LEGISLATIVE COUNCIL — CORONAVIRUS — MANDATORY VACCINATION

Amendment to Motion

Resumed from an earlier stage of the sitting.

HON MARTIN ALDRIDGE (Agricultural) [5.03 pm]: I rise to initially thank Hon Sophia Moermond for bringing this worthy matter to the house by way of an amendment. However, I indicate from the outset that, like the government, I will not be in a position to support the amendment, but for different reasons from those outlined by the government. I do not agree with the government's view that we should act and make decisions on how this place conducts business solely, or exclusively, on the advice of the Chief Health Officer. That is a matter for members of the Legislative Council. There may be circumstances in which we contemplate, or consider, the advice of the Chief Health Officer and others, but, certainly, it is not an acceptable argument that we should not do something because a person who is not a member of this chamber does not recommend doing it.

This motion has some merit and is worthy of some further consideration because, as Hon Sophia Moermond mentioned, it is often regional members who are potentially most dislocated when these types of lockdowns and restrictions on movement occur. That certainly was the case in the other place. The Legislative Assembly effectively managed its numbers through an extended pairing arrangement by which regional members, and particularly the most remote regional members, were constantly paired. That is not just my assessment; it was an assessment in a report tabled in late 2020 by the Legislative Assembly Procedure and Privileges Committee. The members who were effectively paired for periods of time represented electorates that are significantly vulnerable to the pandemic, yet their voices could not be heard in the Legislative Assembly during the course of it conducting business, and particularly business related to the government's response to the pandemic.

Also worthy of consideration is what will happen if intrastate borders are put in place. I commented earlier today that we have been through a number of intrastate border arrangements under directions issued by the State Emergency Coordinator, and not all of them have provided for members of Parliament to travel and conduct their business. There have been times when members of Parliament have been locked down in their homes as a result of those directions. It is questionable whether that constitutes a matter of privilege for one of the houses, but, nevertheless, a matter of privilege has not been raised, and at times the directions have directly accommodated an exemption for members of Parliament to travel freely. It may well be the case that a regional member of Parliament could travel to West Perth in order to attend a sitting day for one of the chambers but there is probably no right or entitlement to allow them to return home.

Under an intrastate travel arrangement, once members are at Parliament, it could be the case that they will not be able to leave the so-called affected area. Members may not be able to return to their homes in their electorates, or if they can, it may be under severe restriction. They may be subject to home quarantine for 14 days, similar to the arrangement for commonwealth parliamentarians when they return to Western Australia. The way they could be treated when they return to their electorates or their place of residence could be an active disincentive for regional members of Parliament to come to Perth to represent their constituents in the Council.

For those two reasons I think there is significant merit in considering the proposal in Hon Sophia Moermond's amendment to insert a paragraph (6)(c) in this motion, but I cannot support this amendment on legal and constitutional grounds. I draw members' attention to the Constitution Acts Amendment Act 1899, and in particular section 14, "Quorum—division, casting vote". The section is relatively short and reads —

> The presence of at least one-third of the members of the Legislative Council, exclusive of the President, shall be necessary to constitute a quorum for the despatch of business; and all questions which shall arise in the Legislative Council shall be decided by a majority of votes of the members present, other than the President, and when the votes are equal the President shall have the casting vote:
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> Provided always, that if the whole number of members constituting the Legislative Council shall not be exactly divisible by 3, the quorum of the Legislative Council shall consist of such whole number as is next greater than one-third of the members of the Legislative Council.

Hon Sophia Moermond's amendment to the motion before us seeks to direct the Clerk to ensure that any member unable to attend Parliament during a lockdown because of a regional border closure, their COVID-19 vaccination status or any other valid reason has the ability to participate fully in the deliberations of the house via secure online means such as have been introduced in other Australian Parliaments in recent months. In my view there are clear constitutional and legal doubts over the participation of members fully in compliance with the Constitution Acts Amendment Act 1899, in particular section 14, which relates to the Legislative Council. With respect to what is occurring in other Parliaments, I know that the Queensland Parliament, which is unicameral, amended its statute to provide for virtual sittings of its house and I understand that the Australian Parliament allows virtual participation but not full participation. It allows members to ask questions, to contribute to debates but does not allow a member to constitute quorum or cast a vote in the House of Representatives. Some variance is occurring throughout Australia

and its Parliaments, but this motion, if passed in this form today, will cast significant doubt over the proceedings of the Legislative Council.

I draw attention to a report that may not be known to many members; in fact, it may not be known to many members of the other place. It is the eighth report of the Legislative Assembly Procedure and Privileges Committee, tabled by then Speaker Hon Peter Watson in November 2020, titled *The Legislative Assembly's response to the COVID-19 pandemic*. I draw members' attention to page 67 of chapter 4, under the heading "Complications to Organising Sittings of the Legislative Assembly". I will not refer to the first part of this section, but it effectively talks about the high level of quorum required by the Legislative Assembly and the Legislative Council, and the context of other Parliaments that have relatively low levels of quorum, which is an issue I want to park in the interests of time. But the second issue the report refers to is the legal impediments on the Assembly from conducting its business virtually. I want to quote from the report. It states —

> The final impediment to organising meetings of the Assembly is the concept of 'presence' and 'members present' in section 24 of the CAAA.

