COMMERCIAL TENANCIES (COVID-19 RESPONSE) BILL 2020

Committee

The Deputy Chair of Committees (Hon Matthew Swinbourn) in the chair; Hon Alannah MacTiernan (Minister for Regional Development) in charge of the bill.

Clause 1: Short title —

Hon NICK GOIRAN: What relief, if any, will this bill provide to landlords of commercial tenancies?

Hon ALANNAH MacTIERNAN: We argue that it will provide them with access to mechanisms for a speedy way forward in negotiating in this challenging environment because it will provide access to the Small Business Development Corporation. In our view, that benefits landlords as well as tenants. It will provide a strong framework for dispute resolution, which will be in the interests of landlords as well as tenants.

Hon NICK GOIRAN: Therefore, the only thing that the bill will do for landlords of commercial tenancies in Western Australia is provide a speedy dispute resolution process; it provides nothing else. I note that the Premier, on 3 April this year, said —

> "Many tenants, many businesses have had their incomes collapse … "Commercial rents should reflect that simple fact.
>
> "Rents will have to come down, it is as simple as that."

Will this bill do that?

Hon ALANNAH MacTIERNAN: The bill will not bring rents down per se, but it certainly provides the framework in which there will be a realistic discussion about rents in some areas. Obviously, some areas, such as people leasing land to iron ore companies, will not be affected. But it will apply a framework in which there can be a reasonable and cost-effective way of putting all the cards on the table and coming to a determination about what a reasonable rent is, going forward.

Hon NICK GOIRAN: I understand that the Premier has said that this bill will introduce a moratorium on evictions for small commercial tenancies, and when we get to the relevant clause, we can discuss what is intended by the phrase "small commercial tenancies". But he has also said in a media release on 14 April this year, a mere three days ago, that the bill will also —

> … provide a range of other measures to offer support for tenants in response to COVID-19.

What are those other measures? Obviously, there is the moratorium on evictions, which is a fairly substantial shield which some tenants might be able to avail themselves of. But apart from that one that had already been mentioned in the media release on that day, what are the range of other measures that he refers to?

Hon ALANNAH MacTIERNAN: Quite clearly, establishing the framework for dispute resolution is a very important part of ensuring that there are no rent increases and ensuring that there is no interest payable on arrears accumulated during the emergency period. They are all provisions and it allows for the introduction of, by way of regulations, the code of conduct, which will set out much more guidance and, as we have talked about before, create an environment in which we can get a realistic dispute resolution and get people focused on what is expected by way of relief when a tenant has been adversely affected.

Hon NICK GOIRAN: That is very helpful. I thank the minister for that comprehensive response. In essence, the Premier has said that this bill deals with a range of measures. It will provide commercial landlords with a speedy dispute resolution process.

Hon Alannah MacTiernan: And guidance through the code of conduct and what might be expected.

Hon NICK GOIRAN: Right. The speedy dispute resolution process and guidance via the code are provided to the landlords. The tenants, on the other side of the ledger, will no doubt get this guidance from the code. They will also get this speedy dispute resolution process. In addition, the minister indicated that they will get an eviction shield. The minister did not use the word "shield"; that is the word I used. I think the phrase that is used by the government is "moratorium on evictions". In addition, the minister indicated that the tenants will also benefit by having no rent increases during this period and no interest will be payable on any defaults. That is the comparison between the two. It is good to get that on the record so that all tenants and landlords of commercial tenancies in Western Australia understand precisely what the government is doing with this bill.

What recourse is available for a landlord to whom favourable terms have not been extended by their lender and against whom the lender will foreclose because the landlord cannot make repayments due to the reduction in rent

received by virtue of the code—the guide the minister referred to? What kind of recourse will be available to landlords who are squeezed by the pressure being exerted on them by virtue of the code and what their lenders might want?

Hon ALANNAH MacTIERNAN: I thank the member for the question. Clause 16(4) states —

> In making an order in proceedings under this Act, … the Tribunal must have regard to —
>
> …
>
> (b) if relevant in accordance with the adopted code of conduct—the landlord's financial capacity;

It is clearly intended that the landlord's financial capacity would also be a consideration. The primary cause of any rent reduction will not be because of this legislation; it will be due to the economic circumstances arising out of COVID. We have to take into account what practically is really happening. The Australian Banking Association has announced that businesses with total running facilities of up to $10 million—that is up from $3 million in the small business threshold—are now able to defer payments for six months. In making our decisions about this legislation, we have to have regard to the reality of the world in which we live. The reality of the world is that the banks have agreed that they will pay loan relief to enable businesses to defer their repayments for up to six months.

Hon NICK GOIRAN: I thank the minister for that response. While the minister was providing that response, I was wondering why the response was so comprehensive and so relevant to the question I asked. I momentarily forgot that I had given notice of all these questions, so we should make excellent progress this evening.

Hon Alannah MacTiernan: I am taking you seriously.

Hon NICK GOIRAN: I thank the minister; I am grateful for it.

Are landlords in any way protected from margin calls on valuations? Will banks be prevented from activated margin calls against commercial borrowers as property values are reduced by potentially more than 50 per cent?

Hon ALANNAH MacTIERNAN: That is not expressly dealt with in this legislation other than by way of clause 16(4)(b), under which the financial capacity of the landlord will be taken into account. Obviously, if margin calls are based on valuations, there will be implications for the financial capability. We have information that relief has now been extended to 98 per cent of all businesses with loans with an Australian bank. It is important to understand that the reduction in rental values will not be a consequence of this legislation; it will be a consequence of the strategies taken, and, in some cases, the lack of strategies taken by some of our international partners to deal with COVID-19. The collapse in property values in some areas will occur regardless of this legislation.

I will use this as an opportunity to refer to something that Hon Aaron Stonehouse said during his contribution. He implied that the pricing of rental properties is totally erratic and dependent upon personal circumstances—whether one wants to send a child to school or go on an overseas holiday. With due respect, whilst there might be a few cases of that happening, generally there is a well-entrenched principle of market value. Most commercial leases are subject to reviews based upon market value. Clear objective principles apply and are brought into play to establish rental prices. A margin call will not be the result of this legislation, but a fall in property prices. It is not in anyone's interest to do that. This legislation gives people a six-month period in which to trade out, rebuild and re-establish while we deal with the worst of this virus.

Hon NICK GOIRAN: Will local governments be permitted to continue to charge full rates to commercial property holders, providing no relief for late payment even though many councils levy rates on gross rental value?

Hon ALANNAH MacTIERNAN: That is not dealt with by the Commercial Tenancies (COVID-19 Response) Bill 2020. We have previously passed legislation that freezes council rates. We will be looking at how local governments deal with rates and the way in which relief and support can be provided. The JobKeeper allowance is helping many small businesses to survive and function, and will be of indirect assistance to the landlords.

Hon NICK GOIRAN: To what extent will this bill prevent or discourage the Water Corporation from levying water rates against the pre-COVID-19 value of a landlord's property?

Hon ALANNAH MacTIERNAN: That is not dealt with by this bill. This is something that the government will consider as we look at what packages of assistance can be provided.

Hon NICK GOIRAN: With respect to local governments, the minister indicated that that might have already been done by virtue of a bill —

Hon Alannah MacTiernan: The freeze in rates, I think.

Hon NICK GOIRAN: The freezing of local government rates —

Hon Sue Ellery: They have done it themselves.

Hon NICK GOIRAN: That has been addressed or there are potentially some discussions going on between government and local governments about that. Have any discussions begun with the Water Corporation in this area?

Hon ALANNAH MacTIERNAN: That is not a part of this bill. The government is looking at what other assistance it might be able to provide independent of this bill.

Hon NICK GOIRAN: The minister will be interested to know that the draft explanatory memorandum—it is the draft, which means that I will probably need to run a copy up to those who must be obeyed—that was provided to the opposition at 9.45 am two days ago, on 15 April 2020, specified that the bill provides for —

> a requirement for landlords to pass on any reduction or rebate in any state tax (e.g. land tax) to tenants by way of a reduction in payable outgoings or operating costs;

Very interestingly, that bullet point in the draft explanatory memorandum has vanished from the final version of the explanatory memorandum. What does this mean for the state government's intentions to either reduce or rebate land tax levies? Obviously, at one point, certainly as recently as 9.45 am two days ago, some people in government were contemplating the idea of some reduction and rebating of land tax levies, but someone has got out the eraser and taken it out. Why is that the case?

Hon ALANNAH MacTIERNAN: It is because that provision refers to a matter that was proposed to be contained in the code rather than in the bill. In order to make sure that we were properly reflecting the bill, rather than the code, which is yet to be settled, we determined to take that out.

Hon NICK GOIRAN: That is funny, because the draft explanatory memorandum provided to the opposition at 9.45 am two days ago states, and I quote —

> The Bill provides for the following in relation to small commercial leases:

It lists seven dot points, and very specifically the fourth dot point states —

> a requirement for landlords to pass on any reduction or rebate in any state tax (e.g. land tax) to tenants by way of a reduction in payable outgoings or operating costs;

Whoever put this together at 9.45 am two days ago certainly did not say that it was the code that was going to provide for that. They very expressly decided to say that the bill provides for it. That is absent. The minister is indicating, and I suppose foreshadowing, that people might see this in the code. It is not apparent to me how the code would somehow then create a reduction of land tax for any property owners. The code might state that a property owner needs to pass this on if there is to be any reduction. My real question is: does the state government intend to reduce or rebate land tax levies? Has there been any discussion on that?

