

**COVID-19 RESPONSE AND ECONOMIC RECOVERY OMNIBUS BILL 2020**

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Leader of the House)** on behalf of Hon Stephen Dawson (Minister for Environment), read a first time.

*Time Limits — Statement by Leader of the House*

**HON SUE ELLERY (South Metropolitan — Leader of the House)** [5.08 pm]: I also advise the house maximum time limits for each stage of the COVID-19 Response and Economic Recovery Omnibus Bill 2020, pursuant to the temporary standing order made on 31 March 2020, are: second reading, 255 minutes; Committee of the Whole, 310 minutes; adoption of report, five minutes; and third reading, 15 minutes.

*Second Reading*

**HON SUE ELLERY (South Metropolitan — Leader of the House)** [5.08 pm]: On behalf of the Minister for Environment, I move —

That the bill be now read a second time.

Western Australia is living through the COVID-19 pandemic. We have all been grateful for the way in which the community has responded to the various restrictions that the pandemic triggered, with uncomplaining commonsense and resilience and by adapting to whatever was required of them. The pandemic required the government to act swiftly to respond to crises beyond anything that it has previously experienced while it continued to undertake the business of government under challenging constraints. The COVID-19 Response and Economic Recovery Omnibus Bill 2020 will allow specific new options for government agencies to continue to operate in a COVID-19 environment. In doing so, it will help to maintain Western Australia as open for business and mitigate damage to the economy that flows from the government not being able to function effectively due to pandemic restrictions. The bill will also ensure decisions taken since 16 March 2020 while the business of government continued during the pandemic—for example, by holding audiovisual meetings or waiving certain types of fees—are validated.

The governments of Tasmania, Queensland, South Australia, New South Wales and the commonwealth have all passed comparable COVID-19-related legislation to assist governments to continue to function effectively during the pandemic. Although we have been able to lift many restrictions and return to a more normal life, we have only to look to our friends in the eastern states to see how quickly things can change. Our government is taking every possible measure to protect the Western Australian community, but we remain aware of the potential for a so-called second wave.

At the start of the crisis, we moved quickly to offset, where possible, the inevitable economic pain brought about by the pandemic restrictions through a number of unprecedented initiatives. In March 2020, we activated the “Western Australian Government Pandemic Plan”, which provides a comprehensive whole-of-government approach to managing the impacts of COVID-19. First and foremost, the pandemic required a health response, which led to a range of restrictions. The plan also called for actions to be taken across government to ensure business continuity, particularly to safeguard the economy. But this aspect has not been straightforward.

On 31 March 2020, we announced the \$1 billion COVID-19 economic and health relief package that provided support to struggling households and businesses, and included waiving a range of business and occupational licence fees for 12 months. In many cases, this could be implemented reasonably quickly by regulation amendment to fee provisions in subsidiary legislation. However, in some instances, it could not happen because no head of power exists in particular acts to apply the fee relief. Naturally, there was an expectation within the community that this measure would come into immediate effect, so to support businesses, especially small and medium-sized businesses already in financial distress, fees were waived in anticipation of legislative amendments to bring about that relief measure.

Some months ago, we asked all public sector bodies to review operations and identify any legislative impediments that could prevent agencies from carrying out certain roles and responsibilities in the COVID-19 environment. This revealed some 75 acts and regulations contained requirements that hindered the government’s ability to apply readily available business continuity measures. Without change, decision-making boards or authorities could struggle to fully perform their functions, potentially threatening the state’s major economic drivers—such as development and other approval processes—particularly in the event of further lockdown restrictions. Inflexible statutory requirements, put in place when modern communication practices did not exist, also have the potential to affect environment regulation, transport and the administration of justice. For example, regulations that require public meetings to be held, committee members to meet in person, fees paid within set time frames, or lodging or witnessing documents in person mean that agencies will struggle to undertake their operational processes if restrictions are reinstated. Some agencies do not have the ability to lessen the financial burden on businesses and individuals in a time of severe economic stress by refunding or waiving fees and charges. These measures are contrary to our urgent need to progress economic recovery and avoid activities associated with community transmission. Technological and practical

solutions can overcome most of these challenges and enable business continuity and economic recovery in these challenging times, but in many cases these solutions may be incompatible with existing statutory requirements.

The COVID-19 Response and Economic Recovery Omnibus Bill 2020 has been drafted to ameliorate problems and impediments arising from the emergency response to the COVID-19 pandemic, facilitate aspects of the state's economic recovery, make related amendments to certain acts, and validate actions taken before, during or after the declaration of the state of emergency. The bill includes standard provisions that will apply for a limited time to classes of problems common to various acts or processes. These are designed to provide economic relief and make the processes possible in the COVID-19 environment. For example, they relate to waiving fees, holding meetings or addressing processes incompatible with social distancing requirements. As well, specific provisions can modify, for a limited time, certain obligations or authorisations under acts. This will enable business or administrative processes to be conducted in the COVID-19 environment. Other specific provisions modify, for a limited time, certain acts relating to mental health or the administration of justice.

