a person has a compulsion to provide information and has no right to silence. So they could potentially incriminate themselves because their right to silence is extinguished, or at least limited, under the penalties that are applicable under the Emergency Management Act.

The provision of information aspect of section 72A is the reason that the minister who declared a state of emergency pursuant to the Emergency Management Act—keeping in mind, as I understand it, that there has been only one declaration—was the same person who described these temporary measures as draconian. This report has landed on the day that we are considering a bill to extend the powers of the act and to compel information from Western Australians, which raises very significant privacy concerns—keeping in mind, members, that we dealt with this issue with the SafeWA app data when we found that there was a breach of trust between the government’s intent and the actions of the Western Australia Police Force. This is not the first time that this issue has been raised. In fact, the Auditor General cites an earlier report in which she had raised similar concerns about data collected pursuant to emergency directions.

The minister flippantly responded to my concerns and the concerns of the Auditor General by saying that this is not question time—this is question time for the purposes of considering the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill 2022. That is exactly what it is. It is the opportunity for all members of this chamber to ask questions of the minister who every 14 days makes an informed decision to extend the state of emergency and enliven section 72A, which requires the compulsion of information that ends up in the hands of the Department of Health and then gets reported on by the Auditor General. This is exactly the reason, amongst a number of reasons, why the opposition cannot support this extension.

Hon STEPHEN DAWSON: I thank the member for his contribution. This is not the reason he is not supporting the bill. He made a decision days or weeks ago that he is not supporting this bill. To suggest somehow that an Auditor General's report today is the reason for doing it is plainly wrong, honourable member.

Hon Martin Aldridge: It didn't exist weeks ago. The bill didn't exist weeks ago.

Hon STEPHEN DAWSON: It existed a week ago.

Hon Martin Aldridge: Yes—a week ago.

Hon STEPHEN DAWSON: Yes—a week ago. What day is it today? It is Wednesday—over a week ago! It is in the second week. Let us be pedantic: it is weeks. But this report was not available weeks ago.

Hon Martin Aldridge interjected.

Hon STEPHEN DAWSON: You made the decision previously. You do not like it. You are politically grandstanding. In relation to the Auditor General's report, I take the Auditor General's reports very seriously. The Department of Health is mentioned in that Auditor General's report and in the documents that I can see today. She does not mention the Emergency Management Act; she mentions decisions made by the Department of Health. There is a clause under the Emergency Management Act about the confidentiality of information. I am happy to look into that to see whether agencies have made sure that the information has been made as confidential as it can be. As the Minister for Innovation and ICT in this government, I have a keen interest in agencies doing the right thing. We have made a significant investment in the budget last week in relation to the digital capability fund and bringing agencies up to speed so that they are not using spreadsheets or old databases and that they are actually doing the right thing and using modern information systems that have appropriate checks and balances in place. I am happy to take this on board and make sure agencies know about the Auditor General's report, but she had not said anything in this report today about the Emergency Management Act. That is wrong.

Hon MARTIN ALDRIDGE: Can the minister not see the connection between this Auditor General's report and the Emergency Management Act and the bill that we are dealing with, which will enliven section 72A, one of the two key elements of which is the provision of information—that is, it compels the provision of information? This matter relates to the Emergency Management Act because the Emergency Management Act and its directions are the vehicle for the Department of Health to be provided with the personal medical information of Western Australians.

Clause put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Emergency Services) [5.21 pm]: I move —
That the bill be now read a third time.

HON MARTIN ALDRIDGE (Agricultural) [5.22 pm]: I rise to make a contribution to the third reading stage of the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill 2022 and, in doing so, wish to highlight how the bill has emerged from the committee stage. Unfortunately, I report to the house that almost none of the information that was sought by non-government members in this place was obtained through the committee stage. Of greatest note is that, in comparison with the last two occasions, the government has clearly changed its approach to providing the information of the State Emergency Coordinator and refused on this occasion to provide his advice for the benefit of the Legislative Council; nor was the advice of the Chief Health Officer known. Obviously, for members who took an interest during question time, I asked a question of the Minister for Health just moments ago about this matter and, of course, the government could not tell me today—it can tell me tomorrow—whether the Chief Health Officer did indeed provide advice to government on this matter.

It concerns me, as I have reiterated throughout this debate, that the operation of the Emergency Management Act and the Public Health Act are not mutually exclusive. They are interoperable, they work together and they complement each other, or at least that is the government's argument. However, we have been unable to obtain a full understanding, or even ascertain whether the government has a full understanding, of why we find ourselves on the fifth occasion in the third year of a state of emergency still dealing with temporary extensions to the Emergency Management Act. We were unable to obtain the expert advice and analysis of the Department of Fire and Emergency Services provided just one year ago to the State Emergency Management Committee of Western Australia. That is very concerning, and it appears from the response from the minister at the table that he was not even aware of that information. We were unable to obtain information on the extent to which the 10 directions that exist under the section 72A powers could not be made under the Public Health Act, which again begs the question of whether the government has asked that same question.