Hon ALANNAH MacTIERNAN: As I have said four or five times now during this debate, and I will say it only one more time, the Premier has indicated that we are looking at what financial assistance we can provide and what will be cost effective. We are looking at all of the other ways in which we can help stimulate the economy and how we can move to provide the best environment for business. All of those things are still under consideration. I cannot say anymore on it and I do not intend to.

Hon NICK GOIRAN: The minister can relax because I am moving to the next question. The national code notes that a state-based industry code administration committee should be established. Does this bill establish that committee in Western Australia? If not, why not? If yes, who will sit on that committee and what role will the committee have in implementing this bill in our state?

Hon ALANNAH MacTIERNAN: One of the fundamentals of this bill is to provide immediate protection from eviction and rent increases for a certain class of small commercial tenants. That is what we are aiming at here. As we said, the code may cover a larger group of people. The bill will not establish that committee. As I said, it will be over the next month that we really refine the provisions of the code. We understand there needs to be negotiations. The minister has agreed that he is happy to have a briefing in two to three weeks with opposition, Nationals WA and crossbench members to get them up-to-date on what the thinking and progress is. It will give members an opportunity to feed in the concerns that they are hearing from residents. At this stage, we have not made a decision about whether to establish that committee. That decision will be part of the work that is done after extensive consultation with industry.

Clause put and passed.

Clause 2: Commencement —

Hon NICK GOIRAN: There are six parts to the bill, but clause 2(b) makes special reference to parts 2 and 3. They are deemed to have come into operation on 30 March 2020; in other words, retrospectively. Why is it necessary

that they be brought into operation retrospectively? I hasten to add at this point that my question is not why the government desires it to come in on 30 March 2020; rather, I want to know why it is necessary for it to come in on 30 March.

Hon ALANNAH MacTIERNAN: As explained during the debate on the previous bill, we certainly did not want to create a situation in which the announcement that we were going to introduce legislation to protect commercial tenants created an environment that accelerated their demise. As I explained in relation to the previous bill, similar to a proposed tax measure, the measure takes effect from the day on which the announcement of the measure is made, obviously to obviate any attempts to defeat the system. Hence, we felt it was necessary to do the same thing because we did not want to precipitate a situation in which landlords thought, "I've got to get rid of this tenant now" and then took precipitous action between now and the time that the legislation is passed. This will ensure that those base protections apply from the time that the announcement was made.

Hon NICK GOIRAN: Herein lies the concern. As I understand it, parts 2 and 3 set out certain actions that will be prohibited. If a person is involved in a small commercial lease in Western Australia, from today until the end of the emergency period they are prohibited from doing certain things. That is fair enough because we are debating it now and agreeing to it now, and we are saying to those Western Australians who have a small commercial lease, "If we pass this bill tonight and send it back to the other place to be dealt with next week, there are certain things that you're prohibited from doing." That is fair enough. But actually what we are doing here is saying, "Not only should you not do these things from today onwards or whenever this bill passes, we're actually telling you that you shouldn't have done these things from 30 March." The minister will say that that is because that is when there was an announcement and we want to make sure that people do not take advantage and put the accelerator on in terms of these types of prohibitive actions.

I think the minister will appreciate my concern that within parts 2 and 3 there is capacity for the government to add other leases and arrangements that will then be applied retrospectively through the regulations. There are several examples of this. Let us take, for example, the definition of "small commercial lease" at clause 3. Paragraph (d) of that definition provides capacity for the government to prescribe by regulations any other lease for the purposes of that paragraph. Paragraphs (a)–(c) under the term "small commercial lease" at clause 3 lists a range of small commercial leases. Those people who are subject to paragraphs (a)–(c)—a retail shop lease, a lease where the tenant owns or operates a small business, and a lease where the tenant is an incorporated association—will know that, at least from today onwards, there are certain actions that they are prohibited from taking. Indeed, they will know that they are in strife if they have already taken those actions as of 30 March, through no fault of their own, just because Parliament has decided to apply the law retrospectively. We can debate that for a long time. But my point is that under paragraph (d) of the definition of "small commercial lease", the government can then, with the stroke of a pen, add other victims to this regime, and by "victims" I mean people who will suddenly find that they are prohibited from taking actions from not just when the regulations might be tabled, but 30 March 2020 onwards. I think that is a real concern. I can understand why many members have probably been lobbied pretty hard on this bill—because, at the stroke of a pen, in theory, the government could prescribe any other lease. That is what paragraph (d) states. Under the definition of "small commercial lease", on page 4 at line 32, paragraph (d) states —

> any other lease that is of a class prescribed by regulations for the purposes of this paragraph;

The fact that the lease is under the definition of "small commercial lease" is neither here nor there; it could be done. Now the situation is that these people will have had to comply with something from 30 March 2020.

I say all this to draw to the minister's attention that I have an amendment standing in my name on the supplementary notice paper suggesting the possibility of changing the date from 30 March to 7 April. I have proposed this amendment on the recommendation of the Property Council of Australia, which I think has made a reasonable point to the opposition; I do not know whether it has spoken to members of other parties. The Property Council made the point that 7 April is the date that the national cabinet agreed to its code, so at least everybody understood the playing field that they were operating under. The problem with 30 March is that there may have been some general statements made, but that was not when the code came in. It seems, as a matter of basic fairness, that 7 April would be a superior date to choose, so that everyone understands the parameters that they are operating under. I wonder whether the government would consider an amendment of that kind.

Hon ALANNAH MacTIERNAN: No, we will not. Any expansion of the operation of the legislation by way of regulation would not automatically be backdated to 30 March. I am advised that there would have to be an express provision on the operation of that regulation, and, of course, that would be a disallowable instrument. We are not making any statement at this stage that all provisions of the code are going to be backdated to 30 March; that is obviously something that needs to be negotiated with the parties. But what we do say, and we think this is very important, is that on 29 March the national cabinet agreed to a moratorium on evictions over the next six months for commercial and residential tenants who are in financial stress and are unable to meet their commitments due to the impact of the coronavirus. That was a very clear statement on 29 March. We could say that enshrining that

is at the very heart of this legislation. At this stage, it is confining it to a much smaller class of people than those who have been the subject of discussion in the code of conduct. The reason we are using this date is that it would have been very bad to have made that announcement on the twenty-ninth and not to have made a commitment that this was going to apply immediately, as landlords could have jumped on this announcement and been tempted to get rid of people before the legislation was introduced. The government is very clear that it is really important to backdate the moratorium on evictions and the setting up of the dispute resolution process to that date. There may be an argument in relation to the broader range of things in the code of conduct—the expansions and whatever. That may be an input that the member could make. The organisations could provide input that that should be retrospective really only to that time, but the moratorium on evictions was promised on 29 March. It would run contrary to our whole desire to protect commercial tenants if we provided a one-week opportunity for landlords to try to obstruct that very clear intention.

Hon NICK GOIRAN: If I understand the explanation the minister has provided, the government said that if everyone was paying attention on 29 March, they would understand that the moratorium on evicting tenants was expected to start on 29 March, and that is why the government wants this law to start from 30 March. I will accept that for the purposes of the debate. I draw to the minister's attention the list of prohibited actions in clause 8. Eviction of the tenant is listed at paragraph (a) and then there is a massive list underneath, which goes far beyond the moratorium on the eviction of the tenant that the minister said everyone was aware of on 29 March. Would everyone have been aware of the other prohibited actions listed in clause 8, such as exercising a right of re-entry, possession, recovery of land, distraint of goods, forfeiture, termination of the small commercial lease and so on? I will take the prohibition on the termination of the small commercial lease as an example. To what extent does that differ from paragraph (a), which is the eviction of the tenant from the land or premises on which there is a moratorium, or from damages and so on and so forth? The minister can see the list for herself at clause 8. Interestingly, in addition to that, paragraph (l) at the very end states —

> any other remedy otherwise available to the landlord against the tenant at common law or under a written law.

We are now saying that we expected landlords to be aware on 29 March that they basically could not do anything. It is not just a moratorium on evictions; it is the whole kit and caboodle. I want confirmation that that is fair and reasonable in the circumstances. I understand the minister's argument regarding the eviction of tenants, which is listed at clause 8(a), but it was not apparent to me that it would include everything else.

Hon ALANNAH MacTIERNAN: In our view, giving effect to all these other things is necessary because landlords could fundamentally destroy their tenants' right to continue occupancy by, for instance under paragraph (b), exercising the right of re-entry by taking possession of the land. All these things would be inconsistent with the idea of a moratorium on the termination of a tenancy, because they would be ways of effectively bringing tenancies to an end. We can continue to debate this. I think we have spent a long time on this. The government does not intend to support the change in date to 7 April, as it thinks that would be a fundamental abrogation of the promise it made to people. If the member wants to put it to a vote, he can put it to a vote.

Hon NICK GOIRAN: Before I do that, minister, I want to understand the government's reasons. The minister provided a very comprehensive explanation about the eviction of the tenant, and all those other matters listed under clause 8. As I understand it, they have sufficient connection with an eviction of a tenant to warrant that nexus. As the minister pointed out, we could debate that until the cows come home. Tonight is not the night for that. Let us park that to one side. That is in regard to all those things that the minister says has a connection to the eviction of a tenant. I draw to the minister's attention clause 11, which outlines rent increases. Was it clear to people on 29 March that that would also be a prohibited thing to do?