Some provisions within this bill will apply permanently. These relate to the administration of justice or environmental matters and will allow many manual court and related processes and certain environmental applications and processes to be done electronically. Other permanent amendments will be made to miscellaneous acts. These include permitting Executive Council meetings to occur by teleconference or remote communication; facilitating the administration of certain justice matters by electronic processes, such as the issuing and lodgement of certain notices or the giving of evidence; and amending the Interpretation Act 1984 to support provisions in this bill.

The bill was drafted by a working group comprising 10 major state government agencies including the Departments of Planning, Lands and Heritage; Transport; Mines, Industry Regulation and Safety; Water and Environmental Regulation; Health; Justice; Biodiversity, Conservation and Attractions; DevelopmentWA; the Mental Health Commission; and Landgate. The WA Police Force and the Public Transport Authority were also consulted. The working group also included representatives from the Department of the Premier and Cabinet and the State Solicitor's Office. The Parliamentary Counsel's Office has overseen drafting of this bill.

As this legislation is required to respond to a crisis, the legislation will be temporary, and most of its provisions will cease on 31 December 2021. There is capacity to extend the operative periods for some provisions if the government deems it necessary, but provisions cannot be extended beyond 30 June 2025. I will talk more on the time line later.

Under the bill, agencies will have options for —

- waiving, varying or refunding fees, charges, dues and late penalties;
- extending time frames in which fees, charges or dues can be paid;
- meetings via telephone or audiovisual means, rather than in person, as well as for decisions to be made out of session; and audiovisual meetings that can be observed by the public as required by legislation;
- providing flexibility across a number of portfolios to permit witnessing by video link;
- expanding the list of authorised witnesses for affidavits under the Oaths, Affidavits and Statutory Declarations Act 2005;
- providing lodgement, transfer, distribution and serving of documents, applications and decisions via electronic means;
- making documents available for inspection online;
- extending or freezing statutory deadlines or time frames that apply to permits, licences and other similar instruments;
- exempting, and exempting with conditions, the need for a licence, permit or approval of existing conditions of approval;
- providing for telehealth consultations under the Mental Health Act 2014;
- extending provisions of the Courts and Tribunals (Electronic Processes Facilitation) Act 2013 to other acts within the Attorney General and police portfolios to facilitate drafting subsidiary legislation to allow electronic processing;
- providing audio links to be used for sentencing in certain limited circumstances under the Sentencing Act 1995; and
- providing for sureties to be entered into over video link when the surety may be intrastate but unable to appear in person, allowing certain electronic notices to be issued under the Bail Act 1982, facilitating electronic lodgement of prosecution notices under the Criminal Procedure Act 2004, and increasing the ability of courts to use audiovisual technology in specified circumstances under the Evidence Act 1906.

Importantly, the bill contains provisions that will also validate any actions taken by agencies after 16 March 2020, particularly those relating to holding audiovisual meetings or waiving fees. This is a substantial piece of complex legislation comprising seven parts, each part consisting of a range of specific divisions, subdivisions and clauses that deal with individual acts. I do not intend to examine every proposal but will endeavour to provide the house with some representative examples of how this will maintain business continuity within government operations and the support it can provide to business and the community.

A significant outcome from this legislation is the ability for agencies to waive or refund fees and charges, providing essential financial relief to both businesses and individuals. This provision will impact 18 acts, and the decision to do so will generally sit with the agency's director general or chief executive officer, who also has the power to extend time frames for payment of fees and charges. For example, the Department of Water and Environmental Regulation administers environmental, waste and water legislation. Under the Environmental Protection Act 1986, over 1 500 occupiers of premises are regulated through permits, works approvals and licences. The power to refund or extend payments for fees relating to instruments under the Environmental Protection Act 1986 will support business continuity and maintain effective environmental regulation during a possible second wave of COVID-19 in the state, and in the recovery period. Currently, there are no extension or postponement powers for fees, licences, works approvals and registrations under the Environmental Protection Regulations 1987, or for an application fee for approvals for sporting, cultural and entertainment events under regulation 18 of the Environmental Protection (Noise) Regulations 1997.

During the height of the COVID-19 emergency, social distancing measures and requirements to self-isolate made it impossible for major decision-making meetings to be held in person. Most agencies were able to develop technological workarounds so that the business of government did not stall. This allowed the work of a huge, diverse range of boards and committees—from the Rottneest Island Authority Board to the Pastoral Lands Board and the variety of committees under the Conservation and Land Management Act—to continue. The work of development assessment panels, for example, is crucial to the state's economy. Last financial year saw the various panels receive close to 300 development applications valued at more than \$4.5 billion, but governing regulations require panel members to meet in person, which clearly is not possible under social or travel restrictions.

