

**EMERGENCY MANAGEMENT AMENDMENT (COVID-19 RESPONSE) BILL 2020**

*Returned*

Bill returned from the Council with an amendment.

*Council's Amendment — Consideration in Detail*

The amendment made by the Council was as follows —

Clause 13

Page 9, after line 10 — To insert —

(2) After section 86(2) insert —

(3) It is a defence to a charge of an offence under subsection (1) for the person to prove that the person had a reasonable excuse for failing to comply with the direction.

**Mr F.M. LOGAN:** I move —

That the amendment made by the Council be agreed to.

**Mr S.K. L'ESTRANGE:** Can the minister explain to the chamber the rationale for this amendment, please?

**Mr F.M. LOGAN:** Thank you, member for Churchlands. An issue was raised by various parties in the Legislative Council that there were no defences in this bill. They did not consider that it was necessary for the insertion of a defence of “reasonable excuse” in the circumstances because there is a full range of those offences under the Criminal Code. I can confirm that the defences under the Criminal Code, which the member for Hillarys would know about, also cover the Emergency Management Act. In the Criminal Code, these defences cover all acts, including the Emergency Management Act. These defences include: the honest claim of right in section 22 of the Criminal Code; unwilling acts in section 23A; “Accident” in section 23B; “Mistake of fact” in section 24; “Emergency” in section 25; “Insanity” in section 27; “Immature age” in section 29; “Lawful authority” in section 31; and “Duress” in section 32. But, of course, ignorance of the law is not an excuse either.

Nevertheless, despite having all those protections named under the Criminal Code, members in the upper house were not satisfied with that and they wanted to include in the bill a defence of “reasonable excuse”, which we have now accepted for the purposes of simply getting this legislation done.

**Mr S.K. L'ESTRANGE:** I have a follow-on question. A couple of the changes that we made in the amendment were to create a class of persons and a class of place so that the Commissioner of Police, in his role of the State Emergency Coordinator, could better communicate faster out to a class of people or a class of place. The minister mentioned in his answer then that ignorance is not a defence under the law—we accept that. For somebody who has not been issued a direction directly but rather is reliant upon, let us say, the media to receive information—let us say they were living in a vacuum and they were not aware that this class of people or this class of place was being impacted by the amendments we have made to the Emergency Management Act—is it a defence for those people under those circumstances to say, “Well, I didn’t know?”

**Mr F.M. LOGAN:** It depends on the facts of the case. It may fall within a reasonable excuse. They or their representatives will have to mount that argument, and it could fall within a reasonable excuse or any one of the others that I have read out. But, that is correct: ignorance of the law, even if they were not watching television, is not an excuse.

**Mr P.A. KATSAMBANIS:** This is quite clearly an issue because there will be people affected who might want to claim a defence. If the minister could indulge me for one moment, I want to clarify an issue around the operation of directions and who may or may not be doing the right thing—or the authorised thing is probably the right term to use. The issue arose yesterday in an exchange in the other place between Hon Nick Goiran and Minister Dawson, representing the minister at the table today. I am not going to quote from the uncorrected *Hansard* in any way; I will try to summarise the exchange. It was about the notice issued on the closure of certain places of business, worship and entertainment directions. The actual direction was on 23 March 2020. A number of businesses and other premises have been ruled out of bounds to the public under a series of directions. There was an exchange between Hon Nick Goiran and the minister about places of worship. Essentially, it was put to the minister in the other place that workers can still enter the place of worship for their essential business. If it is a church, a priest can enter and conduct a service. This is particularly relevant to my own religion, Greek Orthodox, at which our consecrated churches need continual services to take place. There is no prohibition on a priest entering. If the priest employs a chanter or a videographer or the like, in their ordinary course of employment they would be able to attend as long as they met all the other requirements—the four-square-metre requirement and, obviously, if they had not been ordered to self-isolate or quarantine or anything like that, and they were doing all the responsible things that employees would do, they would be able to attend. The minister confirmed that that was the case.

We had this other discussion about whether a volunteer could do exactly the same thing that an employee could. A lot of churches do not employ videographers. I am aware of some that do, but a lot of churches do not employ videographers. We are coming up to Holy Week, whether someone attends an Anglican or Catholic church. The Greek Orthodox Church has its Holy Week the week after those other denominations have theirs. We are also coming up to Passover. There will be great demand from community members in all sorts of religions and denominations to access real-time services. If a priest, a pastor or a rabbi is conducting that service, under this direction they are able to go into the church. As long as they lock the door and meet all the other requirements, they can still conduct a service. It would seem to me to be passing strange that if they employed a videographer, they could do it, but if they asked a volunteer who met the exact requirements, they would not be able to do it.