Hon ALANNAH MacTIERNAN: I will just point out that as part of that set of principles, it was said —

> Commercial tenants, landlords and financial institutions are encouraged to sit down together —

This was on 29 March —

> to find a way through to ensure that businesses can survive … on the other side. As part of this, National Cabinet agreed to a common set of principles, endorsed by Treasurers, to underpin and govern intervention to aid commercial tenancies as follows:
>
> - a short term, temporary moratorium on eviction for non-payment of rent …
> - tenants and landlords are encouraged to agree on rent relief …
> - the reduction or waiver of rental payment …
> - the ability for tenants to terminate leases …
> - commercial property owners should ensure that any benefits received in … their properties should also benefit …

- landlords and tenants not significantly affected by coronavirus are expected to honour their lease and rental agreements …

The principle in that general commitment is that we were trying to help businesses hibernate. We wanted to ensure that tenants were not summarily forced out. Of course, if someone had a situation in which they had rent increases over that time, those rent increases in themselves could have in effect forced a tenant out. Quite frankly, anyone who would even contemplate a rent increase for a commercial lease in the current environment would be highly problematic. We think it is not an undue impost to say that that is going to be included in that idea of a moratorium on eviction, and dealing with financial distress.

Hon NICK GOIRAN: Let us imagine that the tenant is a maker or distributor of toilet paper and during this period they have seen their profits go through the roof, because, for some reason, which is still not clear to me, there is a total obsession with that product. I do not understand what people are doing with it, quite frankly. Let us imagine for a moment that that is what this particular tenant does.

Hon Alannah MacTiernan: What do they do?

Hon NICK GOIRAN: They are the maker or distributor of toilet paper.

Hon Alannah MacTiernan: Are they in a small commercial lease?

Hon NICK GOIRAN: They are in a small commercial lease. They are profiting like they would not believe, for the strange, weird and wonderful reasons that are going on at the moment. In those circumstances, no-one could suggest that that particular business is suffering any hardship due to COVID-19. Let us also assume that this person was in a commercial lease and the lease had said, a long time ago when it was signed, that on 1 April every year, the rent will go up, let us say, by one per cent, for the purposes of our debate. On 1 April every year, rent will go up one per cent, and that has been agreed to for many years in this particular lease agreement. This is the type of tenant who has had no problem with regard to COVID-19. In actual fact, this tenant has been profiting. Why would it be appropriate for that rent increase, that had been understood, agreed to and planned for, many moons ago, to now be specifically prohibited during this emergency period?

Hon ALANNAH MacTIERNAN: We think that a very small group of people will be affected and it will be for only a six-month period. Of course, it will not include rent when the component of rent is determined by reference to turnover. Therefore, in the toilet paper case, if there is a turnover provision within that rental agreement, as there often is, obviously the toilet manufacturer or distributor could pay a good deal more, at least at the beginning of it. Indeed, many of us suspect, as Hon Alison Xamon I think was referencing, that some of those people are now finding that there is a lull and that although there might have been a couple of months of a spike in demand, the paper is still there, the bottoms are not producing at any greater rate and they are finding, shall we say, a dip in the demand for their product. We are talking about only a six-month period for rent that is not related to turnover and small commercial leases. We do not think that in the overall scheme of things this will be very significant.

Clause put and passed.

Clause 3: Terms used —

Hon RICK MAZZA: Can the minister tell me when will the adopted code of conduct be available for us to look at?

Hon ALANNAH MacTIERNAN: As I have said on a few occasions, my advice is that the code of conduct is at least a month away from being finalised. I have given an undertaking that it will not be gazetted prior to 12 May, because that is in accordance with our proposed timetable, so members will not come back to Parliament to find the thing already in place. The Minister for Commerce; Attorney General has agreed that he is prepared to ensure that every member of this place is briefed in the next two to three weeks on the progress of that code of conduct. Therefore, members will get some advance notice of where it is heading and will have an opportunity to feed in the concerns of the people who are making representations to them. My advice is that it is at least four weeks away. We have a commitment from the minister that in two to three weeks' time, should members wish to be so briefed, they can have a briefing at that time on where that code is heading and what sorts of provisions we will be looking at.

Hon RICK MAZZA: Is it envisaged that the adopted code of conduct will closely mirror the National Cabinet Mandatory Code of Conduct for SME Commercial Leasing Principles during COVID-19?

Hon ALANNAH MacTIERNAN: As we have said, it will be consistent with the underlying principles, which are to get the parties to sit down together to try to come to an agreement and to find their way through to ensuring that businesses can survive and be there on the other side. It is a real work in progress, but there will be provisions about what is considered to be a reasonable way of dealing with a decline in turnover caused by COVID-19. It is made clear that it is financial distress or the inability to meet commitments due to the impact of coronavirus, so there will be a focus on requiring the landlord to be mindful of the turnover reduction, the degree to which the rent

reductions will be connected with that and providing that a percentage of that reduction is delivered by a waiver altogether, never to be recovered, and the other is to be delivered by way of a deferral to be payable after the emergency period.

Hon RICK MAZZA: Is consultation planned with stakeholder groups such as the Property Council of Australia and the Real Estate Institute of Western Australia in developing these codes? I am quite alarmed at some of the principles in the national cabinet code, so I would not like to see that the code follow closely what national cabinet has planned. The national code refers to 100 per cent waivers and deferrals and that rental waivers must constitute no less than 50 per cent of the total reduction in rent payable. There is also some scope that landlords will not draw down on tenants' security bonds—I think it is in the bill itself anyway—but if the tenant has abandoned the premises, surely the landlord would have some scope to access the bond with a guarantee. I am concerned that in Western Australia we do not have adequate consultation with those stakeholder groups.

Hon ALANNAH MacTIERNAN: I can assure the member that the advisers at the table are telling me that even this morning they were talking to the Shopping Centre Council of Australia. That is why we are saying that it is at least four weeks away: a lot of stakeholder consultation needs to take place; there is a lot of work to be done. The fact that we are not going to be in a position to deliver the code of conduct for the next four weeks tells the member that we are very serious about getting that consultation in place.

Hon RICK MAZZA: I know that this is emergency legislation and it has been rushed through very, very quickly, and even as MPs we have been struggling to get across it. I have had some correspondence from the Real Estate Institute of Western Australia asking me not to support this bill because it is concerned about it. It would appear it has never been consulted about this bill. I know the institute outlined some concerns with the residential tenancies bill, but it is asking us to oppose this particular bill outright, and I think that would happen only if the institute had not been consulted about the implications of the bill.

Hon ALANNAH MacTIERNAN: The discussions about the general principles tended to be focused at a national level, and the reason that there is going to be a gap until we have a code here in WA is that we are very mindful of the need to have those negotiations. The code will not be put in place until those discussions have been held.

Hon DIANE EVERS: I have a question on the code as well. In my contribution to the second reading debate I talked about whether the code would be binding on participants. Is the intention that these are just guidelines that can help direct negotiations or will there be fixed things that tenants and landlords must attend to? If that is the case, what will the penalties be should they not do that?

Hon ALANNAH MacTIERNAN: That has not quite been determined. As we have seen, we have had to deal with a number of things that have come out of national cabinet and although the underlying fundamental principles are agreed upon, some of the detail has had to be varied, such as for maritime crews and agricultural workers. Members can see that the code, as set out, attempts in some cases to provide some baselines so that, for example, rental waivers must constitute no less than 50 per cent of the total rent repayable under the third principle. That would suggest that it is mandatory. How that actually will play out in the final code that we adopt in Western Australia is yet to be decided. At this point we cannot give members very much more guidance than members can get from reading the national code, other than to say that everyone will have an opportunity to look at what is proposed in advance. We understand that, as legislators, we have imposed upon members' goodwill to get this done in a timely way. We hope that during the development of the Western Australian code, members will have more time to get across those details, and hence the undertaking given by the Attorney General.

Hon DIANE EVERS: Following on from that, the example the minister gave was of a 30 per cent reduction in revenue not having the same impact on two different businesses because it would depend on their fixed costs and how they trade. It does not make sense to suggest putting that in the national code and for it to be binding. From what the minister is saying, it sounds as though there are issues within the code that will be binding, that will be spelt out clearly and if others are not binding, they will be shown in the guidelines.

Hon ALANNAH MacTIERNAN: Absolutely. All these things will be subject to regulation, which will be disallowable. We obviously want a regulation that will get approved. We do not want to keep chopping and changing because we have tenants and businesses out there who are relying on us to get this right. We want to work collaboratively as much as we can. We understand that there will be a wide range of philosophical perspectives, but we hope that we can find common ground about what is fair in these circumstances.

I have an amendment in my name on clause 3 and I am mindful of the time.

The DEPUTY CHAIR (Hon Adele Farina): Hon Nick Goiran has stood up seeking the call a number of times. Unless the minister has an objection, I will give him the call.

Hon NICK GOIRAN: I thank the Deputy Chair and the minister for that courtesy. I think it is important to ask a few more questions before the minister moves the amendment at 5/3, which I indicate the opposition will support.