Section 24 is the equivalent of our section 14 of the CAAA. It continues —

> Second 24 provides:
>
> > The presence of at least one-third of the members of the Legislative Assembly, exclusive of the Speaker, shall be necessary to constitute a quorum for the despatch of business; and all questions which shall arise in the Legislative Assembly shall be decided by a majority of votes of the members present, other than the Speaker, and when the votes shall be equal the Speaker shall have the casting vote …
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> The constitutional issue which arises from section 24 is whether members must be *physically* present in the Chamber to comply with the requirement of 'presence' and 'members present', or whether a member, participating virtually, can be counted towards a quorum and vote.
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> The CAAA was framed in the latter years of the nineteenth century and, as Professor Anne Twomey has observed, nineteenth-century constitutional framers 'did not envisage Parliament sitting with members dispersed and communicating by way of technology'. As the Clerk of the House of Representatives in the Federal Parliament recently confirmed with respect to similar wording regarding 'presence' for quorums and voting in the Australian Constitution: 'This requirement has always been interpreted as meaning that "the presence" means physical presence'.
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> One school of thought is that it is up to Parliament, and not a court, to decide this issue. Proponents point to the 'exclusive cognisance' aspect of parliamentary privilege, and in particular the right of a House of Parliament to judge the lawfulness of its own proceedings. As described in the 1999 report of the influential UK Joint Committee on Parliamentary Privilege:
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> > Both Houses have long claimed, and succeeded in maintaining, the right to be the sole judges of the lawfulness of their own proceedings and to determine, or depart from, their own codes of procedure. Courts of law accept Parliament's claim that they have no right to inquire into the propriety of orders or resolutions of either House relating to their internal procedure or management.
>
> The other, and conflicting, school of thought is that the correct interpretation of section 24 of the CAAA *is* within the jurisdiction of the court. That if the Assembly ever recorded in its Votes and Proceedings that a quorum included a member participating virtually, or a vote of a member participating virtually, a court could adjudicate whether the Assembly was conducting its proceedings in accordance with, or in breach of, section 24 of the CAAA and, in so doing, determine whether section 24 of the CAAA permits virtual quorums and virtual votes.
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> Which school of thought is correct has not been the subject of a court determination. And therein lies the problem: if the Assembly were to pass a resolution to sanction virtual quorums and votes, and virtual quorums and votes followed, then such parliamentary proceedings could become the subject of court action should it be alleged that the Assembly had not complied with section 24 of the CAAA.
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> It may be that the Assembly would prevail in such litigation, either by persuading the court that the matter was not justiciable, or, if it was justiciable, to persuade the court that 'presence' and 'members present' in section 24 of the CAAA extends to members participating virtually. What is certain, is that a legal challenge to virtual presence and voting would be extremely time-consuming and expensive—and its capacity to cast doubt over legislation could be highly problematic for the Assembly.

That is a quite extensive quote, giving the views of the Legislative Assembly Procedure and Privileges Committee with regard to section 24, which mirrors section 14 of the Constitution Acts Amendment Act. Further along in this

report, the Procedure and Privileges Committee made a number of recommendations under the heading "A Suggested Way Forward". It states —

> If, however, a time were to come when extreme circumstances rendered it impractical or impossible for a quorum of members to meet physically, then the PPC is of the view that the Assembly should have the authority to conduct its proceedings virtually, and to vote virtually.
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> While an argument could be made that the Assembly (and the Council) could, in extremis, define 'present' as meaning 'virtually present' under the aegis of exclusive cognisance, i.e. parliaments' jurisdiction to control their internal affairs, proceedings and procedures without interference from the courts, there is no guarantee that a court would agree that exclusive cognisance is a complete bar to judicial scrutiny. Accordingly, it seems prudent to remove all scope for doubt by amending the CAAA.
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> **Recommendation 5**
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> That the *Constitution Acts Amendment Act 1899* be amended to enable remote participation and remote voting.
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> Suggested wording to change the *Constitution Acts Amendment Act 1899* could include something along the following lines:
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> > **Section 24(a)**
> >
> > Presence for the purposes of this section shall be determined by the Standing Orders of the Legislative Assembly and can include provision for presence and voting by electronic means.
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> The reference to Standing Orders in the suggested amendment underscores that ultimately it is for the House, and the House alone, to determine when, how, and in what circumstances virtual participation, virtual quorums and virtual voting may occur.

I raise this in the context of a similar response during the COVID-19 pandemic when we amended this act, if I am not mistaken, in respect of meetings of the Executive Council, to allow the Governor and Executive Council to meet and conduct business virtually. Given that this report was tabled in the other place in November 2020, with prorogation of Parliament following shortly afterwards in December, there probably never was a government response to the PPC's recommendations. I think it would be wise for the government to consider the committee's report and its recommendation 5 for what I think is a quite simple amendment to the Constitution Acts Amendment Act 1899.

Until the government does so, I cannot support the amendment at this time, and I suggest other members should not support it, because I think it will cast uncertainty and doubt over the proceedings of the Legislative Council. It will allow the decisions of this house, and things said by members in this house, to be challenged—potentially through defamation proceedings to which, it could be argued, privilege would not apply because the house met in contravention of the Constitution Acts Amendment Act 1899. For those reasons, I cannot support the amendment.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [5.18 pm]: I will make a small contribution to the debate. I congratulate both Hon Wilson Tucker and Hon Martin Aldridge for their contributions. Hon Wilson Tucker quite accurately assessed the moral obligations in the debate and Hon Martin Aldridge, also very accurately, assessed the legal and constitutional issues. I think they both did remarkably well and I congratulate them both.

With regard to Hon Martin Aldridge's contribution, I make the point that although meetings of the Executive Council and the Governor might well potentially occur online, I do not imagine that the Governor of the state would go into full opposition to the government's agenda and legislation that has been passed in the way that would happen in the Legislative Council, so we are not likely to see the same level of debate and interaction. Therefore, perhaps that is a much more appropriate outcome.

