

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 191

FRIDAY, 17 APRIL 2020

1. Meeting of Council

The Council assembled at 9.00am pursuant to order.

The President, Hon Kate Doust, took the Chair.

Prayers and an Acknowledgement of Country were read.

2. President's Ruling — Tabling of Document under Standing Order 59

The President ruled as follows —

Yesterday, during Members' Statements, Hon Martin Aldridge raised a point of order relating to the interpretation of Standing Order 59. At the conclusion of a Member's statement made by Hon Nick Goiran, that Member sought leave to table a document that he had identified and from which he had quoted in his speech. Leave was denied. Hon Martin Aldridge then requested that the Member table the document under Standing Order 59. Standing order 59 states —

Documents Quoted in Debate:

- (1) A Member must identify any document quoted from by the Member in debate, including an uncorrected version of *Hansard*.
- (2) At the conclusion of a speech in which a Member has quoted from a document, the document shall be tabled upon the request of any other Member, unless the Member states the document states the document is a confidential document.

The purpose of the first limb of the Standing Order is to ensure that the sources of documents quoted from by Members are identified. The second limb requiring the tabling of a document quoted from, provides Members with access to the document to allow for the verification and context of quotations to inform debate. The exception to the requirement to table a document quoted from is where the Member states that the document is confidential. The Member is not obliged to provide any further explanation.

Standing Order 59 facilitates the tabling of a document on the request of another Member. Tabling is dependent on the document being quoted from and the Member not stating that it is confidential. In this respect the conditions precedent to tabling a document are distinct from Standing Order 20. That Standing Order grants to the President, a Minister, a Parliamentary Secretary and a committee chair or nominee presenting a committee report the right to table papers in the course of related business. Other Members require leave to do so. The denial of leave does not affect the operation of Standing Order 59.

I therefore rule that unless the Hon Nick Goiran states that the document from which he quoted is a confidential document, then it must be tabled in accordance with Standing Order 59.

Hon Nick Goiran tabled a screen shot of a social media post by Matthew Hughes MLA regarding the Joint Standing Committee on the Corruption and Crime Commission being unable to achieve bipartisan support for the reappointment of Hon John McKechnie QC as Commissioner of the Corruption and Crime Commission. (Tabled Paper 3807).

3. Business of the House — Residential Tenancies (COVID-19 Response) Bill 2020 and the Commercial Tenancies (COVID-19 Response) Bill 2020 — Time Limits

The Minister for Environment advised the Council that the *Residential Tenancies (COVID-19 Response) Bill 2020* and the *Commercial Tenancies (COVID-19 Response) Bill 2020* were COVID-19 related business, and pursuant to Temporary Order (6), set maximum time limits to apply to the debates.

4. Ministerial Statement — Coronavirus — Agriculture — Temporary Visa Holders

The Minister for Agriculture and Food made a Ministerial Statement with respect to new arrangements for seasonal labour to support Western Australian farmers.

5. Suspension of Standing Orders

The Minister for Environment moved, without notice —

That so much of the Standing Orders be suspended as would permit the taking of Questions Without Notice at this day's sitting at a time ordered by the House.

The motion requiring the concurrence of an absolute majority.

Question — put.

The President having counted the Council, and there being an absolute majority present, and no dissentient voice, declared the motion carried with the concurrence of an absolute majority.

6. Residential Tenancies (COVID-19 Response) Bill 2020

The President reported the receipt of Message No. 180 from the Legislative Assembly forwarding the Bill for concurrence.

The Minister for Regional Development representing the Minister for Commerce moved, That the Bill be read a first time.

Question — put and passed.

Bill read a first time.

The Minister for Regional Development representing the Minister for Commerce moved, That the Bill be read a second time.

The Minister for Regional Development representing the Minister for Commerce tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 3808).

Debate ensued on the second reading of this Bill pursuant to Temporary Order (3).

Question — put and passed.

Bill read a second time.

The President left the Chair.

In Committee

(Hon Adele Farina in the Chair)

Clause 1.

Debate ensued.

Clause agreed to.

Clause 2.

Debate ensued.

Clause agreed to.

Clause 3.

Debate ensued.

Clause agreed to.

Clause 4.

Debate ensued.

Clause agreed to.