Not meeting for three months or so would have had a disastrous impact on the development sector, so members met via audiovisual means, with details on how to observe meetings provided to the public through the published agenda. Online panel meetings that can be viewed by the public satisfy the requirement to hold public meetings.

Most acts and regulations were drafted before the rapid growth of digital technology, so many legislative instruments still require certain dealings with documents such as inspection, lodgement and access to be done in person and with paper copies. Providing documents online for public inspection under a variety of acts, including the Planning and Development Act 2005, the Metropolitan Redevelopment Authority Act 2011, the Waste Avoidance and Resource Recovery Act 2007 and the Water Services Act 2012, will ensure that the community is still able to participate in decision-making processes, even when people may not be able to travel to a location to view physical documents due to COVID-19 restrictions.

The witnessing of documents was particularly problematic. The bill will allow for the witnessing requirements under the Oaths, Affidavits and Statutory Declarations Act 2005 and 15 other related acts to be met through audiovisual means.

The state government administers a number of regulatory regimes, from issuing licences to drive a vehicle to administering schemes designed to regulate the use or development of land. Agencies need the ability to extend the validity period of many authorisations, modify conditions or even obviate the need for certain authorisations or requirements. These provisions provide decision-makers the power to postpone expiry dates and modify or remove conditions that apply to authorisations, including approvals, licences or permits.

Continuing the seamless administration of justice underpins the civil life of a community and nothing, certainly not a pandemic, should impede its fundamental role.

The bill also modifies the Mental Health Act 2014 by providing telehealth consultations if a mental health practitioner is satisfied that it is necessary to do so to comply with the "Mental Health Infection Control Directions", and validates any such actions taken on or after 7 April 2020.

As I mentioned earlier, for the most part, these measures are temporary. However, the bill also includes provisions that are permanent. These cover the justice, water and environment portfolios, and include electronic automation of processes, replacing manual processes such as handwritten evidence; electronic meetings for bodies such as the Executive Council; and the electronic receipt and lodgement of documents and decisions. Provisions within the bill deal specifically with this.

Modifications will be made to the Bail Act 1982 to allow sureties to be entered into via video link if the proposed surety cannot appear in person. Ordinarily, this can happen only when the proposed surety is in another state or territory.

The bill provides for modifications to the Evidence Act 1906 to ensure the timely administration of justice by allowing witness evidence to be given if a key witness is not able to attend the court due to COVID-19 circumstances. Primarily, this is aimed at protecting child witnesses and will allow a child to give evidence, even if the accused person is not able to attend court. This is critical as it will shield child witnesses from further distress, anxiety and trauma if delayed in giving sensitive evidence. This will also ensure the timely delivery of evidence of child witnesses when the passage of time may cause issues with memory recall.

Modifications that impact the Sentencing Act 1995 will allow sentencing by audio link in specified circumstances if travel restrictions prevent an offender from appearing before the court either in person or by video link.

Provisions within the bill extend the application of part 2 of the Courts and Tribunals (Electronic Processes Facilitation) Act 2013 to a number of acts within the portfolios of the Attorney General and the Minister for Police. Part 2 provides for the use of electronic technology to court and related proceedings, and the recording of those proceedings. This includes allowing for things that are required to be done in writing under an applied act to be done electronically; electronic lodgement of documents with courts and tribunals; electronic recordkeeping; electronic authentication; and giving and obtaining of information, provided these processes are done in accordance with the regulations or rules of court.

As I said earlier, this legislation has been introduced to meet a critical need brought about by extraordinary circumstances. It is needed to validate actions taken by agencies during the current state of emergency to ensure the work of the Western Australian government continues with as little disruption as possible, and it is needed to sustain the work of government now, even as restrictions are easing, and in the future in the event of a second wave and as we focus on recovery.

The provisions in parts 2 to 4 of the bill are time limited, and mostly set to expire on 31 December 2021. Given future uncertainty, the option for extensions has been built in, if the crisis or the response period extends beyond this date. We cannot tell how long we may need to live with some of the measures provided to ameliorate the effects of this pandemic. These provisions can be extended by up to 12 months at a time. The extensions are granted by the Governor upon recommendation of the Premier, and these provisions cannot be extended beyond 30 June 2025. Parts 5 and 6 contain permanent amendments, which do not expire. We believe these time frames are appropriate to enable business continuity measures to be applied for the duration of the pandemic and to support economic recovery.

This pandemic required immediate and decisive responses from the government. We must now do whatever we can to support economic recovery while remaining prepared to meet the genuine and realistic risk of a further outbreak of COVID-19. This bill will help the government meet the challenges that have been identified so far in undertaking government business during this pandemic.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government or state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I call upon members to take this opportunity to support the government in this endeavour. I commend the bill to the house and table the explanatory memorandum.

[See paper [4125](#).]

Debate adjourned, on motion by **Hon Pierre Yang**.