I have a number of questions on clause 3, which the minister knows because I gave notice of them yesterday, and they all deal with matters before we get to the part of the clause that the minister wants to amend. It seems appropriate to deal with those questions first, particularly if the answers give rise to making an amendment. If the minister had moved the amendment to add a definition of "tribunal", we would then be prohibited from being able to go back and make such amendments. We certainly do not need any more confusion than what has already taken place today. Before I ask my questions about clause 3, I have one question that arises out of the dialogue the minister had with Hon Rick Mazza. If the code will not be ready for approximately four weeks while the government, quite reasonably, undertakes negotiations with stakeholders, what is the urgency of the bill before the house? If we were to deal with this bill in four weeks, as we know, parts 2 and 3 would come into operation on 30 March anyway. Is there a real imperative for us to be doing this at this time?

Hon ALANNAH MacTIERNAN: There absolutely is, member. People out there might be facing eviction or a range of other things that will undermine their ability to continue to operate. We think it would be incredibly irresponsible for us not to give them some certainty. This is baseline stuff for small commercial leases. This may expand with the code of conduct and a broader group of people may be covered. There may be different and more detailed provisions about how to do things, such as negotiate rents. The critical stuff—the baseline—is contained in this legislation that will come into effect regardless of whether there is a code of conduct. The code of conduct will sit on top of these basic protections. It is not required to give effect to the basic protections that are outlined in this bill.

Hon NICK GOIRAN: What is the emergency period end day, which is intended to be prescribed by regulations, and what criteria will be used to determine whether to invoke that power?

Hon ALANNAH MacTIERNAN: The default emergency period, as I think we have discussed in a few pieces of legislation, is 30 March 2020 to 29 September 2020. As I think we set out in the previous debate, we hope that we will not have to extend that, but because, as with any pandemic, the behaviour of this virus lacks predictability, we need to keep open this option to extend the period. Again, that will be a disallowable instrument. If this Parliament does not agree to it, it will not be extended.

Hon NICK GOIRAN: The government has selected 29 September 2020 for a particular reason. It might well be because it is six months from 30 March. Whatever the reason for that, the government will see that the emergency period comes to an end at some point. At this stage, as the minister says, the default is 29 September, but the government might look to extend that to a later date if it decides that that is appropriate. Does the government intend that this emergency period should cease from the expiration of the declaration of the state of emergency? In other words, I believe that the Minister for Emergency Services is the minister with the power to declare a state of emergency. Is it intended that when he lifts the current state of emergency, this emergency period will come to an end; or is it intended to be until whatever date the JobKeeper scheme remains available?

Hon ALANNAH MacTIERNAN: Quite clearly, the date selected, 29 September, is to reflect the six-month period. The declaration of an emergency under the state emergency legislation is generally done on a fortnight-by-fortnight basis, so that is not the default period that we are choosing. The powers under that state of emergency are very much police-style powers, which is why that is quite a separate proposition to the concept of an emergency period under this legislation. We certainly do not see that it is necessary to tie this to the JobKeeper eligibility scheme. It will be very much based on our assessment of the commercial needs and where we are in terms of having restored the economy.

Hon NICK GOIRAN: Thank you, minister, for the explanation. I will make the observation and the comment that I think that is inconsistent with what the national cabinet members had intended when they talked about it being linked with the JobKeeper scheme. But, of course, I absolutely respect —

Hon Alannah MacTiernan: So where was that, member?

Hon NICK GOIRAN: That is my understanding of it. If that is not the case, I stand to be corrected on it. But I understood that the whole purpose of the code and the scheme was that they would apply for the period that the JobKeeper scheme was in place. If it is not intended to be linked to that, and that WA is going it alone in that respect, I do not have any difficulty with it; it just helps to clarify that it will be entirely a matter for Western Australia when the emergency period will end.

Speaking of the national code, I note that it says —

> … arrangements will be proportionate and appropriate based on the impact of the COVID-19 pandemic plus a reasonable recovery period.

How does the state government define the reasonable recovery period?

Hon ALANNAH MacTIERNAN: These will be matters of complex judgement that will be based on our experience, our advice, the recovery, the retail environment and the commercial environment generally. We are not seeking, and we would not intend to seek, to try to define that at this stage, but it would be having regard to all the normal commercial and financial data that governments take a look at in making their decisions.

Hon NICK GOIRAN: I guess this is why some of the stakeholders are pretty frustrated at the moment, because this bill says that these provisions—which I think even the minister's government accepts are extraordinary and it would not normally do this, but it is doing it because of the pandemic—are going to be in place until 29 September, and it is quite reasonable for a Western Australian commercial landlord or tenant to wonder how long they will be subject to these extraordinary provisions that the Parliament is agreeing to here. The minister would say it would be until 29 September and, of course, then say, "But we, the government, can extend that."

Hon Alannah MacTiernan: With the Parliament's approval.

Hon NICK GOIRAN: No, the government can extend it and somebody needs to be alive to every regulation that gets tabled. Being a very experienced member, I am sure that the minister is aware that not all members are necessarily reviewing every regulation that is tabled in this place. We will have to be on high alert for these ones. The point is this: I think it is reasonable for Western Australians to understand when this is going to come to an end. The minister has said, and I do not have any difficulty with it, that it is not to be linked with the JobKeeper scheme.

Hon Alannah MacTiernan: Not necessarily. We don't see that as —

Hon NICK GOIRAN: The government does not see that as a necessary thing, but the minister has also said that it is not necessarily to be linked with lifting the state of emergency declaration. Therefore, it is not necessarily that and it is not necessarily the JobKeeper program, and that is why I think the stakeholders are frustrated because they are saying, "What are the parameters? What are the criteria by which you're going to make this decision on whether to extend the emergency period?" I just make that comment.

When it comes to the definition of a "landlord" in clause 3 of this bill, what distinction, if any, is made between large corporate landowners and what people have referred to colloquially as mum-and-dad investors? As I am still talking about the definition of "landlord" and because the minister has had notice of these questions, I will ask a supplementary one as well. It is not apparent to me whether the term "personal representative", which is found under the definition of "landlord", captures a mortgagee in possession or a receiver/manager. On its face, my view is that it does not. In fact, I take the term "personal representative" to refer to an executor, trustee or administrator of an estate. It seems somewhat perverse that a landlord is not able to take a prohibited action against a tenant but if the landlord defaults under his or her or their loan facility, the bank, either as a mortgagee in possession or acting through a receiver/manager, could then seek an order for vacant possession as part of the sale of the property. I question whether that is what the government intended.

Hon ALANNAH MacTIERNAN: Under the definition of "landlord", there is no distinction between a mum-and-dad investor or another investor. However, unlike the residential tenancy arrangements, the landlord under a commercial lease is less likely to be a mum-and-dad landlord. Any differentiation in the application of this legislation risks creating a two-tiered system, whereas our focus is really on the tenant rather than on the landlord. Small business landlords will be able to access the advice and dispute resolution services of the Small Business Commissioner. I think we have made it clear that they will be considered to be small business so they have the ability to access the advice and dispute resolution services of the Small Business Commissioner.

We note that both the landlords and tenants will be required to negotiate in good faith. The government will have particular landlords in mind when we consider what we might be able to offer by way of assistance packages and what support can be provided to commercial landlords to pass on to commercial tenants.

We agree with the member that it is unlikely that a personal representative would capture a mortgagee or a receiver/manager. The bill does not expressly extend operations to prevent a lender taking action upon the landlord defaulting. The banks are offering loan relief to many landlords. As we have said, businesses with total loan facilities up to $10 million will be able to defer payments for six months. Given the relief being offered by lenders as a matter of policy, it was decided that the bill should not prohibit lenders from enforcing rights.

Hon NICK GOIRAN: I turn now to the definition of "lease" in clause 3. What other class of lease agreements are intended to be excluded from the reach of this bill by way of regulation? While I am on my feet, the minister will see that reference is made to a pastoral lease in the definition of "lease" under subclause (b) and the list of exclusions. In my view, that would include a pastoral sublease. Is there any rationale behind that type of lease being expressly excluded but a freehold farm lease or sublease not being expressly excluded?

Hon ALANNAH MacTIERNAN: It is important to understand that at the moment, farming businesses in general are not particularly suffering. Some would argue that the demand for their product has gone up. The class of small commercial leases that this legislation intends to cover includes any lease, sublease, licence or other agreement under which a person grants a right to occupy land.

Hon Nick Goiran: I have not got to small commercial leases yet. I am asking about the class of lease agreements excluded by way of regulation. The definition of "lease" starts on page 3 of the bill.

Hon ALANNAH MacTIERNAN: The member wants to know what classes of lease —

Hon Nick Goiran: I want to know which leases are going to be excluded. On page 4, line 10 of the bill, under the definition of "lease", paragraph (b)(v) states that it excludes any other lease, sublease, licence —

Hon ALANNAH MacTIERNAN: As a matter of policy, this is in case there are leases that we have not previously thought of at this time that might need to be included due to special circumstances. Again, this is one of those catch-all provisions. If we knew of all the lease arrangements, we could have expressly listed them. But as is always the case, there are a complex array of arrangements that people have entered into and we do not always capture them all in the legislation. We want to keep some flexibility within the legislation to be able to expand that by way of regulation should it turn out that there is another class of lease that our drafters have not heard or thought of in creating this legislation.

Hon NICK GOIRAN: What about freehold farm leases? Under the definition of lease, paragraph (b)(iii) expressly excludes pastoral leases, but it is silent on freehold farm leases. Is it intended that they be included or excluded?