The minister may not necessarily be able to give me a positive answer today, but would he at least give consideration to that so that parishioners from all denominations and religions can access their services during this period of closure rather than having to employ someone to do this job? As I said, it seems passing strange to me.

**Mr F.M. LOGAN:** I thank the member for Hillarys for raising that issue. I was listening to the debate last night and I heard the discussion about this issue between Hon Nick Goiran and Minister Dawson, who represents me in the upper house. Let us take a step back. It comes down to the directions that have been given around the world; not just here in Western Australia, but across Australia and around the world. There are certainly classes of places that people have been asked not to attend because of the number of people and the likelihood of community transmission in that one place. There is a list of those places—from cinemas all the way through to places of worship. In Australia, that decision was made by the national cabinet, and all states have been asked to comply with that direction. In that case, under the national cabinet, it is a direction that has been agreed to by all participants—the Premiers and the Prime Minister.

Following that agreement, the State Disaster Council confirmed that and asked the State Emergency Coordinator, the Commissioner of Police, to issue a written direction under the Emergency Management Act to bring that into force, which is what we have. As the member for Hillarys knows, for the purposes of places of worship, no more than nine people can attend a funeral and no more than five people can attend a wedding. Over and above that, the number of people who can attend a place of worship is based on the four-square-metre rule. How that is managed is up to the person in charge of that place of worship. As to the people attending for the purposes of a service—I am not just talking about parishioners; I am talking about the people holding the service who are actually the employees—it does not extend to volunteers. Western Australia cannot change that. That is an agreed position, not just here in Western Australia but in every other state in Australia—in fact across the world as well. Out of all of the countries that have gone down the path of closing places, including places of worship, it does not seem to be any different from what it is here in Western Australia.

**Mr P.A. KATSAMBANIS:** Just picking up on that, I recognise that there has been an agreement. I am talking about services outside of weddings and funerals, obviously, because they have specific requirements. I am sure that all religious denominations are meeting those requirements. I do not want to labour this point, but would it include a person hired to conduct a job inside a church? Say church services are continuing. The priest goes in and conducts the service on his own. I spoke to my bishop from the Orthodox Church last night. Like the minister, I listened to the debate. When I heard this, I spoke to Bishop Elpidios here in Perth who confirmed that the Orthodox Church in Australia moved ahead of the national cabinet decision to close churches to the public. Archbishop Makarios made that decision to protect people. He rightfully made that call. At the moment, the only people who could go in there, until these restrictions are lifted, would be a priest to conduct a service, assisted by a chanter, and a videographer who operates a machine. In the main, these churches are larger than this chamber. I note some churches are different, but most churches are quite large, so they meet the four-square-metre requirements. Individuals, of course, have been asked to make sure they comply with all the other things. Would an honorarium be something that would elevate a volunteer to a “worker” for the purposes of this, so that during Holy Week in particular, people of all denominations could at least have access to the service? Over the past two Sundays, my family has accessed services being videoed directly from the holy monastery of St John in Forrestfield. A decision was made by our church here in Perth to video and stream on Facebook and YouTube. Many other churches are doing the same thing. I notice some other denominations are currently having lectures and the like, which is all great—that is what is needed to connect with parishioners. Would something along the lines of an honorarium convert that otherwise “volunteer” into someone who could be considered a “worker”? Remember we are talking about two individuals inside a closed building, which is extraordinarily large and meets all the other requirements.

**Mr F.M. LOGAN:** This is not a matter we are able to resolve here on the floor of Parliament House. We are dealing with an amendment from the Legislative Council over providing a reasonable excuse for a defence of a charge of not complying with directions. This is not the only time this has been raised in Parliament, both in the upper and lower house. I will raise this issue at the State Disaster Council. We cannot change it now because it is a direction that has been given by the SEC. As we talked about the other day, member for Churchlands, it has also been published insofar as it is on the website of the Western Australian government. Nevertheless, it is an issue. Easter is coming up. I will raise that as a matter to resolve at State Disaster Council tomorrow.

**Mr P.A. KATSAMBANIS:** Thank you, minister. I really appreciate that.

**Question put and passed; the Council's amendment agreed to.**

**The Council acquainted accordingly.**