Clauses 5 to 7 agreed to.

Clause 8.

Debate ensued.

Clause agreed to.

Clauses 9 and 10 agreed to.

Clause 11.

Debate ensued.

Clause agreed to.

Clause 12 agreed to.

Clause 13.

Debate ensued.

Clause agreed to.

Clause 14

Debate ensued.

Hon Rick Mazza moved —

Page 12, line 19 — To delete “whether or not”.

Debate ensued.

Amendment — put and passed.

Hon Rick Mazza moved —

Page 12, after line 25 — To insert:

- (1A) Prior to the entering into of a rent repayment agreement, the tenant must provide to the landlord or the landlord’s agent, a statutory declaration setting out the tenant’s personal financial hardship as a result of the COVID-19 pandemic.

Debate ensued.

Hon Aaron Stonehouse moved to amend the amendment as follows —

To insert after “pandemic”:

, if the lessor requires the tenant to do so.

Debate ensued.

Hon Aaron Stonehouse, by leave, withdrew his amendment.

Hon Aaron Stonehouse, moved to amend the amendment as follows —

To insert after “pandemic”:

, if the owner requires the tenant to do so.

Debate ensued.

Amendment to the amendment — put and passed.

Debate resumed.

Hon Nick Goiran moved to amend the amendment as follows —

To delete “landlord or the landlord’s agent” and insert:

owner or the owner’s agent

Amendment to the amendment — put and passed.

Amendment, as amended — put.

The Committee divided.

Ayes (9)

Hon Peter Collier
 Hon Donna Faragher
 Hon Nick Goiran
 Hon Rick Mazza
 Hon Simon O’Brien

Hon Robin Scott
 Hon Charles Smith
 Hon Aaron Stonehouse
 Hon Ken Baston (*Teller*)

Noes (15)

Hon Jacqui Boydell
 Hon Tim Clifford
 Hon Stephen Dawson
 Hon Colin de Grussa
 Hon Diane Evers
 Hon Adele Farina
 Hon Colin Holt
 Hon Alannah MacTiernan

Hon Kyle McGinn
 Hon Martin Pritchard
 Hon Samantha Rowe
 Hon Matthew Swinbourn
 Hon Dr Sally Talbot
 Hon Alison Xamon
 Hon Pierre Yang (*Teller*)

Amendment, as amended, thus negatived.

Clause, as amended, agreed to.

Clause 15 agreed to.

Clause 16.

The Minister for Regional Development representing the Minister for Commerce moved —

Page 14, line 24 — To delete “This” and insert:

- (1) Subject to subsection (2), this

Amendment — put and passed.

The Minister for Regional Development representing the Minister for Commerce moved —

Page 14, after line 24 — To insert:

- (2) Section 18A applies during and after the emergency period.

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 17 agreed to.

Clause 18 agreed to.

New Clause 18A.

The Minister for Regional Development representing the Minister for Commerce moved —
Page 15, after line 22 — To insert:

18A. Termination of tenancy agreement in relation to failure to pay rent during emergency period

(1) In this section —

deciding entity means —

- (a) for a long-stay agreement — the State Administrative Tribunal; or
- (b) for a residential tenancy agreement — a competent court;

remedial period means the 60-day period beginning on the day on which the owner gives the tenant the remedial notice;

rent repayment agreement has the meaning given in section 14(1).

(2) This section applies if —

- (a) a tenant fails to pay rent, in accordance with a tenancy agreement, due during the emergency period; and
- (b) the tenant's failure to pay rent is not due to financial hardship caused by the economic effects of the COVID-19 pandemic.

(3) The owner may give the tenant a written notice (the *remedial notice*) stating that —

- (a) the tenant has failed to pay the rent in accordance with the tenancy agreement; and
- (b) the owner offers to enter into a rent repayment agreement in relation to the rent; and
- (c) the tenancy agreement may be terminated under this section if the tenant fails to pay the rent, and refuses to enter into a rent repayment agreement in relation to the rent, during the 60-day period beginning on the day on which the owner gives the tenant the remedial notice.

(4) Subsection (5) applies if the tenant unreasonably —

- (a) fails to pay the rent during the remedial period; and
- (b) refuses to enter into a rent repayment agreement in relation to the rent during the remedial period.