Hon ALANNAH MacTIERNAN: They would have to be included, but that is not the focus of this legislation. This legislation focuses on businesses that have experienced a downturn because of COVID-19. We do not anticipate that that particular class of lease will experience a downturn. We put pastoral lease into the definition because it falls under the Land Administration Act. This legislation is not aimed at farm leases, and nor do we think that that will be a matter of contention. However, if it becomes a matter of contention, we can refer to subparagraph (v).

Hon NICK GOIRAN: I will leave it to the government to deal with the correspondence from all the stakeholders about why the government has decided to include freehold farm leaseholders, but expressly exclude pastoral leases. I will leave it to the government to deal with that correspondence in the fullness of time, particularly from those members who might have constituents in that field. I will move on because, as we know, the guillotine is coming in accordance with the desires of the government. What other class of small commercial leases are intended to be captured by way of regulation?

Hon ALANNAH MacTIERNAN: Again, it is the same argument. Hon Nick Goiran is going on to the definition of small commercial lease.

Hon Nick Goiran: Yes.

Hon ALANNAH MacTIERNAN: The member notes that at paragraph (d) under the definition, other leases are of a class described. Again, if we have not captured a lease that should be captured by those other definitions, we do not have any intention at this stage to add one, but these provisions are included so that if we do get a flurry of correspondence from a group who believe they should be included, we have the ability to consider that and, therefore, use that provision to include them by way of regulation.

Hon NICK GOIRAN: Excellent. The national cabinet mandatory code of conduct applies to small to medium-sized enterprise tenants with an annual turnover of up to $50 million; however, the bill insofar as it relates to non-retail shop tenants—for example, an office tenant—applies only if the tenant operates a small business, as that term is defined in the Small Business Development Corporation Act 1983. The definition of small business in that act is far more limited in comparison with the $50 million annual turnover test in the national code. The term "small business" in the Small Business Development Corporation Act 1983 currently allows for no separation between management and ownership. It excludes any subsidiary entities and applies only to entities with a relatively small share of the market in which it competes. I seek clarification: is the effect of the application of the bill to office tenants quite limited in these circumstances? If so, is that what was intended by the government?

Hon ALANNAH MacTIERNAN: Only the core protections that we talked about before are limited to the businesses that come within that definition. That is different to the code. It is quite conceivable that the core protections will be available to a smaller class of persons who are captured by the code. The code might provide a framework. Certainly, all the people in the code will have access to the dispute resolution mechanisms, but in terms of some of those core protections, at this stage it is conceivable that that might be different in the extent to that within the code, but that is part of the complexity that we need to work through.

Hon NICK GOIRAN: The definition of "retail shop lease" in the Commercial Tenancy (Retail Shops) Agreements Act does not apply to a retail tenant where the size of the premises is about 1 000 square metres. Would such a tenant then need to satisfy the small business test in subclause (b) in order to have the protection under the bill?

Hon ALANNAH MacTIERNAN: I am advised that yes, they would need to satisfy the test to fall within the definition of a small commercial lease. As I said, the code might be broader, but the core protections may not necessarily apply to the code.

Hon NICK GOIRAN: The minister might be pleased to know that this is my final question on clause 3. I take this opportunity to give her a friendly reminder that once I have asked my question, she might like to move amendment 5/3 on the supplementary notice paper.

Not all associations are incorporated and not all charitable bodies are structured in this way. Many are set up as public companies limited by guarantee. Should this subclause be broadened to catch charitable bodies as defined under the state's tax legislation?

Hon ALANNAH MacTIERNAN: I am advised that, if necessary, these bodies could be included within the scope of clause 3 by regulation. They may also be captured by the scope of the code. It should be noted that the definition of "retail shop lease" excludes only listed corporations, which means that public companies limited by guarantee are covered by the Commercial Tenancy (Retail Shops) Agreements Act 1985.

The DEPUTY CHAIR: Minister, would you like to move your amendment?

Hon ALANNAH MacTIERNAN: No; I will not be moving the amendment. As I have indicated to some members, we are seeking a new amendment to replace the amendment on the supplementary notice paper to achieve the effect that I outlined in the second reading speech. I apologise that there has been late advice from the Solicitor-General outlining concerns about the amendment as it exists. I do not want to proceed with the amendment at this stage. We can move on to clause 4.

The DEPUTY CHAIR (Hon Adele Farina): Minister, can I just check whether the amendment that is being worked on at the moment is proposed to clause 3 or a subsequent clause? If it is intended to apply to clause 3, you will need to move that consideration of clause 3 be deferred until after clause 4.

Hon ALANNAH MacTIERNAN: That is a very wise decision. We do not think that the new provision will apply to clause 3. I will seek to defer consideration of clause 3 while we wait for the new amendment, which probably will not involve clause 3, but out of a surfeit of caution, we will go on to clause 4.

Further consideration of the clause postponed, on motion by Hon Alannah MacTiernan (Minister for Regional Development).

[Continued on page 2389.]

Clause 4: Act binds Crown —

Hon NICK GOIRAN: When the state or a department holds a retail shop lease, should it receive the benefit of these protections, in particular the prohibition on rent increases?

Hon ALANNAH MacTIERNAN: There is no distinction in the bill; therefore, a state instrumentality may be covered by these provisions in the very small number of cases in which they fall within the scope of the bill. It is not expected that any default in relation to rent will arise. The state does not intend to scam this bill in any way. The government would obviously have to prove that the default was related to COVID-19, which we might be able to establish. But I can give an undertaking that we do not intend to benefit from this legislation in our role as a tenant.

Hon NICK GOIRAN: I appreciate that the state of Western Australia may not wish to be an absconder or any type of individual that might be a mischievous operator under a commercial lease. I accept that, but the minister might recall that my question was specifically asking why the state of Western Australia should be able to avail itself of this shield on rent increases. Is it intended that this will be a rent increase holiday for the state of Western Australia if it is a tenant?

Hon ALANNAH MacTIERNAN: If the member would just bear with me, because, unfortunately, our legal adviser here is engaged in trying to sort out something else. I think the provision that the act binds the Crown is a fairly standard one. I do not know if the member can just bear with me for one moment.

Hon NICK GOIRAN: I have an hour and 24 minutes.

Hon ALANNAH MacTIERNAN: There are other members in the chamber. I will just take a moment to clarify that.

The state is also a landlord. This provision makes clear that the state will also be bound in its role as a landlord. The state is much more likely to be a landlord than it is to be a small commercial tenant. As I said, this is a very standard provision within legislation. I have been given authority to say that the state has no intention of seeking any rent relief for itself under the provisions of this legislation; indeed, through its government trading enterprises and its other tenancies that it manages, it has in fact been overwhelmingly providing relief to affected small business tenants.

Clause put and passed.

Clauses 5 to 7 put and passed.

Clause 8: Term used: prohibited action —

Hon NICK GOIRAN: Further to the discussions we had earlier under, I think, clause 1, during which reference was made to clause 8, I draw the minister's attention to the definition of "prohibited action" and, in particular, clause 8(l), which reads —

> any other remedy otherwise available to the landlord against the tenant at common law or under a written law.

What are the remedies referred to in this paragraph that are not already listed earlier in the clause?

Hon ALANNAH MacTIERNAN: It is a catch-all intended to ensure that the protections cover all types of actions available. As I said, we were very conscious of the fact that we could say that a landlord was not able to evict a tenant, but a whole variety of other strategies, including those enumerated in clause 8, could be used by a landlord to overwhelm that protection. For instance, the landlord could use other provisions, such as taking possession of the land or providing a degree of financial duress, to require the tenant to surrender the property. Again, we think we have a fairly comprehensive list, but if there are other provisions that we have not thought of, we have that provision in paragraph (l). I am advised that it may include things like seeking injunctive relief. The fundamental schema here is that we are trying to stop tenants from being thrown out and encourage behaviour that will see people sit down and negotiate what is reasonable in order to let the tenant survive. Of course, in terms of landlords as a class, it is in their interests because we want these businesses to survive and be able to kick into life once we are past the worst of this crisis.

Hon NICK GOIRAN: If we are telling Western Australians that there is certain action that they are prohibited from taking, I think it is fair that we be precise about what that action is. The government has been kind enough to list paragraphs (a) to (k) with precision, yet it now tells us that paragraph (l) will have this catch-all. All those Western Australians who will now be subjected to this prohibited action should not worry about whether the McGowan Labor government in Western Australia has not thought of all the prohibited actions, because it will have caught them under catch-all provision (l). I do not like that sort of provision at the best of times, but what is particularly heinous about this provision is that the government has decided that it will have retrospective effect from 30 March. The government is telling Western Australians that it is not really sure what remedies might be available to them other than what it has listed in paragraphs (a) to (k), but just in case there are others, it will make sure it hooks them in with paragraph (l), and, for good measure, that does not start from today but from 30 March. I find that quite distasteful. Nevertheless, that is the decision of the government as it continues to push this matter through the Parliament.