Personally, I have relative abhorrence for most modern technology, particularly Zoom meetings. When I am an attendee in a Zoom meeting and other people are present, I find it an immensely frustrating and generally rather useless process. I am not a fan of that technology coming in. You tend to sit there trying to wave to get somebody's attention or you speak over the top of someone. Perhaps I am a dinosaur—certainly my children think so—but the work of this chamber is too important to go to that stage of appearing on a screen, perhaps somewhere in the back of the room, and trying to gain the attention of the President or the presiding officer. I am not a supporter of that. It should be done as a last resort rather than be a regular occurrence.

I will make some comments about the proposal so far and the amendment, which I am unable to support largely for the reasons put forward by those two very good members who have made their address. I will not repeat those reasons, but I will comment on a couple of things said by Hon Dr Brian Walker and Hon Sophia Moermond, the mover of the amendment. It is interesting that one answered the other's question, which was quite useful. Hon Sophia Moermond made the comment quite strongly that the vaccine does not prevent the disease or the transfer of the disease. That

is absolutely true; it does not 100 per cent prevent either. However, it does have an impact on the incidence of the disease and the transfer of the disease because antibodies are present when a person's immune system is stimulated by either vaccination or infection. That point needed to be made because it answered the question of Hon Dr Brian Walker as to why people are not allowed to take the risk for themselves—that last five per cent of people who refuse to be vaccinated. The reason that that becomes an issue is exactly the reason put forward by Hon Sophia Moermond; that is, everybody else whom we are trying to protect is not 100 per cent protected. They might be, in different cases, 90 per cent protected or 50 per cent protected—every case is individual. Let me say that all of that protection is better than no protection. I am an absolute supporter of the vaccination process.

Hon Sophia Moermond has conducted herself in this debate pretty well up until this week, but it slipped when she tabled a petition yesterday that contained the words, "The vaccine does not work but is a serious threat to health." The vaccine may not work 100 per cent. It probably works 100 per cent rarely. It might work 95 per cent quite frequently and it probably works 25 per cent on occasion. But to say it does not work is an untruth, and that is the problem. I get that Hon Sophia Moermond was tabling somebody else's work—this is not a personal criticism and I am not even suggesting that that is her view—but I urge her to be very cautious because her name is now associated with an untruth. I have been asked to table a few petitions about this issue. I ask people to read them out to me and if they have the words "The vaccines don't work", "The vaccines give you 5G" or whatever else they might say, I say no. I would table a petition that was true even if I did not necessarily agree with the sentiment.

There was an untruth in the petition that Hon Sophia Moermond tabled yesterday and that is a very dangerous process. I urge her to look at that.

Hon Dr Brian Walker talked about the weight of scientific evidence. It is true that there are dissenting views—that is absolutely the case. As a man of science himself, Hon Dr Brian Walker knows that until we have an alternative view, we take the weight of evidence, the weight of science and the greatest number of indicators. It is a bit like the argument about climate change. I can refer the member to probably 1 000 climate change scientists who say there is no such thing, but that does not mean that the 100 000 who say that it exists are necessarily wrong, and it is exactly the same with the COVID debate. The reason that we listen to the Chief Health Officer is that it is not one person's opinion; rather, it is the opinion of the chief health officers of all the jurisdictions in most of the countries in the world who are in furious agreement, generally, about these things.

Yes, there is always an alternative view in science. As scientists, we are always trained to be sceptics. I am not proud to be a sceptic, but we also have to work with the weight of evidence and we cannot be a sceptic because it suits somebody's opinion. Again, Hon Sophia Moermond potentially answered her own question without one. She raised the situation in Germany, so I had a quick look. At the moment, Germany is experiencing in the order of 80 000 new cases a day and there have been just over 100 000 deaths to date. If we look at the chart, which I just did, we can see that it is a massive and significant rise. Funnily enough, Germany is now looking at all sorts of measures that Australia and Western Australia put in in advance. Unfortunately, I think there are problems with all the arguments the member presented. I get the intent. I understand that not everybody is a dinosaur like me. I struggle with the proposal, but for the reasons that I think were very well illustrated by Hon Wilson Tucker and Hon Martin Aldridge, unfortunately, this amendment cannot be supported.

HON NICK GOIRAN (South Metropolitan) [5.25 pm]: I rise to consider this amendment that has been moved by Hon Sophia Moermond. We are currently considering the twenty-ninth order of the day on the daily notice paper. It is an order that will require members of the Legislative Council to provide information about their private medical history to the Clerk of the Parliament by a set date, and in the absence of doing so be in suspension of Parliament and the precinct when we are in a so-called undefined lockdown. The honourable member seeks to insert an extra limb into what is already an extraordinary motion. The motion proposed by the Leader of the House has seven limbs. Some of the limbs have some sub-limbs. We seek here at this time to add a third one at paragraph (6). As has just been described by Hon Martin Aldridge, it is in effect a direction and an obligation created on the Clerk of the Parliament.

Before I get to some of the arguments that have been raised, I am not surprised that the government has indicated it will oppose the honourable member's motion. That does not surprise me in the least. What surprises me is that the one and only explanation provided by the Leader of the House to the honourable member was that the Chief Health Officer's advice does not tell us to do this. Have we seriously got to the point in Western Australia now of vacating our capacity to think on any topic and that the only thing we can do now is say, "Well, it all depends on whether the Chief Health Officer tells us to do something or not."? He has a very, very important role to play in Western Australia.