(5) After the end of the remedial period, the owner may apply to a deciding entity for —

- (a) an order terminating the tenancy agreement; and
- (b) an order for possession of the residential premises the subject of the tenancy agreement.

(6) However, the owner cannot apply to a deciding entity under subsection (5) on or after the day on which Part 4 Divisions 3, 4 and 5 come into operation under section 2(c) unless —

- (a) the owner has made a submission to the Commissioner under section 48(1) in relation to the failure to pay the rent; and
- (b) the Commissioner has certified —
 - (i) under section 56(2) that no agreement has been reached in relation to the failure to pay the rent; and
 - (ii) under section 56(5) that the tenant has not cooperated with the conciliation proceeding.

- (7) On an application under subsection (5), a deciding entity may make an order terminating the tenancy agreement if the deciding entity considers that —
- (a) the preconditions set out in subsections (2) to (6) for the making of the application have been met; and
 - (b) the making of the order is justified in the circumstances.
- (8) If the deciding entity makes the order under subsection (7), the deciding entity —
- (a) must also make an order for possession of the residential premises the subject of the tenancy agreement; and
 - (b) may make such ancillary or incidental orders as the deciding entity considers appropriate.
- (9) The *Residential Tenancies Act 1987* section 71(3) to (6) applies to an application and order made under this section with all necessary modifications, including as if a reference in those provisions to —
- (a) the court were a reference to the deciding entity; and
 - (b) section 71(2) were a reference to subsections (7) and (8) of this section; and
 - (c) a lessor were, in relation to a long-stay agreement, a reference to a park operator; and
 - (d) a tenant were, in relation to a long-stay agreement, a reference to a long-stay tenant; and
 - (e) a notice were a reference to the remedial notice; and
 - (f) a notice given by the lessor upon the ground referred to in section 69 were a reference to the remedial notice.

Debate ensued.

New Clause put and passed.

Clause 19.

Debate ensued.

The Minister for Regional Development representing the Minister for Commerce moved to postpone further consideration of the clause until after Clause 75.

Question — put and passed.

New Clause 19A.

The Minister for Regional Development representing the Minister for Commerce moved to postpone further consideration of New Clause 19A until after Clause 75.

Question — put and passed.

Clauses 20 to 25 agreed to.

Clause 26

Debate ensued.

Hon Rick Mazza moved —

Page 22, line 1 — To delete “whether or not”.

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 27 agreed to.

Clause 28.

The Minister for Regional Development representing the Minister for Commerce moved —
Page 24, line 6 — To insert after “Sections”:

30A,

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 29 and 30 agreed to.

New Clause 30A.

The Minister for Regional Development representing the Minister for Commerce moved —
Page 25, after line 22 — To insert:

30A. Termination of accommodation agreement in relation to failure to pay rent during emergency period

(1) In this section —

remedial period means the 60-day period beginning on the day on which the landlord gives the resident the remedial notice;

rent repayment agreement has the meaning given in section 26(1).

(2) This section applies if —

- (a) a resident fails to pay rent, in accordance with an accommodation agreement, due during the emergency period; and
- (b) the resident’s failure to pay rent is not due to financial hardship caused by the economic effects of the COVID-19 pandemic.

(3) The landlord may give the resident a written notice (the *remedial notice*) stating that —

- (a) the resident has failed to pay the rent in accordance with the accommodation agreement; and
- (b) the landlord offers to enter into a rent repayment agreement in relation to the rent; and
- (c) the accommodation agreement may be terminated under this section if the resident fails to pay the rent, and refuses to enter into a rent repayment agreement in relation to the rent, during the 60-day period beginning on the day on which the landlord gives the resident the remedial notice.

(4) Subsection (5) applies if the resident unreasonably —

- (a) fails to pay the rent during the remedial period; and
- (b) refuses to enter into a rent repayment agreement in relation to the rent during the remedial period.

(5) After the end of the remedial period, the landlord may apply to a competent court for —

- (a) an order terminating the accommodation agreement; and
- (b) an order for possession of the residential premises the subject of the accommodation agreement.