Concern has been raised by a number of members of the Western Australian community about the national code that underpins this bill, albeit that the government has said that the code it intends to adopt will not be exactly the same as the national code. A few people have certainly raised with the opposition that the national code appears to provide no incentive for a tenant to pay rent. Indeed, a real estate agent in Perth wrote to the opposition leader's office on 4 April this year and his communication was forwarded to me in my capacity as the shadow minister. I will briefly quote from that letter, which is a confidential letter, to save us going through that other exercise. It states —

> There is actually no incentive for the tenant to pay rent whatsoever. The principles goes even further and removes **all** the devices that a property owner has to discourage tenants to not pay.
>
> In fact, there is nothing to prevent the tenant from not paying any rent or their variable outgoings obligations, accumulate the profits for the duration of the crisis, abscond from their rent obligations after 6 months and then doing a corporate phoenix by opening a new shop right next door to their old tenancy. The property owner has no means to recover their losses. Where property owners were once able to charge interest or claim on their bank guarantee for loss rental this would not be possible.

Is that concern correctly held by that constituent? Does this bill remove all incentive for tenants to pay rent? Further, does it remove all the devices that a property owner has to discourage tenants from defaulting? Before the minister rises to answer that question, I ask: if it is the case that the government does not share this constituent's concern, can the minister advise what incentives are retained by property owners to encourage payments during this time?

Hon ALANNAH MacTIERNAN: If the tenant has in fact been suffering losses as the result of COVID, there is very good reason why they might want to enter into a negotiation, because they may indeed secure a rent reduction that may not just be a waiver, and at the end of the six-month period, they are not left with the same liability. The unethical person who chooses the course of action that the member was talking about would not be availing themselves of the ability to enter into a dispute resolution process, whereby they might reduce their rent. They would be stuck with their full rent. They would not have that ability to have their rent reduced. As we flagged in our second reading speech, there will be amendments that will make it clear that if someone cannot establish financial hardship, and they were not COVID affected, there will be the capacity for the landlord to move. We had a set of amendments on the supplementary notice paper designed to deal with that specific issue. We now have advice that

we are better off doing that in a different amendment from the one that is on the current supplementary notice paper. It is our intention to proceed with those amendments, which will now be amendments to clauses 14 and 16. We propose that we do not proceed with that part of the bill until such time as those amendments are forthcoming and some opportunity for the opposition and Parliament to consider those clauses has been given.

Hon RICK MAZZA: I just want to get on the record clarification of clause 8(j) and (k) and the prohibition on recovery of any whole or part of any security from the commercial lease. If a tenant wishes to cancel the lease or abandons the lease and cannot be found, will the landlord be able to recover the security bond or pursue the tenant for any guarantee?

Hon ALANNAH MacTIERNAN: We believe that that would be available to the landlord. The member has to read that in conjunction with clause 9(a), (b) and (c). If it does not relate, and if the exercise of the security or seeking of security is founded not on the basis to pay rent but on the basis that the tenant has abandoned the property, the advice I have is that the landlord would be entitled to exercise the security bond that they might be holding, because it would not simply be on the basis of failing to pay rent, but basically on the basis of abandoning the property.

The CHAIR: Minister, at this point in clause 8, do you want to move the amendment standing in your name?

Hon ALANNAH MacTIERNAN: No, Mr Chair. As I have explained, we have made commitments to provide some stronger provisions so that people who are not suffering from COVID financial hardship cannot claim the benefit, or a mechanism by which landlords who believe that there is no COVID-related hardship can get that matter determined. The amendments for that provision were one mechanism of delivering that. The Solicitor-General has now advised against that mechanism and, as I said, I think a new mechanism has been drafted. It is just being examined, but I will seek confirmation that it does not relate to changes to clause 8. That is correct; we do not need to move those amendments to clause 8 because there will be another suite of amendments for members to consider.

The CHAIR: I take that as a no, then.

Hon Alannah MacTiernan: Yes.

Clause put and passed.

Clause 9: Prohibited action cannot be taken during emergency period —

Hon NICK GOIRAN: As this peculiar bill continues to make its passage through the Parliament with supplementary notice papers listing amendments in the name of the government, which the government gives little notice of and expects members to be familiar with and to be in a position to debate intelligently and make contributions on, when we get to the relevant provisions we find that those particular amendments will not be moved and some other mysterious amendments will be moved in the fullness of time. Presumably, that will be in the next one hour and nine minutes before the government's famous guillotine launches. While we are waiting for that, I have a few other questions on clause 9 of which I have given the government notice. The first relates to the prohibition on operating expenses. Presumably, this is meant to apply to all small commercial leases. Those leases could, of course, be both retail and non-retail. However, the definition of "operating expenses" in this bill, at the moment at least, incorporates the definition from the Commercial Tenancy (Retail Shops) Agreements Act 1985, which is specific to retail shops and retail shopping centres. Does the definition need to be broader if it is to achieve the purpose of applying to both retail and non-retail leases?

Hon ALANNAH MacTIERNAN: The advice I have received is thus. The definition does not need to be broader to have its intended effect. The definition of "operating expenses" in this bill refers to the definition of the same term in section 12(3) of the Commercial Tenancy (Retail Shops) Agreements Act. That definition is limited to the retail shops context. However, the reference in the bill to "operating expenses" is used in context only to make it clear that certain payments of money include operating expenses. The reference to operating expenses has been included to provide clarity on that type of commercial lease, but the relevant operative clauses are not limited to consideration of only operating expenses. Clause 9(a) states —

> a failure 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);

Therefore, it is general. That makes it clear that it captures operating expenses by referring to the more general phrase "any other amount payable by a tenant".

Hon NICK GOIRAN: I will not labour the point, my concern was not about whether operating expenses were included, but whether it was intended to apply to both retail and non-retail leases, but, as I say, the guillotine is coming in one hour and six minutes. Clause 9 applies to a breach that occurs during the emergency period. Will it apply when the breach first occurs before 30 March 2020 but the landlord does not issue a default notice until after 30 March?

Hon ALANNAH MacTIERNAN: Clause 9 is intended only to prohibit actions that relate to breaches that occurred during the emergency period, so if a breach has occurred prior to 30 March, before the emergency period, clause 9 will not prohibit such an action.

Hon NICK GOIRAN: It is common for a landlord to grant the lease to the franchisor rather than the franchisee. The franchisor then recovers the costs, including the lease costs, from the franchisee under its franchise agreements. If the small commercial lease is between a landlord and the franchisor as the tenant, does clause 9 offer protection to a franchisee given that clause 9(a) relates to moneys payable by the tenant to the landlord?

Hon ALANNAH MacTIERNAN: It may not. If, for example, the franchisor was Chicken Treat or some other chain and it was the lessor, it is quite possible that that would not apply to that particular tenant. It will to some extent depend on the nature of the agreements between parties and the corporate structure of the franchisor and the franchisee, but it is of course important to understand that the franchisor has some interest in keeping the franchisee going as their return is not primarily the return from the lease cost, which is not necessarily a profit-making centre for them, but the share of the turnover or the franchisee's purchasing of product from them. It is quite possible here that this arrangement would not cover a franchisor that is a tenant, but the franchisor would lose the tenancy and presumably there will be some provisions in the franchise regulations about franchisors losing tenancies. The code may provide franchise arrangements, and some consideration will have to be given to how we deal with this stuff when a franchisee is not the tenant. That will have to be considered as part of the code.

Hon NICK GOIRAN: I move on to bank guarantees. They have an expiry date. If the tenant is in arrears and the bank guarantee is due to expire during the emergency period, the landlord is going to lose its security position. Is that what the government intended?

Hon ALANNAH MacTIERNAN: Bank guarantees typically have an expiry period; however, in most leases there is generally a provision that requires the bank guarantee to be renewed. To the extent that bank guarantees are not renewed, it is a breach that would ordinarily give rise to a termination event. Such a breach is unlikely to fall within the scope of clause 9, and therefore action in relation to that breach would not be prohibited. There is a risk that the landlord's security position might be compromised; however, given the requirement that the tenant maintain a guarantee, this is considered to be unlikely.

Hon RICK MAZZA: I will explore the previous question asked by Hon Nick Goiran about a franchisee, using the Chicken Treat example that he gave. Assuming that the owner of a property and the corporate franchisor take the lease, they are not a small business and have a lease agreement with the property owner. Holding the head lease, they sublease to the franchisee. Does the franchisor, as the head leaseholder subleasing to the franchisee, have an obligation to the small business that they sublease the property to?

Hon ALANNAH MacTIERNAN: It is a very good question. Could the member give us a moment to consider it? It is interesting because the definition of "landlord" is the person who, under a lease, grants the tenant the right to occupy the land or premises that are the subject of the lease. The definition of "lease" is any arrangement in which a person grants a right to a person to occupy land or premises whether or not the right is exclusive, and whether or not the lease, sublease or licence is in writing. From that, it would appear that, potentially, a sublease is covered. It could include a lease or a sublease or a licence or agreement, because it may well be that a franchise arrangement is a licence rather than a lease. We can seek to get some further clarification on that, but on my reading of this, it could mean that a sublessee or licensee would have some provision against a franchisor as the leaseholder or the licence holder.

Hon NICK GOIRAN: Going back to the issue of the guarantees and the expiry date, it probably would be of some comfort to people to get on the record an understanding of what the minister said this evening when she said that if the bank guarantee expires during the emergency period, it is the government's view that that is a breach but that it is a breach for which a prohibited action cannot be taken pursuant to clause 9. It would be a comfort to some people to know that. Having said that, I note that under clause 9(c), it is possible for the government to prescribe by regulation any act or omission of a kind prescribed for the purposes of that paragraph. I trust that means that the government has no intention of prescribing breaches pertaining to bank guarantees. It probably would be worthwhile to get that on the record for the commercial landlords in our state.

