

**EMERGENCY MANAGEMENT AMENDMENT (TEMPORARY COVID-19 PROVISIONS) BILL 2022**

*Committee*

Resumed from 18 October. 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 1: Short title —**

Progress was reported after the clause had been partly considered.

**Hon NICK GOIRAN:** We are continuing our consideration of clause 1. We had got to a rather interesting place yesterday evening. In the moments before we adjourned, the minister said on multiple occasions that, in essence, the threshold for the powers available under an emergency situation declaration and under one of the new COVID-19 declarations were the same. I do not have a copy of the uncorrected *Hansard* from last night readily available, but in the end it appeared that the minister was indicating or conceding or suggesting that they were similar—that they were not the same. So that we can start the next four hours and 20 minutes of debate in a somewhat efficient fashion, can the minister clarify for the chamber whether they are the same or similar; and, if they are not the same and they are, as the minister described them, similar, to what extent are they different?

**Hon STEPHEN DAWSON:** Let me put this on the record. For a state of emergency declaration to be made, section 56(2) of the Emergency Management Act 2005 requires that a minister —

- (b) is satisfied that an emergency has occurred, is occurring or is imminent; and
- (c) is satisfied that extraordinary measures are required to prevent or minimise —
  - (i) loss of life, prejudice to the safety, or harm to the health, of persons or animals; or
  - (ii) destruction of, or damage to, property; or
  - (iii) destruction of, or damage to, any part of the environment.

The first part of the threshold requires that there is or will be an emergency. This is defined in section 3 to mean —

... the occurrence or imminent occurrence of a hazard which is of such a nature or magnitude that it requires a significant and coordinated response;

The minister is required to consider the advice of the State Emergency Coordinator prior to making a state of emergency declaration.

Emergency situation declarations may be made by the State Emergency Coordinator or a hazard management agency under section 50 of the act. Section 50(2) requires the State Emergency Coordinator or the hazard management agency to be satisfied that —

- (a) an emergency has occurred, is occurring or is imminent ...; and
- (b) there is a need to exercise powers under Part 6 to prevent or minimise —
  - (i) loss of life, prejudice to the safety, or harm to the health, of persons or animals; or
  - (ii) destruction of, or damage to, property; or
  - (iii) destruction of, or damage to, any part of the environment.

The first part of the threshold is the same as the first criteria for a state of emergency declaration; it requires that there is or will be an emergency. That means that the occurrence or imminent occurrence of a hazard is of such nature or magnitude to require a significant and coordinated response. The second part of the threshold requires that there is a need to exercise powers under part 6 to prevent or minimise certain things from happening. This is a step down from a state of emergency declaration, which requires that extraordinary measures are required for a similar coordinated response. Before making an emergency situation declaration, the State Emergency Coordinator or hazard management agency must undertake consultation in accordance with state emergency management policies.

COVID-19 declarations made under proposed section 77C(2) will require the State Emergency Coordinator to be satisfied that —

- (a) the occurrence of COVID-19 is, or imminently will be, of such a nature or magnitude that it requires a coordinated response; and
- (b) there is a need to exercise powers under Division 4 to prevent or minimise loss of life, prejudice to the safety, or harm to the health, of persons.

The first part of the threshold is a step down from a state of emergency declaration or an emergency situation declaration as it will not require that COVID-19 be an emergency, as defined by the act. It will require only that it necessitates a coordinated response. The second part of the threshold will require a need for the exercise of powers

under proposed part 6A, division 4. This is similar to the second criteria for the emergency situation declaration. Before making a COVID-19 declaration, the State Emergency Coordinator must consult the Chief Health Officer. The criteria for a COVID-19 declaration represents a step down from a state of emergency declaration and will operate like, but not the same as, an emergency situation declaration. The other similarity between an emergency situation declaration and a COVID-19 declaration is that the State Emergency Coordinator will be the person who makes these declarations. Hopefully, that unscrambles the matter.

**The DEPUTY CHAIR:** Before I give the call, I draw members' attention to supplementary notice paper 84, issue 1.

**Hon NICK GOIRAN:** Thanks, deputy chair.

It appears that the minister is conceding that the threshold for a decision to make a COVID-19 declaration will be lower than the threshold for a state of emergency declaration.

**Hon STEPHEN DAWSON:** I am.

**Hon NICK GOIRAN:** We are in agreement about that, but I guess this is where a point of difference might arise: can the minister explain to the house why it is appropriate that it will be easier for a person who I have described as an "unelected public servant", in this case the State Emergency Coordinator, to make a COVID-19 declaration than for the minister to make a state of emergency declaration?