The suggestion put forward by Hon Sophia Moermond is that members should have the capacity to participate in an electronic fashion, just as members do in parliamentary committees from time to time. That is what the honourable member is asking. It is good enough for us to sit in a committee room across the road while some of our colleagues participate via a screen, so the honourable member is simply asking us to say why we cannot do that in here. It is not an unreasonable proposition. We might not agree with it for some of the reasons that have just been articulated, but, seriously, the government's response is that the Chief Health Officer did not tell us to do that. We have to be

better than that, members. There has to be a better reason to oppose the amendment if that is our desire. If we have become slaves to the Chief Health Officer—wow!—why bother having the Parliament in the first place. Why do we not ask him how to determine all bills? I am surprised that was the response by the government; nevertheless, that is what *Hansard* will reflect.

In a stunning contrast to that response by the government, we heard the very considered and eloquent response by Hon Martin Aldridge, who took us through, at some length, the provisions set out in the Constitution Acts Amendment Act 1899. He also drew to our attention a report that was provided to the other place more than a year ago touching on the topic of electronic participation. I associate myself strongly with the remarks Hon Martin Aldridge made on this amendment. I think he very accurately stepped out the state of the law in Western Australia and the risks of the amendment. The principle behind the amendment, which is that people might be able to remotely participate in Parliament, definitely warrants investigation and consideration. However, at the present time, while there are legal risks in place, it would be irresponsible on my part, as the shadow Attorney General, to support the amendment as it is currently drafted. I hasten to say that I certainly support the idea of it being considered and investigated. The question then becomes: who should do this investigation and consideration on behalf of members? I draw to members' attention schedule 1 of our standing orders that sets out the roles of the various committees. The first of those committees is the Standing Committee on Procedure and Privileges. As members will know, it consists of the President, the Deputy President and three other members. Importantly, clause 1.4 of the schedule says —

> The Committee is to keep under review the law and custom of Parliament, the rules of procedure of the Council and its Committees, and recommend to the Council such alterations in that law, custom, or rules that, in its opinion, will assist or improve the proper and orderly transaction of the business of the Council or its Committees.

Members could not articulate a term of reference that is more on point than that which the honourable member is asking us to consider, which is that members should have the ability to participate fully in the deliberations of the house via secure online means. That is what the amendment before us says. Plainly, this type of issue should be considered by the Standing Committee on Procedure and Privileges. I regret that the honourable member has not suggested that, because I think that would have quite a lot of merit. Mind you, honourable member, I think we know what the outcome would be from the government's general attitude on this. It would say that the Chief Health Officer did not tell it to refer the matter to the Standing Committee on Procedure and Privileges and that in the absence of that type of advice, the government could not possibly think for itself anymore. That all stopped during the pandemic, apparently. I regret to say to the honourable member that although I sympathise with what her amendment seeks to achieve, I cannot provide my support for it, only because of the legal risks to the Parliament in the absence of an amendment to the Constitution Acts Amendment Act 1899.

I also hasten to say to the honourable member that there is a solution to this. The member will have witnessed the McGowan Labor government moving heaven and earth when it wants to pass legislation at lightning speed. If it wants to do something, it can make things happen. We have just seen a remarkable set of circumstances. If I am not mistaken, the Aboriginal Cultural Heritage Bill 2021 was introduced yesterday and the public record reflects that the McGowan Labor government thought it was appropriate to introduce the bill and commence the debate on the same day in the other place. That is how fast the government can move if it wants to. Incidentally, the rule in the other place is that bills are normally allowed to sit for three weeks so that members can consider and digest them, but the government has said, for whatever reason, that that would not happen with that bill in the other place. As members know, we now have an extra sitting week in this place because that is how important that legislation is to the government. I am not here to debate the merits of that. I am simply making the point that when the McGowan government wants something to happen—express, pronto—it happens. Apparently, honourable member, that does not apply with regard to the Constitution Acts Amendment Act 1899, because we have heard nothing from the government to indicate that it has any appetite whatsoever to consider it—nothing! As Hon Martin Aldridge pointed out, the government has been aware of this since November last year, when a committee dominated by Labor members in the other place recommended that this be considered. We heard absolutely nothing from the government. It has been far too busy pushing through legislation to change the rules on how we elect the upper house—something that apparently was not on the agenda prior to the last election. It suddenly became a priority, apparently because Hon Wilson Tucker dared to come into the Parliament as a member. It suddenly became a top priority and the government had to drop everything, and that bill has now passed. That is how fast the government can act. Do not worry, Hon Sophia Moermond; if the McGowan government wanted to change the Constitution Acts Amendment Act 1899, it most certainly could do it. It has the numbers in both houses of Parliament to do it, and it could give the honourable member the right to participate electronically if it wanted to. The simple truth of the matter is the government does not want the honourable member to have that right. That is what is at stake here. I do not believe, as the Leader of the House has suggested, that it is because the Chief Health Officer has not mentioned it. As your honourable colleague mentioned, he also did not tell us to go and put our hand in a fire. Apparently, this government needs every type of guidance!

I also regret to advise Hon Sophia Moermond that the second line of her motion refers to a member being "unable to attend Parliament during a lockdown", and I draw to members' attention that the government has talked about members in circumstances "during a lockdown or similar restrictions". We will get to this in a moment when we return to the substantive motion, but one of the issues, apart from the fact that "lockdown" is undefined, is we have this other undefined term of "or similar restrictions". I imagine that if this amendment were to pass, she would want it to apply not just during a lockdown but also when there were similar restrictions. That is the type of drafting improvement that could be made to the motion. As I mentioned earlier, the proper committee that could consider that type of matter more appropriately would be the Standing Committee on Procedure and Privileges. But that is evidently not an option the government will contemplate. We heard earlier today from the Leader of the House that the government would like its motion passed today. Once again, that is a demonstration that the government can act very swiftly if it likes to. Despite the fact that none of this has any bearing until 31 January 2022, apparently it needs to be passed on 1 December, for reasons which have not been explained.