Hon ALANNAH MacTIERNAN: At this time, that is certainly not the intention. I have already read in the advice I received. To the extent that bank guarantees are not renewed, that breach would ordinarily give rise to a termination event. Such a breach is unlikely to fall within the scope of clause 9 and therefore action in relation to that breach would not be prohibited.

Hon NICK GOIRAN: This is my last question on clause 9. It is a reality that some tenants will become insolvent. Clause 9 prevents a landlord from taking any prohibited actions against a tenant during the emergency period, which includes any action for damages under the lease. If a tenant becomes insolvent during the emergency period,

the prohibition in this clause may damage the landlord's position against other unsecured creditors if the landlord cannot take any action while other creditors are lining up. Was that the government's intention?

Hon ALANNAH MacTIERNAN: I am advised that if a tenant went into liquidation, the landlord would be a creditor, secured or unsecured. For instance, if a tenant went into liquidation and owed the landlord money, the landlord could lodge proof of debt. Limitations imposed by clause 9 may impact on the landlord's ability to secure its position.

Hon Nick Goiran: That's the concern, though, isn't it?

Hon ALANNAH MacTIERNAN: The fundamental theme of this bill is to try to prevent the tenant from becoming insolvent. As the Premier has made clear, this is not a moratorium on debt. The landlord's debt will still be owed and will not be expunged by this provision. The debt is still there. The debt does not just come into existence after the end of the emergency period; the debt is there and existing. In terms of the lining up of creditors, landlords will be in the same position. The debt that is outstanding to them will be existing. It is not as though their debt does not become a debt until after the end of the emergency period. It is an ongoing debt. As the administrator is determining the allocations to creditors, it is hard to see that the landlord would be compromised, because the debt is there and has to be taken into account by the administrator or liquidator, as it is an existing debt. Perhaps the member could further articulate where he thinks a problem might emerge.

Hon NICK GOIRAN: The minister is quite right; the landlords still have a debt owing to them. As the Premier has said, it will not be expunged. The concern is that, unfortunately, because of the provisions of clause 9, the Premier is putting handcuffs and a muzzle on this type of creditor, while the other guys have no muzzle and no handcuffs. While everybody is trying to feed on the carcass of the individual who has become insolvent, this type of creditor will become a third-class citizen. Everybody else will be able to take action and do things, but these will be prohibited from that. I am just clarifying that that is what is intended. It seems a little unfair.

Hon ALANNAH MacTIERNAN: They are prevented only from taking action to terminate the lease, so I am not sure how the other creditors would somehow or other benefit from that. If anything —

Hon Nick Goiran: There is a big, long list of things the landlord is not able to do—prohibited actions—including "any other remedy otherwise available to the landlord against the tenant".

Hon ALANNAH MacTIERNAN: That is right. Is the member talking about a person who has gone into liquidation?

Hon Nick Goiran: Yes.

Hon ALANNAH MacTIERNAN: Clearly, they are no longer operating the business. I am not sure that this will continue to apply to them, because they will not be able to operate the business any longer. As I understand it, the liquidator will go into the position of the tenant and take over all the rights of the tenant. The liquidator will have the obligation to share any proceeds of the liquidation, if there are any, according to the set priorities. The fact that the landlord is not terminating the lease will not change the priority that the liquidator has to give them.

Clause put and passed.

Clauses 10 to 12 put and passed.

Clause 13: Regulations may adopt code of conduct —

Hon AARON STONEHOUSE: I want to seek some clarification around part 4 and the head of power to make regulation. I note that the commencement clauses of the bill do not apply part 4 retrospectively. But I am wondering whether, within that head of power, there is the ability to write regulations retrospectively. I would not have thought so; I want to be clear on that, though.

Hon ALANNAH MacTIERNAN: The regulation is not retrospective, but it can have retrospective application. A regulation could state that the content of the regulation was to apply retrospectively, but, of course, that is disallowable. I do not think that would offend any ultra vires provision, but it is theoretically possible that a regulation could be gazetted to operate retrospectively, but that, of course, is a disallowable provision. I can assure the member that we are not trying to do things that are unreasonable, to catch people out, and we are very conscious that we will need to get the member's support to get those provisions through.

Hon NICK GOIRAN: I know that the minister has said that the government is not sure about the code yet and it is working on it and is negotiating and seeking feedback et cetera and it hopes to get all that done in four weeks, but is there sufficient clarity around the type of code that the government is going to adopt in part 4? Is the minister in a position to advise whether it would apply if the tenant in the commercial tenancy has a turnover of less than $50 million and is also eligible to receive the JobKeeper payments, which I understand are the provisions in the national code?

Hon ALANNAH MacTIERNAN: I will clarify because I can understand some of this concern. The advice that I have received is that we do not intend that the code will apply retrospectively. Here we are seeking to have these core protections cemented in place as quickly as possible. We understand that there is a lot of uncertainty around the detail of the code, and it would not be reasonable, as a general rule, to have that all apply. Whether we go to the extent of applying this code to commercial tenancies with turnovers of $50 million, which seems very high, will be the subject of discussion with the industry. I can only say that that has not been determined. We will be looking at what is happening in other jurisdictions. We will be very mindful of the discussions with all the stakeholders. We will try to find a reasonable amount of common ground. It would be fair to say that that particular aspect has yet to be determined. It will depend very much on the dialogue with the stakeholders. We are very open to their input on that matter.

Hon AARON STONEHOUSE: I turn to something that I raised during the briefing I was provided with on Tuesday. Clause 13(4) seems a little strange to me. I understand why it is there; it is there to provide legislators with some assurance that parliamentary sovereignty is not undermined when adopting a code. It is so that we do not adopt a code that sits outside of this jurisdiction, that we have no control over and that may be amended by some other Parliament or some other body, and that then becomes law in Western Australia without Parliament having a role in creating that law or without having a veto power over it.

However, it seems a little strange that the second reading speech almost explicitly states that the code we will adopt will not be the national code; it will reflect the principles of the national code but will take into account Western Australia's circumstances. We will have our own code. Our code will not be the national code. It may be informed by the national code. It may be based on some of the ideas from the national code. It will be a completely different code. What is the point of us making some reference to another code? I do not propose any amendment to this subclause but I think it would be neater and simpler for anybody trying to follow the actual code when trying to comply with this act once it is amended to merely have whatever WA happens to adopt as a regulation in full rather than some reference to some external document or parts of the national code and parts of something else that make up our code. If that is the case, subclause (4) becomes rather irrelevant.

Hon ALANNAH MacTIERNAN: We understand the point that the member is making. We want to keep that provision open in case we want to incorporate by reference another national code of conduct that is not agreed to by everyone. We say that if that is going to happen, it is made quite clear that that code would take effect only once we issued that primary regulation and it would not be amended in any way in the future without our specific amendments to that regulation. It is just keeping alive the possibility that there might be something other than the existing document that has been created, which we do not intend to adopt by reference. I do not think we will require that, but I think we would prefer to keep that in. It does not act as any constraint on parliamentary sovereignty because both the adoption by reference and any subsequent amendments would have to be approved by Parliament.

Hon NICK GOIRAN: I understand that the government will adopt a code of conduct that will be based on the national code but that it is still working on it and will negotiate over the next four weeks. Leasing principle 4 in the national code states —

> Rental waivers must constitute no less than 50% of the total reduction in rent payable under principle #3 … over the COVID-19 pandemic period and should constitute a greater proportion of the total reduction in rent payable in cases where failure to do so would compromise the tenant's capacity to fulfil their ongoing obligations under the lease agreement. Regard must also be had to the Landlord's financial ability to provide such additional waivers. Tenants may waive the requirement for a 50% minimum waiver by agreement.

Is leasing principle 4 one of the elements of the national code that the government is enthusiastic about implementing, is it one that the government is disinclined to incorporate, or is it of a third category whereby it is subject to further discussion and negotiation with stakeholders?

Hon ALANNAH MacTIERNAN: It is very clearly the third category. We have said that these leasing principles are designed to create a sense of where things are going. Whether that principle is overly prescriptive will be the subject of discussion with all stakeholders. As I said, we are trying to get a reasonable degree of common ground.

Hon NICK GOIRAN: One can see why people in the industry are concerned. These provisions will apply retrospectively from 30 March. The government's view is that that date is appropriate because announcements have been made about a moratorium on evictions and the like. But in the meantime—I think it was on 7 April—a national code and principles were announced. Now it is 17 April and Western Australian landlords and tenants, at least at a commercial level, remain completely unaware of what principles apply to them. The minister has given them some comfort this evening by saying that whatever code is adopted will not be applied retrospectively, but it is intended to exist for this emergency period. Landlords and tenants will feel hamstrung or concerned about where they sit at the moment. Is there an expectation that in the interim they should be acting in good faith? I would have thought that yes, there is. Is good faith defined at the moment as complying with the national code in the absence

of the state bringing out its code? I do not think it is unreasonable for tenants and landlords in the current climate to have some clarity from the government about its expectations. Should they be complying with the national code in the interim while they wait for the negotiations and the finalisation of the WA code? Alternatively, does the state government want business to continue as usual and landlords and tenants to do things in the ordinary course as they would, if they want to? I do not say this with any disrespect, but are we telling landlords and tenants at the moment to disregard the national code and continue on with business as usual? Is the minister in a position to provide some clarity for landlords and tenants during this four-week waiting period?