(6) However, the landlord cannot apply to a competent court under subsection (5) on or after the day on which Part 4 Divisions 3, 4 and 5 come into operation under section 2(c) unless —

- (a) the landlord has made a submission to the Commissioner under section 48(1) in relation to the failure to pay the rent; and
 - (b) the Commissioner has certified —
 - (i) under section 56(2) that no agreement has been reached in relation to the failure to pay the rent; and
 - (ii) under section 56(5) that the resident has not cooperated with the conciliation proceeding.
- (7) On an application under subsection (5), a competent court may make an order terminating the accommodation agreement if the competent court considers that —
- (a) the preconditions set out in subsections (2) to (6) for the making of the application have been met; and
 - (b) the making of the order is justified in the circumstances.
- (8) If the competent court makes the order under subsection (7), the competent court —
- (a) must also make an order for possession of the residential premises the subject of the accommodation agreement; and
 - (b) may make such ancillary or incidental orders as the competent court considers appropriate.
- (9) The *Residential Tenancies Act 1987* section 71(3) to (6) applies to an application and order made under this section with all necessary modifications, including as if a reference in those provisions to —
- (a) section 71(2) were a reference to subsections (7) and (8) of this section; and
 - (b) a lessor were a reference to a landlord; and
 - (c) a tenant were a reference to a resident; and
 - (d) a notice were a reference to the remedial notice; and
 - (e) a notice given by the lessor upon the ground referred to in section 69 were a reference to the remedial notice.

Point of Order

Hon Hon Rick Mazza raised the following Point of Order —

We deferred clause 19 to discuss clause 19 and proposed new clause 19A. I accepted that in good faith, so I am hopeful that we will have time to deal with that clause and my amendment on the supplementary notice paper.

Chair's Ruling

The Chair ruled as follows —

We are acting under a direction from the House that we will entertain a committee stage for a period of time. That time has now expired. The avenues that can now be pursued are that in accordance with the temporary orders and the suspended Standing Orders that have been agreed to, I now put all remaining questions without debate, or there may be a procedural motion that I report progress and seek leave to sit again. The fact is, it is the House that has directed what we are doing. If we are to have any more time on this, it is the House that will have to decide.

The Minister for Regional Development representing the Minister for Commerce moved, That the Chair report progress and seek to sit again at a later stage of this day's sitting.

Question — put and passed.

The President resumed the Chair.

The Chair of Committees reported that the Committee of the Whole House had considered the Bill, made progress, and seeks to sit again at a later stage of this day's sitting.

Ordered — That the Committee of the Whole House sit again at a later stage of this day's sitting.

7. Commercial Tenancies (COVID-19 Response) Bill 2020

The President reported the receipt of Message No. 181 from the Legislative Assembly forwarding the Bill for concurrence.

The Minister for Regional Development representing the Minister for Commerce moved, That the Bill be read a first time.

Question — put and passed.

Bill read a first time.

The Minister for Regional Development representing the Minister for Commerce moved, That the Bill be read a second time.

The Minister for Regional Development representing the Minister for Commerce tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 3809).

Debate ensued on the second reading of this Bill pursuant to Temporary Order (3).

Question — put and passed.

Bill read a second time.

8. Questions Without Notice

Questions without notice were taken.

The Minister for Environment representing the Minister for Energy, by leave, incorporated into *Hansard*, information in relation to the Government's Energy Assistance Payment, in response to a question without notice asked by Hon Peter Collier.

The Parliamentary Secretary to the Minister for Regional Development representing the Minister for Forestry tabled a document in relation to stumpages, in response to a question without notice asked by Hon Diane Evers. (Tabled Paper 3810).

The Parliamentary Secretary to the Minister for Health, by leave incorporated into *Hansard*, information in relation to healthcare facilities and capabilities in the Mining and Pastoral region available in the event of a COVID-19 outbreak, in response to a question without notice asked by Hon Robin Chapple.

The Minister for Environment, in accordance with Standing Order 108(2), advised that an answer to questions on notice 2846 asked by Hon Alison Xamon will be provided on 12 May 2020.

The Minister for Environment on behalf of the Leader of the House, in accordance with Standing Order 108(2), advised that an answer to questions on notice 2853 asked by Hon Nick Goiran will be provided on 12 May 2020.

The Parliamentary Secretary to the Minister for Regional Development representing the Minister for Water, in accordance with Standing Order 108(2), advised that answers to questions on notice 2842, 2843 and 2844 asked by Hon Robin Chapple will be provided on 13 May 2020.