I conclude on the amendment before the house to insert paragraph 6(c) into this motion on member COVID-19 vaccinations. I cannot support it for the reasons that have been explained, particularly the legal risks to the Parliament, but I believe the matter warrants investigation and consideration. I believe that the appropriate place for that to happen is in the Standing Committee on Procedure and Privileges. It is evident from the government that that will not happen today, which I regret.

Amendment put and negatived.

Motion Resumed

HON NICK GOIRAN (South Metropolitan) [5.39 pm]: I rise now to speak to the substantive motion, which is unamended and in the form proposed to the house by the Leader of the House. As I have mentioned, it is the twenty-ninth order of the day listed on the *Daily Notice Paper*. This matter has been prioritised by the government. It is the only order of the day that the government has decided we shall deal with today on 1 December. I quickly make this point in passing. That means that as far as the government is concerned, this twenty-ninth order of the day is more important than everything else that is on the *Daily Notice Paper*; nothing is more important than this particular motion. The government is most entitled to make that decision, but it also has a responsibility to be held accountable for the fact that the matter that it is prioritising will have operational meaningful effect only from 31 January 2022. There are other matters on the *Daily Notice Paper* that if dealt with and enacted could have a material benefit for Western Australians far earlier than that.

Nevertheless, I make these observations with respect to the motion proposed by the Leader of the House. I understand the desire within our community—a desire that I share—for what is referred to as herd immunity. I understand that goal, and I support it. What I cannot justify is when the desire for herd immunity sees individuals resorting to what I would describe as a herd mentality. Very little intellect is required or needed to politicise any matter. However, a great deal of intellect is required to articulate and consider competing important principles. I listened very carefully to the explanation that was provided by the Leader of the House earlier today about why she believes this motion ought to be supported. In essence, the arguments provided by the government come in two forms. The first is that if we pass this motion, it is the safe thing for us to do. The second explanation that is provided is that it is important to set an example. I think Hon Wilson Tucker made similar remarks about the importance of setting an example. They are the two arguments that were provided by the government to justify the motion that is currently before the house.

In effect, the government is relying on and asking us to provide heavy weight to the two principles of safety and leadership. For my part, I agree that these are important principles, but they are not the only principles that are involved at this time and ought to be considered. Ultimately, if members decide that they want to give greater weight to the principles of safety and leadership, over and above every other principle that is involved here, it is certainly their right to make that decision. What saddens me is the complete lack of consideration by the government, led by the Premier, of any of those other principles—in fact, not even a capacity to articulate what those other principles are.

I might remind members that this episode first began in the second sitting week of October this year, when the member for Rockingham, the Premier of Western Australia, expressed that he would direct members of Parliament to disclose their vaccination status. That caused quite some controversy at the time, because I delivered a speech in the chamber, pointing out that the honourable Premier did not have that power, as much as he might like to have it, and that I would not be disclosing my private medical status other than if compelled under law. The Premier was incredibly agitated that week—that would probably be the fairest way I could describe his behaviour that week—so he said, and conceded to the media, that he would need to go and seek legal advice, which he then did. Unsurprising to anyone other than probably the Premier, the legal advice that came back to him was that he did not have the power to do what he wanted to do. Because the Premier was deeply agitated that the legal advice had confirmed that he did not have the power to simply issue edicts like a dictator, we then saw what I would describe as repeated, unhinged

displays of abuse. It was constant, not just that week but subsequently, and never once during all that time was there ever a display of any intellect or capacity to engage on the issues—not once. The only thing that was perhaps worse than that was the bizarre, desperate and, frankly, disgusting allegations of what some members, including the Leader of the House, described as dog whistling. It was unbecoming of all those members, such was their desperation. It is no wonder that people in Western Australia are annoyed when they see this type of dictatorial behaviour.

What are some of the competing principles and issues at stake here? The first, which the government will have considered at some point, is: Can Parliament, by way of a motion, create a new category of disqualification or ineligibility without amending either the Constitution Act 1889 or the Constitution Acts Amendment Act 1899? Can it do that? As Hon Martin Aldridge identified earlier, if we were, simply by virtue of a motion, to have proceedings today via electronic participation, there would be a risk that that could be challenged. It is not something that Hon Martin Aldridge invented. It is something that he has quite correctly drawn to our attention and was considered by the Procedure and Privileges Committee of the other place. Further to that, can Parliament also move a motion to create, in effect, some form of disqualification or ineligibility for a member without making those amendments; and, if it does have the power to do that, should it do so? Is it appropriate for one of those criteria for disqualification or ineligibility to be about a person's medical history? Of course, there is set out in the Constitution Acts Amendment Act 1899 a range of circumstances and criteria that disqualify a person, yet none of these matters could fairly be described as something consistent with a person's medical history. But that is what has been proposed here.

