



Hon Nick Goiran MLC

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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

Dear Peter,

PETITION NO. 057 - NO FURTHER STATE OF EMERGENCY DECLARATIONS TO BE MADE

I refer to your letter dated 12 August 2022 requesting a written submission regarding this petition tabled on 9 August 2022.

Different Petition

At the outset it is important that the Committee not conflate this petition with Petition No. 49.

That earlier petition with 8318 signatures, tabled on 10 May 2022 essentially sought that the Committee inquire into the lack of transparency surrounding the information used to justify the State of Emergency declarations.

The petitioners were asking the Committee to make findings that:

1. The declarations have impacted the rights and liberties of Western Australians;
2. The declarations have imposed obligations on Western Australians;
3. The principle of transparency by Executive Government is important, especially when declarations are made pursuant to statutory administrative power; and
4. It is desirable that the Government table health advice and modelling justifying each declaration.

While each of those potential findings remain meritorious, this petition moves beyond the principle of transparency.

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.

Since that time, 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 its initial declaration.

More than two years ago, when the Emergency Management Amendment (COVID-19 Response) Bill 2020 was passed, the Premier said the 'state of emergency' was "unprecedented" and "extraordinary"¹.

¹ 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>

During this time, Premier McGowan has stated repeatedly that the Government “will follow the health advice. We will follow what the Chief Health Officer advises us to do”² and “will continue to do its best to ensure that we follow the health advice”.³

On 26 May 2021 during the second reading speech for the *Covid-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill 2021*⁴, the Leader of the House, Hon Sue Ellery MLC stated:

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

On 19 October 2021 during a Standing Committee on Estimates and Financial Operations (“Estimates Committee”) hearing with WA Health⁵, Dr David Russell-Weisz, Director General and Dr Andrew Robertson, Chief Health Officer both 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.*

Issue 1: Government refusal to table health advice

On 23 March 2022, the Estimates Committee conducted a hearing with the Department of Health, and asked:

On how many occasions did the Chief Health Officer provide advice to the State Emergency Coordinator regarding extensions of the Emergency Management Act state of emergency? (2020–21 FY) and (July 2021 to date)?

² 24 September 2020, W.A. Parliament Hansard Extract, QWN 753 asked by Peter Katsambanis MLA to the Premier, [https://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/65889b50caaf48ff482585f3001636c7/\\$FILE/A40+S1+2000924+p6509b-6510a.pdf](https://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/65889b50caaf48ff482585f3001636c7/$FILE/A40+S1+2000924+p6509b-6510a.pdf)

³ 7 April 2022, W.A. Parliament Hansard Extract, QWN 236 asked by Mia Davies MLA to the Premier, [https://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/06b4ed4e9a134c8148258879002411df/\\$FILE/A41+S1+20220407+p1807d-1808a.pdf](https://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/06b4ed4e9a134c8148258879002411df/$FILE/A41+S1+20220407+p1807d-1808a.pdf)

⁴ 26 May 2021, W.A. Parliament Hansard, *COVID-19 RESPONSE LEGISLATION AMENDMENT (EXTENSION OF EXPIRING PROVISIONS) BILL 2021 [Statement, Second Reading, Committee]*, [https://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/f554d75b310f76a6482586f00025036d/\\$FILE/C41+S1+20210526+p727b-739a.pdf](https://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/f554d75b310f76a6482586f00025036d/$FILE/C41+S1+20210526+p727b-739a.pdf)

⁵ 19 October 2021, Standing Committee on Estimates and Financial Operations, *TRANSCRIPT OF EVIDENCE TAKEN AT PERTH, TUESDAY, 19 OCTOBER 2021, WA HEALTH*, [https://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Evidence+Lookup+by+Com+ID\)/FFD1CD26DAAF51A24825876D002561FA/\\$file/ef.ehw22.211019.tro.001.drw.pdf](https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Evidence+Lookup+by+Com+ID)/FFD1CD26DAAF51A24825876D002561FA/$file/ef.ehw22.211019.tro.001.drw.pdf)

The question was taken on notice and the response was:

The CHO provided advice to the State Emergency Coordination regarding extensions of the Emergency Management Act state of emergency on 26 occasions in the 2020–21 FY

The Estimates Committee also asked:

With respect to all the occasions where the Chief Health Officer provide advice to the State Emergency Coordinator regarding extensions of the Emergency Management Act state of emergency, will that advice be tabled?

The Government response was:

Any request for advice pertaining to a particular extension will be considered on a case by case basis, however there is no current intention to table each instance of advice.

In this context, petitioners are understandably concerned about state of emergency decisions being made without transparency and when requests for the tabling of the health advice informing the State of Emergency declarations, have to date been denied.