The Parliamentary Secretary to the Minister for Regional Development tabled an answer to question on notice 2854 asked by Hon Martin Aldridge. (Tabled Paper 3811).

The President left the Chair at 4.59pm

The Deputy President resumed the Chair at 5.08pm

9. Commercial Tenancies (COVID-19 Response) Bill 2020

The Leader of the House moved, without notice —

That the consideration of this Bill, in committee, be made an order of the day for a later stage of this day's sitting.

Question — put and passed.

10. Business of the House — Residential Tenancies (COVID-19 Response) Bill 2020 Time Limit for Bill

The Leader of the House pursuant to Temporary Order (6), set further maximum time limits to apply to the committee stage of debate on the *Residential Tenancies (COVID-19 Response) Bill 2020*.

11. Order of Business

Ordered — That Order of the Day No. 1, *Residential Tenancies (COVID-19 Response) Bill 2020*, be resumed forthwith. (Leader of the House).

12. Residential Tenancies (COVID-19 Response) Bill 2020

Resumption of consideration of this Bill in Committee of the Whole House (*see item 6 above*).

The Deputy President left the Chair.

—————
In Committee

(Hon Simon O'Brien in the Chair)

New Clause 30A.

Debate resumed on the amendment of the Minister for Regional Development representing the Minister for Commerce, as follows —

Page 25, after line 22 — To insert:

30A. Termination of accommodation agreement in relation to failure to pay rent during emergency period

(1) In this section —

remedial period means the 60-day period beginning on the day on which the landlord gives the resident the remedial notice;

rent repayment agreement has the meaning given in section 26(1).

(2) This section applies if —

- (a) a resident fails to pay rent, in accordance with an accommodation agreement, due during the emergency period; and
- (b) the resident's failure to pay rent is not due to financial hardship caused by the economic effects of the COVID-19 pandemic.

(3) The landlord may give the resident a written notice (the *remedial notice*) stating that —

- (a) the resident has failed to pay the rent in accordance with the accommodation agreement; and
- (b) the landlord offers to enter into a rent repayment agreement in relation to the rent; and
- (c) the accommodation agreement may be terminated under this section if the resident fails to pay the rent, and refuses to enter into a rent repayment agreement in relation to the rent, during the 60-day period beginning on the day on which the landlord gives the resident the remedial notice.

(4) Subsection (5) applies if the resident unreasonably —

- (a) fails to pay the rent during the remedial period; and
- (b) refuses to enter into a rent repayment agreement in relation to the rent during the remedial period.

(5) After the end of the remedial period, the landlord may apply to a competent court for —

- (a) an order terminating the accommodation agreement; and
 - (b) an order for possession of the residential premises the subject of the accommodation agreement.
- (6) However, the landlord cannot apply to a competent court under subsection (5) on or after the day on which Part 4 Divisions 3, 4 and 5 come into operation under section 2(c) unless —
- (a) the landlord has made a submission to the Commissioner under section 48(1) in relation to the failure to pay the rent; and
 - (b) the Commissioner has certified —
 - (i) under section 56(2) that no agreement has been reached in relation to the failure to pay the rent; and
 - (ii) under section 56(5) that the resident has not cooperated with the conciliation proceeding.
- (7) On an application under subsection (5), a competent court may make an order terminating the accommodation agreement if the competent court considers that —
- (a) the preconditions set out in subsections (2) to (6) for the making of the application have been met; and
 - (b) the making of the order is justified in the circumstances.
- (8) If the competent court makes the order under subsection (7), the competent court —
- (a) must also make an order for possession of the residential premises the subject of the accommodation agreement; and
 - (b) may make such ancillary or incidental orders as the competent court considers appropriate.
- (9) The *Residential Tenancies Act 1987* section 71(3) to (6) applies to an application and order made under this section with all necessary modifications, including as if a reference in those provisions to —
- (a) section 71(2) were a reference to subsections (7) and (8) of this section; and
 - (b) a lessor were a reference to a landlord; and
 - (c) a tenant were a reference to a resident; and
 - (d) a notice were a reference to the remedial notice; and
 - (e) a notice given by the lessor upon the ground referred to in section 69 were a reference to the remedial notice.