Why is it important to consider whether there should be an express provision in an act? It is important for this simple reason: the voters of Western Australia are the highest authority. Despite the fact that the Premier believes he is the highest authority, there is certainly a higher authority than him. There are two such higher authorities. One is the rule of law; the second is the voters—the electors—of Western Australia. In the case of the 36 members here, irrespective of whether their surname is Ellery, Moermond, Goiran or any other name, the electors of Western Australia have said to those members, "We give you an express licence for four years starting on 22 May 2021 to come in here, take your seats and represent the members of your region, and to do so irrespective of circumstances." They did not give us a provisional licence; they gave us a four-year licence. They are the highest authority of all. They said to us, "It doesn't matter if there's a war; it doesn't matter if there's a pandemic. It does not matter. We are giving you a licence to represent us in the Parliament, to make the laws and to hold the government to account." That is the executive. That is why this matter is important.

There has been some suggestion—this goes to the earlier issue—about whether an example needs to be set. I very much understand that argument, but the Parliament has a duty in every circumstance, whether there is a war or a pandemic, to hold the executive to account. To compare that with every other employment situation in Western Australia is simply incorrect. They are not the same. There will be people who have decided that they cannot or do not wish to comply with the mandate requirements that have been made, and, as a result of that, they run the risk of losing their employment. I note that a dispute has now emerged in the Western Australian Industrial Relations Commission between some police officers and the Commissioner of Police; we will see what the outcome of that is in due course. But whether the employment situation is that of a police officer or any other person, ultimately, all those people are electors, and they have asked us to be here for four years, no matter what, to represent them, to have exactly these and other kinds of debates. That cannot be done if some members have been excluded.

Let us assume for a moment that there is a lawful power to do what is before us at the moment, and that not only is there a lawful power, but it is indeed then appropriate to utilise that power for this purpose—that is, to create this new category of disqualification and ineligibility. The question then becomes: how should that power be exercised? Members who have some experience in the industrial relations system may know that it is the case that an employer can provide a direction to an employee in a sense on anything—any topic. Here, at the moment, we are talking about vaccinations, because of course that is the hot topic around the state, but an employer can provide a direction to an employee in a sense on any topic. However, there is some restraint. There is a framework within which that power of direction operates. The first thing is that it has to be lawful. Obviously, an employer cannot direct an employee to do something that is unlawful. It is not unlawful for a person to receive a vaccination. People can lawfully receive a vaccination, so there is no issue with regard to that, but an employer cannot direct an employee to do something that is unlawful.

Secondly, the direction has to be reasonable. The third thing that has to happen, as a matter of law and industrial relations law, is that there has to have been consultation on the direction by the employer to the employee. These are the three categories that have to be met for an employer to provide a direction to an employee: it has to be lawful, it has to be reasonable and there has to have been consultation. I want to deal with the third of those things. Some members have raised the argument that we need to show leadership, we need to set the example and we need to make sure that people do not think there is one rule for Parliament and one rule for everybody else. If we follow that argument, the same criteria should be applied, and that would include consultation. What consultation has there been here, members? Absolutely none. There has been a debate today, but there has been no consultation. Consultation is not limited to whether something should happen; consultation should also be about alternatives. I suspect that is

where the industrial relations matter between police officers and the Commissioner of Police will probably go with respect to alternatives.

What are the alternative options? Hon Sophia Moermond encouraged us just moments ago to consider another alternative, and that was the ability for people to participate via secure online means. That is an alternative, and for the reasons that we recently discussed, it remains an alternative that requires the government to first do something that it is not willing to do. That option or alternative is unviable in the absence of the government showing the will to take it up. What other alternatives exist? I ask members to reflect on this for a moment.

If people have not quite worked it out yet, in my case, I say all this in the circumstance that there is no scenario in which I will not be taking my seat in this Parliament. That simply will not happen. It was never in jeopardy; that was never the issue. It was never about an individual perspective; it was about the principles that are at stake here, and the desire to engage with others on those principles. There has been a complete lack of willingness, particularly by the Premier, to do so. He would rather resort to abuse. But in terms of these alternatives, the motion that members will inevitably pass sometime in the next 23 minutes will allow for an unvaccinated member to participate in the proceedings of Parliament during a lockdown or under similar restrictions, just so long as that member has what is referred to as proof of a valid exemption.

Consider this for a moment: there is a lockdown, Parliament has been recalled and we know for sure that there will be at least 34 members present on that day. Who knows, there might be 36, but there will at least be 34. What if one of those members has what is referred to in the motion as proof of a valid exemption? Members will not even know, because the proof of the valid exemption will be provided to the Clerk, and under the motion that members are about to pass, the Clerk cannot disclose that information to anybody. Members will be very pleased to be sitting here during a lockdown and passing urgent laws that, no doubt, the McGowan government will insist be passed in a microsecond, but unbeknownst to them, they could be sitting next to a person who has not been vaccinated. My point is this —

Hon Dan Caddy interjected.

Hon NICK GOIRAN: Except for Hon Dan Caddy, who has the benefit of the permanent social distancing arrangement! Consider this, Mr Acting President: the person you might be sitting next to is not vaccinated because they have quite lawfully got themselves one of these valid exemptions, which are forms of evidence approved by the Chief Health Officer. How is it suddenly safe? The argument put forward by the government is all about the fact that this is the safe thing to do and it is about leadership and setting the example. How is it suddenly safe to be sitting in the Parliament, in the chamber, in a lockdown situation next to a person who has not been vaccinated? It is apparently very safe, because they have these medical exemptions, but if a person did not have the medical exemption, he would be highly dangerous. That is the logic that is being applied here. Remember the three limbs of the test are that it has to be lawful and reasonable and there has to be consultation. There evidently has not been consultation. How is it reasonable to expect that a person who has not been vaccinated cannot sit on one of these chairs in a lockdown, but a person who has not been vaccinated who has one of these certificates can take a seat? It is very safe for the other 34 members then. Poor old Hon Tjorn Sibma, a long-suffering colleague of mine. On lockdown day when he is here, he will not know what my status is. Nobody else will know what my status is. All they will know is that the very annoying member from the South Metropolitan Region still managed to be here. They cannot get rid of him, no matter what. He is still here even in a lockdown. He must have provided some information to the Clerk, but they do not know what information he provided.

