



# Hon Nick Goiran MLC

Member for the South Metropolitan Region

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16 June 2022

Hon Peter Foster MLC  
Chair, Standing Committee on Environment and Public Affairs  
Harvest Terrace, Parliament House  
PERTH WA 6000

By email: [env@parliament.wa.gov.au](mailto:env@parliament.wa.gov.au)

Dear Peter,

## PETITION NO. 049 - STATE OF EMERGENCY DECLARATIONS

I refer to your letter dated 17 May 2022 requesting a written submission regarding this petition that requests the release of the health advice and modelling that have informed the State of Emergency declarations.

### The issue

In March 2020, the Government declared a State of Emergency under the Emergency Management Act 2005, and a Public Health Emergency under the Public Health Act 2016 in response to COVID-19.

The respective individuals who have held the position of Minister for Emergency Services have extended the State of Emergency declaration for a period of 14 days, every fortnight since. Two years ago, when the Emergency Management Amendment (COVID-19 Response) Bill 2020 was passed, Premier McGowan said the 'state of emergency' was "unprecedented" and "extraordinary"<sup>1</sup>.

There was understandable concern at the beginning of the pandemic, however, as strains weakened, vaccines and efficacious treatments emerged, Western Australia re-opened its State border and resumed receiving international arrivals.

Different levels of powers made available during an 'emergency situation' or 'state of emergency' circumvent legislative safeguards. The Australian Human Rights Commissioner has expressed concern about the long-term use of state of emergency laws as they were not designed to be used on a 'rolling basis'.<sup>2</sup>

In this context, petitioners are understandably concerned about the lack of transparency that has surrounded the ongoing State of Emergency declarations.

<sup>1</sup> 2 April 2020, W.A. Government Media Statement, *New emergency management powers to combat COVID-19*, <https://www.mediastatements.wa.gov.au/Pages/McGowan/2020/04/New-emergency-management-powers-to-combat-COVID-19.aspx>

<sup>2</sup> 5 April 2022, ABC News, *Human Rights Commissioner questions WA's ongoing use of state of emergency powers*, <https://www.abc.net.au/news/2022-04-05/western-australia-state-of-emergency-law-human-rights/100964550>

The South Metropolitan Region contains

the Legislative Assembly electorates of: Baldivis, Bateman, Bicton, Cannington, Cockburn,

Fremantle, Jandakot, Kwinana, Riverton, Rockingham, Southern River, South Perth, Victoria Park, Warnbro and Willagee.

## **Lack of Transparency**

The Government's lack of transparency has not been limited to a recent isolated incident. There has been a pattern of behaviour.

On 4 November 2020, the Legislative Council made the following order —

*That Hon Sue Ellery, Leader of the Government in the Legislative Council, be ordered, and is hereby so ordered, to lay on the table of the house not later than seven days from the day on which this order is made, on behalf of the government of Western Australia, the information and documents described below, and that such documents be tabled without excision, alteration or defacement — Copies of all communications between 13 October 2020 and 20 October 2020 inclusive, including but not limited to letters, emails, telephone notes, text messages and file notes between any of the following relating to advice or information on COVID-19 pandemic restrictions — (1) the Premier, Hon Mark McGowan, MLA; (2) any staff member of the Office of the Premier or Department of the Premier and Cabinet, including contract, temporary or seconded staff; (3) the Minister for Health, Hon Roger Cook, MLA; (4) any staff member of the Office of the Minister for Health or Department of Health, including contract, temporary or seconded staff; (5) the Chief Health Officer, Dr Andrew Robertson; and any staff member of the Office of the Chief Medical Officer, including contract, temporary or seconded staff.*

Seven days later, on 11 November 2020, the Leader of the House provided the government's response. However, as reported in Hansard on 25 November 2020, Hon Peter Collier noted:

*The government's response completely and absolutely excluded any of the other information—for example, letters, telephone notes, text messages, file notes et cetera—from the Chief Health Officer. It also completely failed to provide any information whatsoever from the Premier, Hon Mark McGowan, MLA; any staff member of the office of the Premier, including contract, temporary or seconded staff; the Minister for Health, Hon Roger Cook, MLA; or any staff member of the office of the Minister for Health, including contract, temporary or seconded staff. In effect, at very best the government response dealt with only two of the six areas stipulated in that order, and the two that were covered were not covered adequately at all.*

On 17 November 2020, the Standing Committee on Estimates and Financial Operations conducted a hearing with the Chief Health Officer. It was revealed that he had not been asked by the government to provide copies of certain documents.

Parliament was then prorogued for the 2021 State Election.

On 26 May 2021 during the second reading speech for the *Covid-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill 2021*<sup>3</sup>, the Leader of the House, Hon Sue Ellery MLC stated:

*None of these decisions is easy. They are based on expert advice from the Chief Health Officer and the State Emergency Coordinator.*

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<sup>3</sup> 26 May 2021, W.A. Parliament Hansard, *COVID-19 RESPONSE LEGISLATION AMENDMENT (EXTENSION OF EXPIRING PROVISIONS) BILL 2021 [Statement, Second Reading, Committee]*

On 19 October 2021 during a Standing Committee on Estimates and Financial Operations hearing with WA Health<sup>4</sup>, Dr David Russell-Weisz, Director General and Dr Andrew Robertson, Chief Health Officer both clearly stated that the decisions being made are informed by the Chief Health Officer's advice.

The CHAIR: *Can I get some clarification myself from this? Does cabinet make the decision what is going to happen, or is it based on specific data?*

Dr RUSSELL-WEISZ: *The modelling that is done by the department and informed clearly by the Chief Health Officer's advice—it has always been informed by the Chief Health Officer's advice—is that the Chief Health Officer and others and I would look at that modelling and then that is actually informed through the State Disaster Council.*

### **Public Interest**

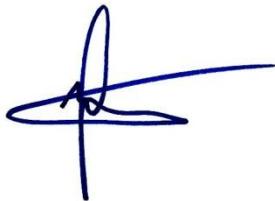
Vaccine mandates, border closures and snap lockdowns have had an immeasurable impact on the lives of Western Australians. There is considerable public interest in the tabling of the health advice and modelling that inform the 'State of Emergency' declarations.

In this context I would recommend that the Committee inquire and satisfy itself of the following:

1. Have the State of Emergency declarations ("Declarations") made over the past two years had any impact on the rights or liberties of Western Australians?
2. Further, or in the alternative, have those Declarations imposed any obligations on Western Australians?
3. If yes to 1 or 2, is the principle of transparency by the Executive important given those Declarations have been made pursuant to statutory administrative power?
4. Further to the above, and in any event, is it desirable and appropriate that the health advice and modelling used to justify each Declaration be tabled in Parliament?

I thank you for the opportunity to lodge this submission and make myself available to appear before the Committee to elaborate on any particular aspects.

Yours sincerely,



**Hon Nick Goiran MLC**  
**Member for the South Metropolitan Region**  
**Shadow Attorney General; Shadow Minister for Child Protection and Industrial Relations**  
**Secretary to the State Parliamentary Liberal Party**

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<sup>4</sup> 19 October 2021, Standing Committee on Estimates and Financial Operations, *TRANSCRIPT OF EVIDENCE TAKEN AT PERTH, TUESDAY, 19 OCTOBER 2021, WA HEALTH*