New clause — put and passed.

Clause 31.

Debate ensued.

The Minister for Regional Development representing the Minister for Commerce moved —

Page 26, lines 4 to 7 — To delete the lines and insert:

- (2) If a resident in relation to an accommodation agreement for a fixed term suffers financial hardship caused by the economic effects of the COVID-19 pandemic, a notice of termination given under subsection (1)(a) by the resident may specify a day earlier than the last day of the term as the day on which the agreement is terminated.

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 32 to 43 agreed to.

Clause 44.

Debate ensued.

Clause agreed to.

Clause 45

The Minister for Regional Development representing the Minister for Commerce moved —

Page 34, lines 4 and 5 — To delete the lines and insert:

If a relevant dispute has arisen in respect of a residential tenancy agreement, or a person has failed to comply with an order made in connection with a residential tenancy agreement under section 57(1) —

Debate ensued.

Amendment — put and passed.

The Minister for Regional Development representing the Minister for Commerce moved —

Page 34, line 9 — To insert after “relevant dispute”:

or failure

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 46.

The Minister for Regional Development representing the Minister for Commerce moved —

Page 34, line 27 — To insert after “the agreement,”:

or that a person has failed to comply with an order made in connection with the agreement under section 57(1),

Debate ensued.

Amendment — put and passed.

The Minister for Regional Development representing the Minister for Commerce moved —

Page 34, line 28 — To insert after “relevant dispute”:

or failure

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 47.

Debate ensued.

The Minister for Regional Development representing the Minister for Commerce moved —

Page 36, line 19 — To delete “for the purpose of enforcing” and insert:

in relation to a failure by a person to comply with

Amendment — put and passed.

The Minister for Regional Development representing the Minister for Commerce moved —

Page 36, after line 25 — To insert:

- (ba) an application under section 18A(5) or 30A(5); or

Amendment — put and passed.

Clause, as amended, agreed to.

The time under Temporary Order (6) having elapsed, the Chair of Committees put all questions *seriatim* —

Clauses 48 to 52 agreed to.

Clause 53 agreed to.

Clause 54 agreed to.

New Clause 54A.

The Minister for Regional Development representing the Minister for Commerce moved —

Page 41, after line 7 — To insert:

54A. Evidence of financial hardship

- (1) If, during a conciliation proceeding, a person claims that they are experiencing financial hardship caused by the economic effects of the COVID-19 pandemic, the Commissioner may, in writing, require the person to —
 - (a) give the Commissioner details of the financial hardship; or
 - (b) give the Commissioner a statutory declaration setting out the details of the financial hardship.
- (2) The Commissioner must specify in the requirement a reasonable time within which the person must comply with the requirement.
- (3) If the person does not comply with a requirement under subsection (1) within the time specified in the requirement, the Commissioner must make a certification under section 56(5) in relation to the person.

New Clause — put and passed.

Clauses 55 to 57 agreed to.

Clause 58.

The Minister for Regional Development representing the Minister for Commerce moved —

Page 43, line 17 — To delete “for the purpose of enforcing” and insert:

in relation to a failure by a person to comply with

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 59 to 72 agreed to.

Clause 73 agreed to.

Clauses 74 and 75 agreed to.

Postponed Clause 19.

The Minister for Regional Development representing the Minister for Commerce moved —

Page 16, lines 10 and 11 — To delete “A notice of termination given under subsection (1)(a) by a tenant in relation to a tenancy agreement for a fixed term may” and insert:

If a tenant in relation to a tenancy agreement for a fixed term suffers financial hardship caused by the economic effects of the COVID 19 pandemic, a notice of termination given under subsection (1)(a) by the tenant may

Amendment — put and passed.

Question, That the clause, as amended, be agreed to — put.

The Committee divided.

Ayes (13)

Hon Tim Clifford
Hon Stephen Dawson
Hon Colin de Grussa
Hon Sue Ellery
Hon Diane Evers
Hon Adele Farina
Hon Colin Holt

Hon Alannah MacTiernan
Hon Kyle McGinn
Hon Martin Pritchard
Hon Samantha Rowe
Hon Alison Xamon
Hon Pierre Yang (*Teller*)

Noes (10)

Hon Jacqui Boydell
Hon Peter Collier
Hon Donna Faragher
Hon Nick Goiran
Hon Rick Mazza

Hon Simon O'Brien
Hon Robin Scott
Hon Charles Smith
Hon Aaron Stonehouse
Hon Ken Baston (*Teller*)

Clause, as amended, thus passed.