Hon Alannah MacTiernan interjected.

Hon NICK GOIRAN: Honestly, Minister for Regional Development, this is not the time. The minister knows that normally I would be happy to engage with her, but today is not the day for it. My point is that Hon Tjorn Sibma would not know the status of the member he is sitting next to. The Clerk cannot reveal it to him. What if the member has a medical exemption? They are allowed to sit in here. Does that suddenly make it unsafe for him? This is all about the test of reasonableness. This is why police officers are engaged in an industrial dispute with the police commissioner; it is because there are these three important tests. I think it was Hon Stephen Dawson in question time who was chastising one or more of my colleagues about not being able to have it both ways. It is a little bit like that now. If we want the test for the Parliament and we have to have the same system, we have to have the same rules here as everybody else in Western Australia, that is okay, but then we have to apply those same rules, and that is not what is happening now. There has been no consultation. There are question marks about reasonableness and lawfulness. Two of the three limbs are in question, and the third limb absolutely has not happened. Yet, members are told that we need to proceed with this because it is the safe thing to do and it is important to set the example.

Based on history, I know that there will be no engagement on any of these points. There will be no response on consultation, there will be no response on the issue of reasonableness and there will be no response to explain how it is suddenly safe. I welcome Hon Tjorn Sibma back to the chamber from his urgent parliamentary business. I will have a chat to him later about me using his name in vain in this debate. I was saying that the honourable member is in the difficult position that on lockdown day, he will not know the status of the member sitting next to him, whether

there is a medical exemption or not and whether there is any safety there. None of these things will attract a coherent, or any, response from government to engage on this. Has there been consultation? In what form has that occurred? To what extent are there question marks around reasonableness and to what extent are there question marks around lawfulness? We should remember that the government—in particular, the Premier—had to get legal advice. Where is it? Why has it not been provided? Why is this not one of those circumstances when an extraordinary motion is before the house? It is not typical to put forward a set of medical criteria to members of Parliament. It is not typical to ask members of Parliament to provide their private medical history to the Clerk of the Parliament. I am sure we can at least agree that it is not typical. In those circumstances, why is this not one of those times when the government can provide the legal advice and table it? Is the government that concerned that the matters might be challenged in the courts that it wants to hang on to legal professional privilege, and it does not want to waive it? I would be surprised if it was that concerned about it, but maybe it is. If it is going to take an extraordinary measure with this, at least give members the comfort of all the information, particularly given that there has been no consultation. Alternatively, the Standing Committee on Procedure and Privileges could consider all these issues, but the government does not want to do that either.

I conclude my remarks on this motion moved by the Leader of the House by simply saying what some people will have heard before. I support vaccination. I have always supported vaccination. I encourage every Western Australian to have a confidential discussion with their medical practitioner before they provide their informed consent. That is a set of principles that I have associated my name with throughout this debate, despite the abuse and the rhetoric from the Premier of Western Australia. I will not resile from that position. If he or any other member has a difference of opinion on that, that is fine, but I am nailing my colours very squarely to the mast of supporting vaccination in the circumstances of a person having a confidential discussion with their medical practitioner and, on the basis of that confidential discussion, providing their informed consent. If people do not want to associate themselves with those sets of principles, they should feel free to say so. I could do with a little less of the abuse that consistently comes my way on this matter, despite the fact that I have repeatedly said what I just said.

As much as I support vaccination in those circumstances of a private conversation between a patient and a doctor, and informed consent being provided, I am absolutely and firmly anti-dictatorship and anti-coercion, and I make no apology for that. I detest dictatorships and I detest coercion. Some members will remember that we have had other controversial debates in this place. One of the big issues that I was discussing at the time was around informed consent and coercion. So, it is not a new principle; in fact, for 13 years in Parliament, I have indicated as a pro-life member of Parliament, and proudly so, that I support first-rate health care being provided to every Western Australian, first and foremost because life is important and life is precious. Nothing has changed. But I detest coercion and dictatorships. I also detest concocted rage and abuse that is provided by senior members in government to other members of Parliament.

I am quite happy to engage intellectually with the principles and with the debate every day of the week. We are going to have an extra sitting week; that is no problem for me. I would be happy to have an extra sitting month. I had a joke with another member of Parliament—not from my party—earlier today and said that I would be quite happy to be sitting every day. The response was, "We know you would!" That is true—nothing has changed about that. I will not stand for vile abuse and concocted rage or be bullied by the Premier of Western Australia. When I talk about abuse, it also applies to those people who have absolutely wrongfully and disgracefully abused the Premier and his family. I understand that some special security measures have been put in place. That is shocking. It should not happen to the Premier of Western Australia, whether it is Hon Mark McGowan, Hon Colin Barnett or any of them. They have a job to do. At times I violently disagree with the Premier of Western Australia and I make my points known in this chamber, but he is still entitled to go home safely at night and be with his family, and his family absolutely do not deserve any of that. The garbage that has been put out, including by the Leader of the House in a recent speech in this chamber, about me doing what is apparently called "dog whistling" is rubbish, garbage and concocted. I do not support the abuse against the Premier but I also will not support him abusing me or anybody else.