As I said, we have entered the third year of a state of emergency. This is the fifth time we have considered a bill of this form. It is the fourth extension. It is proving that we are in not only a dual state of emergency, but also, increasingly, a state of secrecy. We do not know—it is a state secret—what the outbreak response plans are, because they are secret documents. Heaven forbid the Legislative Council or the other place should know what the state government’s plan is for the COVID-19 response! We do not know the decisions. There is no transparency around the decisions of the State Disaster Council because, under this regime, they are cabinet-in-confidence. We do not know whether the Chief Health Officer has provided advice to government in the last four weeks, because the last published advice of the Chief Health Officer on the government website was on 21 April. That is extraordinary. I find it very difficult to believe that, during a period of significant COVID-19 activity in the community, the government has not received advice from the Chief Health Officer in the last four weeks.

One of the things I have been afforded by this government over time and I wish to recognise is somewhat regular interaction with the Chief Health Officer. I have always valued his counsel, his time and the advice that he has provided to me. One of the first pieces, if not the first piece, of advice that the Chief Health Officer gave to me in the very early stages of this pandemic was that the sooner we learn to live with COVID-19, the better we will be. The conduct of the committee stage has just reaffirmed for a number of reasons why the opposition cannot support this amendment bill today. However, I wish to reaffirm the offer for the third time during this debate: the opposition stands ready to work with the government to amend and prepare our Public Health Act to deal with public health emergencies now and into the future.

HON TJORN SIBMA (North Metropolitan) [5.28 pm]: Very briefly, I think it is worth dwelling on that splendid contribution provided by Hon Martin Aldridge. I will do my best to make a similar point. The opposition decided to oppose the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill 2022 for one reason, and that was that the necessity of the bill as a mechanism to deal with COVID-19 had not been demonstrated. It is very important to demarcate where we are with COVID management at this time. We are in a significantly different phase of COVID-19 management than was the case certainly in March 2020 and in a markedly different scenario compared with the last time we dealt with this type of bill in November last year, because that was a period before the dismantling of the hard border. Since then, the border has come down, domestic travel has resumed some form of normalcy, schools have reopened, mask mandates have been directed and then withdrawn, and we have an enormously high uptake, thankfully, of effective COVID vaccines. The issue is not about whether we want to protect people. Obviously we do, and that needs to be reasserted, because there has been some defamatory and, frankly, irresponsible public commentary not by any member of this chamber, but certainly by members of the other chamber.

We are at a stage where we will actually have to deal with a persistent malady. We will not be able to do that effectively if we perpetuate a state of emergency. The government’s argument has rested upon: “Trust us. We’re in a state of emergency.” When we asked during that debate what factors drove that consideration, the government could not offer anything tangible. When we asked for a paper trail that justified those decisions, we discovered that one was not available, or none that would be offered up to us that was not covered by the caveat of cabinet-in-confidence. Frankly, at this stage of dealing with COVID-19, that is completely unacceptable. States of emergency were never designed to be used in this way. I follow the dictum that that which is asserted without evidence can be dismissed without evidence. The onus has been on the government to demonstrate why we are in a state of emergency, why we need these powers, and what the government’s plans are post-January 2023. On those three measures, the government has failed, and I think that reflects very poorly on us as an entire jurisdiction.

We are able to deal with these things in a mature way, and I re-emphasise the offer made by Hon Martin Aldridge. If the government determines, sometime over the winter recess, that it has a superior model for dealing with COVID-19 as an ongoing serious health issue in Western Australia, I will be pleased to be recalled to this Parliament to deal with it in an appropriate way, regardless of whether it is through a specific pandemic management bill or, as would be more appropriate, an amended Public Health Act. I think that is absolutely where we need to go, and I look forward to possibly being advised on movement on that front from the government in the near future.

Division

Question put and a division taken, the Acting President (Hon Dr Brian Walker) casting his vote with the noes, with the following result —

Ayes (16)

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

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

Hon Dr Brad Pettitt
Hon Stephen Pratt
Hon Martin Pritchard
Hon Rosie Sahanna

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

Extract from *Hansard*
[COUNCIL — Wednesday, 18 May 2022]
p2427c-2431a
Hon Martin Aldridge; Hon Stephen Dawson; Hon Tjorn Sibma

Noes (7)

Hon Martin Aldridge
Hon Steve Martin

Hon Sophia Moermond
Hon Tjorn Sibma

Hon Neil Thomson
Hon Dr Brian Walker

Hon Colin de Grussa (*Teller*)

Pairs

Hon Dan Caddy
Hon Kyle McGinn
Hon Alannah MacTiernan
Hon Shelley Payne

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

Question put and passed.

Bill read a third time and passed.