Title agreed to.

The President resumed the Chair.

Bill reported with amendments.

The Minister for Regional Development representing the Minister for Commerce moved, That the report be adopted.

Report adopted.

The Minister for Regional Development representing the Minister for Commerce moved, That the Bill be read a third time.

The President announced that the Chair of Committees had certified that this was a true copy of the Bill as agreed to in Committee of the Whole House and reported.

Debate ensued.

Question — put and passed.

Bill read a third time and passed.

The Acting President left the Chair at 6.03pm

The Acting President resumed the Chair at 6.31pm

13. Order of Business

Ordered — That Order of the Day No. 2, *Commercial Tenancies (COVID-19 Response) Bill 2020*, be resumed forthwith. (Leader of the House).

14. Commercial Tenancies (COVID-19 Response) Bill 2020

Resumption of consideration of this Bill in Committee of the Whole House (*see item 9 above*).

The Acting President left the Chair.

In Committee

(Hon Matthew Swinbourn in the Chair)

Clause 1.

Debate ensued.

Clause 2.

Debate ensued.

Clause agreed to.

Clause 3.

Debate ensued.

The Minister for Regional Development representing the Minister for Commerce moved to postpone further consideration of the clause until after Clause 24.

Question — put and passed.

Clause 4.

Debate ensued.

Clauses 5 to 7 agreed to.

Clause 8.

Debate ensued.

Clause agreed to.

Clause 9.

Debate ensued.

Clause agreed to.

Clauses 10 to 12 agreed to.

Clause 13.

Debate ensued.

Hon Nick Goiran moved —

Page 10, line 5 — To delete “commercial leasing” and insert:

small commercial lease

Debate ensued.

Amendment — put.

The Committee divided.

Ayes (12)

Hon Jacqui Boydell
 Hon Peter Collier
 Hon Colin de Grussa
 Hon Donna Faragher
 Hon Nick Goiran
 Hon Colin Holt

Hon Rick Mazza
 Hon Simon O’Brien
 Hon Robin Scott
 Hon Charles Smith
 Hon Aaron Stonehouse
 Hon Ken Baston (*Teller*)

Noes (11)

Hon Tim Clifford
 Hon Stephen Dawson
 Hon Sue Ellery
 Hon Diane Evers
 Hon Adele Farina
 Hon Alannah MacTiernan

Hon Kyle McGinn
 Hon Martin Pritchard
 Hon Matthew Swinbourn
 Hon Alison Xamon
 Hon Pierre Yang (*Teller*)

Amendment thus passed.

Hon Nick Goiran moved —

Page 10, line 28 — To insert before “lease”:

small commercial

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

The Minister for Regional Development representing the Minister for Commerce moved, That the Chair report progress and seek to sit again at a later stage of this day’s sitting.

Question — put and passed.

The Acting President resumed the Chair.

The Chair of Committees reported that the Committee of the Whole House had considered the Bill, made progress, and seeks to sit again at a later stage of this day’s sitting.

Ordered — That the Committee of the Whole House sit again at a later stage of this day’s sitting.

The Acting President left the Chair at 9.15pm

The President resumed the Chair at 9.43pm

15. Business of the House — Commercial Tenancies (COVID-19 Response) Bill 2020 Time Limit for Bill

The Leader of the House pursuant to Temporary Order (6), set further maximum time limits to apply to the committee stage of debate on the *Commercial Tenancies (COVID-19 Response) Bill 2020*.

16. Order of Business

Ordered — That Order of the Day No. 2, *Commercial Tenancies (COVID-19 Response) Bill 2020*, be resumed forthwith. (Leader of the House).

17. Commercial Tenancies (COVID-19 Response) Bill 2020

Resumption of consideration of this Bill in Committee of the Whole House (*see item 14 above*).

The President left the Chair.

In Committee

(Hon Adele Farina in the Chair)

Clause 14.

Debate ensued.