**Hon STEPHEN DAWSON:** The COVID-19 declaration is informed by elements of the existing emergency situation declaration framework, which operates under a lower threshold and aligns with a move away from a state of emergency in which I, the Minister for Emergency Services, make the declaration. The making of a COVID-19 declaration by the State Emergency Coordinator is consistent with their current ability to make an emergency situation declaration for any hazard under the Emergency Management Act. The State Emergency Coordinator being responsible for making the declaration also recognises their experience and ability to coordinate and manage the state's response to COVID-19. The State Emergency Coordinator has the appropriate level of experience and authority to make decisions for the COVID-19 declaration. The State Emergency Coordinator also engages with ministers through the State Disaster Council, which ensures that whole-of-government input and liaison occurs.

**Hon NICK GOIRAN:** That does not explain why it is appropriate that it will be easier for the State Emergency Coordinator to make a declaration than the minister. If anything, it should be the other way around—the minister of the Crown should have the easier pathway to make a decision and the unelected public servant, in this case the State Emergency Coordinator, should have a difficult task in making one of these decisions—because the outcome is significant powers. Perhaps to take us forward, can the minister confirm that the full suite of part 6 powers will be available in the event that the Minister for Emergency Services makes a state of emergency declaration? Will they be dependent on a declaration at which point all the powers will be available?

**Hon STEPHEN DAWSON:** Yes, the full suite of powers would be available to me. In relation to an emergency situation declaration, it is only the powers linked to sections 67 to 72A of the act. Under a COVID-19 declaration, the powers under proposed section 77C would be equivalent to those under sections 67 to 72A of the act.

**Hon NICK GOIRAN:** That is an important explanation. If we have a situation in which the minister makes a state of emergency declaration, the full suite of part 6 powers would be enlivened or made available. On the other hand, if it is an emergency situation declaration, the State Emergency Coordinator could make such a declaration but not all the part 6 powers would be made available, as I understand the answer the minister just provided. A substantial portion of the part 6 powers—I think the minister indicated that it will be that portion set out from sections 67 to 72A—would be made available because the State Emergency Coordinator has made a declaration, and the threshold for him to make that declaration will be the same threshold or substantially similar.

**Hon Stephen Dawson:** Hang on, is it the same or is it similar?

**Hon NICK GOIRAN:** That is the question I am asking: will it be the same or will it be substantially similar to a state of emergency declaration? If we compare and contrast that with a COVID-19 declaration, the minister has already conceded that the threshold will be lower and the powers that will be available under proposed division 4 are—I am going to use the word carefully here—the same as what would be available under the emergency situation declaration.

**Hon Stephen Dawson:** Honourable member, by way of interjection, I used the word "equivalent".

**Hon NICK GOIRAN:** Equivalent—okay. They will be equivalent to the powers available under an emergency situation declaration. In summary, as a result of this bill, it appears we will have an easier pathway for the State Emergency Coordinator to make available these powers than the minister has and the State Emergency Coordinator ordinarily has. For the first time, this will be the easiest way for the State Emergency Coordinator to access these special statutory powers. Is that true?

**Hon STEPHEN DAWSON:** I would not say it will be an easier pathway; it will be similar to the process that needs to take place when an emergency situation declaration is made by the State Emergency Coordinator.

**Hon NICK GOIRAN:** When I use the word “easier”, I use it in the context that there has been a concession that the threshold is lower. If the threshold to make a decision is lower, it will be easier to jump that hurdle than it is at the moment. In that sense, that is the context in which I am using the word “easier”. If members were not aware of this point previously, it is now becoming evident that this bill will—something I do not believe the Premier has ever disclosed to any person in Western Australia while he has been trumpeting this legislation as a step down from the state of emergency—for the first time give the State Emergency Coordinator easier access to these special powers. If that is the case—the McGowan government can put together legislation, as it has, and seek the approval of Parliament—there needs to be a justification for it. Why is it appropriate that the State Emergency Coordinator will have easy access to these statutory powers? These are special powers. How long will the powers be available in the event that he makes one of these easier decisions?

**Hon STEPHEN DAWSON:** They will be available for up to two years. It will be a time-limited framework under the bill before us.

**Hon Nick Goiran:** But initially, at first instance, not for two years.

**Hon STEPHEN DAWSON:** It will be for up to three months.

**Hon NICK GOIRAN:** By comparison, how long will the powers in that portion of part 6 be available to the State Emergency Coordinator if he makes an emergency situation declaration or indeed to the minister if he makes a state of emergency declaration?

**Hon STEPHEN DAWSON:** It is three days first of all and then it can be extended for seven days and further extended for such a period as the State Emergency Coordinator considers necessary. The only powers that may be exercised during the period are any or all of the powers under section 69 in relation to a place for the powers under section 72.

**Committee interrupted, pursuant to standing orders.**

[Continued on page 4658.]