What I will always support is the rule of law. Some of those principles need to be thought through; it is not as easy as saying, "We'll just slavishly follow the advice of the Chief Health Officer. Unless he tells us to do something, we don't know what to do." He has not been elected as a member of Parliament. He has not been elected as the Premier of Western Australia. He has had an incredible job to do over the last couple of years, along with the Commissioner of Police, and I would not want to trade places with either of those two gentlemen. I cannot imagine how difficult it has been for them, but that does not mean they are infallible or that theirs is the only advice that the government can take. It is all very cute for the government to come along, as the Leader of the House has done today, and quote ad nauseam from Dr Andrew Robertson's health advice of 22 October this year. It is all very good to do that, but the government did not then provide the legal advice it has received. The government is selective about the information that it provides. As I say, I support the rule of law and I always will. I will demand of the government continuously that it provides responses on these important issues.

Finally, because time is running out and I know the Leader of the House would like an opportunity to respond, which is entirely fair and reasonable, I once again make the point to members that if they still have not worked it

out, there is absolutely no chance that I will not be taking my seat in this Parliament. It is an enormous privilege to be elected as a member of Parliament. That has always been my view—nothing has changed about that. I do hope that the cooler heads at least will understand that there are some important principles that need to be thought through, considered and, at the very least, debated, rather than simply using a bulldozer approach, which is applied from time to time. It is no wonder in those circumstances that people in Western Australia get frustrated and feel like they are living in a dictatorship.

I know what the result of the vote on the motion will be. As I indicated earlier, I am sorry to Hon Sophia Moermond that this government does not have an appetite to do something about the eminently sensible suggestion she put forward that secure online means for participation be investigated for use—in extreme circumstances, it needs to be noted. It was not suggested that it be done so that everybody can sit at home in their board shorts and participate in Parliament on any particular day; it was suggested that it be used only during a lockdown or under similar restrictions or when there are regional border closures. Those are the unique circumstances that I think merit those things being considered. But, regrettably, this government has no appetite to listen to those things—that is clear. No matter what the Leader of the House is about to say, let me tell members that if the government wanted to do it, it would happen. It would have already happened today. It has not happened.

HON SUE ELLERY (South Metropolitan — Leader of the House) [6.14 pm] — in reply: I thank members for their contributions—for the most part—to the debate. Hon Martin Aldridge actually addressed the matter before the house. He asked questions about some of the background and assumptions and practical implications going forward, and I can provide him with some information. I can also tell him that I will refer the questions he raised around the efficacy of relying on one and two vaccinations, consideration of a third booster shot and whether consideration has been given to a testing regime to the Chief Health Officer. I will ask him for a response and provide that to the honourable member when I get the opportunity to do so.

The honourable member asked some questions about the use of forms and what would constitute reasonable demonstration of completion of vaccination. I draw his attention to this document, which I will table, headed "Mandatory vaccination FAQs"—meaning frequently asked questions. It sets out —

> **What evidence do employees need to demonstrate their vaccination status?**
>
> The Chief Health Officer has approved the following forms of evidence as proof of vaccination against COVID-19:
>
> - an Australian Government COVID-19 vaccination certificate or an Immunisation Statement …
> - written confirmation by the WA Department of Health of the COVID-19 vaccination …
> - an International COVID-19 Vaccination Certificate issued by the Commonwealth Government

People will need to provide that certificate if they come from overseas.

The exemption process is also set out in that document, but it is a bit long for me to read now, so I will table that document and provide it to the honourable member and any other member who might be interested in it.

[See paper 949.]

Hon SUE ELLERY: I thank everybody else for their contribution to the debate.

With respect to the comments of Hon Nick Goiran, we heard the dog whistle blow again when he said words to the effect of: "No wonder people get frustrated and feel like they are living in a dictatorship." Be under no illusion: that is the same language used by those people outside who try to threaten and intimidate members of Parliament going about their due business. It is the dog whistle!

Hon Nick Goiran interjected.

The ACTING PRESIDENT (Hon Steve Martin): Member!

Hon SUE ELLERY: Be under no illusion that it is anything other than that.

Hon Nick Goiran interjected.

The ACTING PRESIDENT: Member, please! The Leader of the House has the call.

Hon SUE ELLERY: I also make this point—members will see a pattern here. When Hon Nick Goiran needs to pad out his contribution, he goes to the fact that he—what was the expression he used? I quite liked it; it was "concocted rage". He is the master of it! He has concocted rage that the government has deemed this particular matter, whatever it is, the priority of the day. It is rage, it is faux, it is fake and he is the master of it. Support the motion, members.

Division

Question put and a division taken, the Acting President (Hon Steve Martin) casting his vote with the ayes, with the following result —

Ayes (23)

Hon Martin Aldridge	Hon Sue Ellery	Hon Steve Martin	Hon Matthew Swinbourn
Hon Klara Andric	Hon Peter Foster	Hon Kyle McGinn	Hon Dr Sally Talbot
Hon Dan Caddy	Hon Lorna Harper	Hon Shelley Payne	Hon Dr Steve Thomas
Hon Peter Collier	Hon Jackie Jarvis	Hon Stephen Pratt	Hon Wilson Tucker
Hon Stephen Dawson	Hon Alannah MacTiernan	Hon Martin Pritchard	Hon Pierre Yang *(Teller)*
Hon Colin de Grussa	Hon Ayor Makur Chuot	Hon Tjorn Sibma	

Noes (2)

Hon Sophia Moermond	Hon Dr Brian Walker *(Teller)*

Question thus passed.