The Minister for Regional Development representing the Minister for Commerce moved —
Page 12, line 15 — To delete the line and insert:

- (b) includes —
 - (i) a code of conduct dispute; and
 - (ii) a financial hardship dispute;

Debate ensued.

Amendment — put and passed.

The Minister for Regional Development representing the Minister for Commerce moved —
Page 12, after line 15 — To insert:

financial hardship, in relation to a tenant, means financial hardship suffered by the tenant as a result of 1 or more of the following —

- (a) a restriction imposed under a written law in response to the COVID-19 pandemic;
- (b) changes in societal behaviour in response to the COVID-19 pandemic;
- (c) any other consequences of the COVID-19 pandemic;

Debate ensued.

Amendment — put and passed.

The Minister for Regional Development representing the Minister for Commerce moved —
Page 12, line 18 — To delete the line.

Debate ensued.

The Minister for Regional Development representing the Minister for Commerce, by leave, withdrew the amendment.

The Minister for Regional Development representing the Minister for Commerce moved —
Page 12, after line 18 — To insert:

- (2) For the purposes of this Part, a *financial hardship dispute* is a dispute between the parties to a small commercial lease in the following situation —
 - (a) during the emergency period, the tenant has breached the small commercial lease by failing to pay rent or any other amount of money payable by the tenant to the landlord under the small commercial lease (including, without limitation, a requirement under the lease to pay all or any of the landlord's operating expenses); and
 - (b) the landlord claims that the breach was not a result of the tenant suffering financial hardship; and
 - (c) the landlord has not granted the tenant a waiver, deferral or reduction in respect of the unpaid rent or other unpaid amount of money.

Amendment — put and passed.

Clause, as amended, agreed to.

New Clause 14A.

The Minister for Regional Development representing the Minister for Commerce moved —

Page 12, after line 18 — To insert:

14A. Relationship with s. 9

Nothing in section 9 prevents a landlord from making a request to the Commissioner under section 17, or an application to the Tribunal under section 15, in relation to a financial hardship dispute.

Debate ensued.

New Clause — put and passed.

Clause 15 agreed to.

Clause 16.

Debate ensued.

The Minister for Regional Development representing the Minister for Commerce moved —

Page 14, after line 10 — To insert:

- (ca) if the proceedings relate to a financial hardship dispute — an order terminating the small commercial lease;

Debate ensued.

Amendment — put and passed.

Hon Nick Goiran moved —

Page 14, lines 20 and 21 — To delete “if relevant in accordance with the adopted code of conduct —”

Debate ensued.

Amendment — put and passed.

The Minister for Regional Development representing the Minister for Commerce moved —

Page 14, after line 24 — To insert:

- (4A) In proceedings relating to a financial hardship dispute, the Tribunal —
 - (a) cannot make an order under subsection (3)(ca), or any other order to the disadvantage of the tenant, unless satisfied that the tenant’s breach was not a result of the tenant suffering financial hardship; and
 - (b) must make an order under subsection (3)(d) if satisfied that the tenant’s breach was a result of the tenant suffering financial hardship.

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 17 and 18 agreed to.

Clause 19.

Debate ensued.

Clause agreed to.

Clause 20 agreed to.

Clause 21.

Debate ensued.

Clause agreed to.

Clauses 22 to 24 agreed to.

Postponed Clause 3.

Debate ensued.

Clause agreed to.

Title agreed to.

The President resumed the Chair.

Bill reported with amendments.

The Minister for Regional Development representing the Minister for Commerce moved, That the report be adopted.

Report adopted.

The Minister for Regional Development representing the Minister for Commerce moved, That the Bill be read a third time.

The President announced that the Deputy Chair of Committees had certified that this was a true copy of the Bill as agreed to in Committee of the Whole House and reported.

Question — put and passed.

Bill read a third time and passed.

18. Adjournment

There being no Members' Statements the Council adjourned at 10.18pm until Tuesday, 12 May 2020 at 2.00pm.

Members present during the day's proceedings

Attendance: Present all Members except: Hon Robin Chapple (*by leave*), Hon Laurie Graham, Hon Tjorn Sibma and Hon Colin Tincknell.

NIGEL PRATT
Clerk of the Legislative Council

HON KATE DOUST MLC
President of the Legislative Council