Issue 2: Minister has not seen the health advice

On 22 June 2022 during the 2022-23 Budget Estimates Hearings – Department of Fire and Emergency Services⁶, the following exchange took place between me and the Minister for Emergency Services

Hon NICK GOIRAN: *In your time as emergency services minister, how many state of emergency declarations have you made?*

Hon STEPHEN DAWSON: *I have extended an existing state of emergency.*

Hon NICK GOIRAN: *How many times would that have happened?*

Hon STEPHEN DAWSON: *How many times have I done it? I have done it, I understand, on 12 occasions. Eleven times have been since I was sworn in as the Minister for Emergency Services in December last year, and I had done it once previously when I acted as the Minister for Emergency Services in August 2020.*

Later in the hearing this further exchange occurred:

Hon NICK GOIRAN: *Minister, is the existence of a public health state of emergency, which, I appreciate you do not declare—the health minister does that—but is the existence of that a factor that you take into account when you decide whether to extend the state of emergency or not?*

Hon STEPHEN DAWSON: *No, not necessarily.*

Hon NICK GOIRAN: *It is irrelevant to your considerations.*

Hon STEPHEN DAWSON: *I am aware of it, but my decisions are made solely on the advice of the State Emergency Coordinator, not in relation to what the Public Health Act is doing.*

⁶ 22 June 2022, Standing Committee on Estimates and Financial Operations, *TRANSCRIPT OF EVIDENCE TAKEN AT PERTH, TUESDAY, 22 JUNE 2022, WA HEALTH*, [https://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Evidence+Lookup+by+Com+ID\)/28303DFA040CD9B24825886800203010/\\$file/est220621.2.f+-+Health.pdf](https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Evidence+Lookup+by+Com+ID)/28303DFA040CD9B24825886800203010/$file/est220621.2.f+-+Health.pdf)

Hon NICK GOIRAN: *In that advice that he gives to you, at no stage does he use the fact that there is a public health state of emergency declaration as a reason why you should extend.*

Hon STEPHEN DAWSON: *I do not recall him using those words, although, as he indicated today in an earlier hearing, he talks through the health issues—the things that are happening in the community—in relation to COVID-19 that convince him that a state of emergency is required under my act, and therefore convince me that it is required.*

Hon NICK GOIRAN: *Minister, that advice that he gets, which is written advice from the Chief Health Officer, are you prepared to provide that to this committee?*

Hon STEPHEN DAWSON: *I do not get a copy of the advice that the Chief Health Officer provides to him.*

The concern of petitioners about the lack of public transparency of the health advice is elevated in the situation where that health advice has not and is not even being made privately available to a Minister of the Crown.

Issue 3: SOE declaration should be temporary

In April 2022, Australian Human Rights Commissioner Lorraine Finlay told the ABC⁷ that WA's emergency powers were never designed to be used on a rolling basis.

“The state of emergency declaration transfers an enormous amount of power to the executive, and therefore to public servants and bureaucrats, and reduces parliamentary oversight and scrutiny,” she said.

“The longer the situation goes on, the harder it is to justify the continuation of emergency measures.”

Issue 4: Premier and Minister for Emergency Services travelling overseas during State of Emergency

Minister for Emergency Hon Stephen Dawson MLC, the Minister responsible for extending the State of Emergency, travelled to the United States on a “mission to promote WA”, according to his media statement dated 7 June 2022⁸ during the State of Emergency declaration.

Deputy Premier, Hon Roger Cook MLA led the “India trade mission with WA business leaders” from 12 – 19 July 2022⁹. From 25 June 2022, Premier Mark McGowan also travelled “throughout Europe”, “promoting WA as a safe place to visit, work, study and invest”¹⁰.

⁷ 5 April 2022, ABC Radio, *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>

⁸ 7 June 2022, Minister for Emergency Services Media Statement, *Mission to United State to promote WA*, <https://www.mediastatements.wa.gov.au/Pages/McGowan/2022/06/Mission-to-United-States-to-promote-WA.aspx>

⁹ 16 May 2022, Deputy Premier Media Statement, *Deputy Premier to lead India trade mission with WA business leaders*, <https://www.mediastatements.wa.gov.au/Pages/McGowan/2022/05/Deputy-Premier-to-lead-India-trade-mission-with-WA-business-leaders.aspx>

¹⁰ 30 June 2022, Premier Media Statement, *Reconnect WA shines spotlight on tourism and work opportunities*, <https://www.mediastatements.wa.gov.au/Pages/McGowan/2022/06/Reconnect-WA-shines-spotlight-on-tourism-and-work-opportunities.aspx>

These overseas trips 'promoting WA as a safe place' during a State of Emergency declaration, that impacts the lives of Western Australians is both incongruous and warrants closer scrutiny.

Scope for inquiry

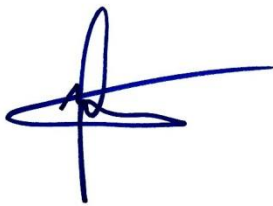
There is considerable public interest in the 'State of Emergency' declarations.

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 or imposed obligations on them?
2. Were Western Australians told that the Government would make declarations based on health advice?
3. Is the principle of accountability 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 Minister for Emergency Services make a Declaration without seeing the health advice?
5. Is it desirable and appropriate that the Premier, Deputy Premier and Minister for Emergency Services travel overseas to promote Western Australia during a State of Emergency?
6. Is the State of Emergency declaration still reasonable and proportionate?
7. Is the provision within Victoria's legal framework, which replaced its state of emergency in December 2021, and requires leaders to table their reasoning for any pandemic restrictions in Parliament, recommended for Western Australia?

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
Shadow Attorney General; Shadow Minister for Child Protection and Industrial Relations