Hon ALANNAH MacTIERNAN: The purpose of the moratorium is to give time to set this framework. We know of some landlords—Hon Rick Mazza tells me he is one of them—who have given waivers of 100 per cent. Some landlords are saying, depending on the nature of business, that they will provide a 50 per cent or 100 per cent reduction for the next couple of months until they see to what the extent the restrictions are lifted. For example, if a landlord is leasing a property to a Vietnamese nail shop, once the restriction on its operation is lifted, presumably most of those ladies will go back to work very quickly. Landlords would be conscious of this and would want to make sure that that makes sense for their tenants.

I acknowledge that there is a period of uncertainty, but we have put in the baseline protection so that we are not chucking out tenants during this period. We are giving time. We are encouraging landlords and tenants to get together and talk reasonably. We know that a code of conduct is coming up that may look at the proportionality between turnover reduction and rental reduction and the waivers and percentages of that, which is to be simply a deferral. We get some idea of the general direction. It is true that we cannot give absolute certainty, but we can put it on hold—so we know that until we have that clear, people are not being chucked out—and put in place the mechanisms that will enable the Small Business Development Corporation to deal with a range of these proposals. These are very complex matters. As members know, making these sorts of changes normally takes months and months, if not years, and we are trying to do this in a matter of weeks. We have ruled a line under some of the basic protections that are required to stop the position deteriorating for many of those tenants while we sort out this other business. I assure members that everyone from the minister down is working very hard to try to achieve something that offers a fair and reasonable balance and gives us the maximum chance of the most businesses surviving and being able to rebuild when we can lift these restrictions.

Hon NICK GOIRAN: At this point, it is appropriate that I move the amendment standing in my name. Before I do so, I pause momentarily because, of course, the amendment deals with matters pertaining to page 10, line 5. I note that the government is furiously preparing amendments at the moment and I do not want to move an amendment and then find that it causes a problem for the government by our having gone past the part of clause 13 that might be of interest to it. I will proceed slowly at this time and perhaps indicate to members the substance of the amendments that I propose to move shortly.

The first amendment I propose to move, which is set out at 2/13, will look to substitute the words "commercial leasing" with "small commercial lease". The amendment at 3/13 seeks to insert "small commercial" before "lease" later in the clause. Members might ask why all of that is necessary. This has come to me on the recommendation of the Property Council of Australia, and I think it makes a pertinent point. Members will be aware, because the minister has said it on multiple occasions during the course of the debate on this unique bill, that the government is providing baseline protections by virtue of this bill. Those baseline protections that the government is bringing in pertain only to small commercial leases. They do not apply to all leases, only small commercial leases. I do not quibble with the government about that. In fact, to the extent that I am complimentary of it, at least it is clear. Who under this bill is subjected to the prohibited actions that apply retrospectively? It is small commercial leases. It is not everybody—it is the small commercial leases, so that people know exactly where they stand. If someone qualifies as a small commercial lease under this definition, this applies to them retrospectively from 30 March.

Members may have a view as to whether that is appropriate. The chamber has passed that provision and that is not a problem. The issue is this: the code that the government would like to adopt by way of regulations in due course has the capacity to be of far greater scope than merely small commercial leases; it could be any kind of lease. The Property Council of Australia made a very good point when it said that there should be consistency in this bill. If it is the case that the baseline protections apply to small commercial leases, and if it is the view of the government as articulated by the minister that we need to get this done now, tonight, and that we cannot wait for four weeks when the code might be ready—why?—because we need to have baseline protections for small commercial leases, then the entire bill should be about small commercial leases. If, in due course, the government wants to expand it to a further category of leases—no problem—it has two options available. One is to bring a bill to the Parliament, a possibility that I imagine the government would not be excited about. There is another option, which was effectively conceded to by the minister earlier in debate. I draw to members' attention the definition of "small commercial lease" under clause 3, which has been postponed for later consideration. If clause 3 passes in its current form—I have no reason to doubt that it will not—members will see that under paragraph (d) on page 4, a "small commercial lease" means any other lease that is of a class

prescribed by regulations for the purposes of this paragraph. At any time in the future, the government would be able to say, "We're going to invoke paragraph (d) and prescribe a whole range of other leases to which this particular bill applies." Later on in the regulations—we have not got to that particular clause—there is scope for the government to determine whether parts of the code will apply to a particular person, a particular class of persons or a particular class of lease. There is a stack of scope in these, dare I say, Henry VIII clauses, which we will deal with later in this bill, for the government to expand the scope as much as it likes. Of course, if members are unhappy about that at the time, they can move a disallowance motion. My point is this: in the amendment that I seek to move, hopefully momentarily, I think it is fair and reasonable for us as the chamber to send a message to the WA community that to the extent that anyone in this place understands what this bill is doing today, it is dealing with small commercial leases. If, in the fullness of time, the government decides because of its negotiations that it wants to do other things, it will let everybody know, and this chamber will know because a regulation will be tabled. That is a far superior and fairer way of dealing with this particular bill in these extraordinary circumstances than leaving it in the current form. Before I move my amendment, I will check with the minister to see whether there is any problem with me moving it at this time.

Hon Alannah MacTiernan: Not in relation to other matters, but we do not support it.

Hon NICK GOIRAN: Sure. With that, and seeking the support of members, I move —

Page 10, line 5 — To delete "commercial leasing" and substitute —

small commercial lease

Hon ALANNAH MacTIERNAN: We do not support this amendment. We have very deliberately limited the bill and the immediate protections to those people involved in a small commercial lease. We will be giving a different range of protections in the code—that is, encouraging people to negotiate fairly and to access dispute resolution procedures—and we do not think it is a good idea necessarily to make a decision now to limit the baseline of access to the new process and the new negotiating environment just to this class. We anticipate that it may be a slightly broader class. Again, this is going to be a matter of negotiation. If we include this, we really limit the amount of flexibility and negotiation that we have in negotiating the code.

I strongly urge members not to support this amendment, but to wait until we have the code. When we come to consider the code in this place, members can determine what is fair and proper, without pre-empting the code before we have had the opportunity of that detailed negotiation. The member has dealt with the landlord's representative in the Property Council of Australia. I think it is only proper that members have the opportunity to hear the other side of the story before they make that determination. When we go through the code when it comes before this place, we will be able to debate and discuss these matters. I urge members not to support this amendment.

Hon NICK GOIRAN: The fault in the minister's argument is that in due course, when the government has worked out what it wants to do with the code and whom it will apply to, it will table one document in this place. That document is an instrument that is disallowable by this place. Members will then be caught in a difficult position, because they might like to adopt the code and say that it is applicable and appropriate for a small commercial lease, but not like the fact that the government has now widened the scope to apply to other particular individuals, for whatever reason, and will be left in the unenviable position of having to either take it or leave it. I know that this government has had a long history of that type of approach over the last three years, and it loves the take-it-or-leave-it approach; however, as serious lawmakers, I am not sure that that is an appropriate position for us to be in at the best of times. Let me tell members: what is happening with this bill is certainly not the best of times. This is the worst of times. I would remind members that this bill has been rammed down our throats over the last 24 hours; in fact, I am told that there is a proposal to take a short adjournment soon so that further amendments can be prepared by the government at this time, which is nine o'clock on a Friday. As I have said to members before, I have no problem with that. I am happy to come here any day of the week, at any time of night, but it is not about me. There are stakeholders who have an active interest in this matter. While the government is busy scribbling away, preparing amendments for us to consider, what opportunity do we have to consult with those stakeholders at nine on a Friday night? Does the government think that they are all sitting around on a Friday night waiting for us to say to them, "Hey, hang on guys, there's a new amendment that's been prepared by the government, let us know what you think, but you'll have to somehow communicate to us while we're in the chamber and we're busy debating other clauses"? That is the real problem here. All I am asking for is a little bit of clarity. We know what the government definitely wants to do. The minister has said it herself; the government definitely wants it to apply to small commercial leases. I will not quibble with the minister about that; she has made the government's position clear. But I think it is unreasonable to leave it so open-ended that it could include anything else in circumstances in which we are not even told anything about the prospective code.

With those words, I move the amendment standing in my name, if I have not already, at 2/13 on the supplementary notice paper.

Hon AARON STONEHOUSE: I rise to say that I support the amendment put forward by Hon Nick Goiran. I think it is rather sensible. It will give Parliament the opportunity to ask two questions when the government wants to prescribe a code of conduct: Firstly, what will the code be? Secondly, who will the code apply to? I think it is important that they are two separate questions, and we have an opportunity to answer either of them, of course, through the instrument which is available to us, which is a disallowance motion. Small commercial leases will be prescribed and the code of conduct will be prescribed. I think that is a desirable outcome. I think it allows the government a greater degree of flexibility than would otherwise be allowed if we left clause 13 as it is. I do not think it will inconvenience the government; it will just provide a greater degree of flexibility for the Legislative Council and the government in this instance.

Hon DIANE EVERS: The Greens do not support the amendment. There is a need to leave this open to the potential that other businesses may want to take advantage of the dispute resolution processes by being able to go directly to the tribunal. I am concerned, because looking at the definition of "small business" in the Small Business Development Corporation Act, this could apply especially to regional areas. One of the criteria is that the business has a relatively small share of the market in which it competes, yet in some towns they may be the only business there. They may also have a substantial amount of revenue, which would make them larger than one would usually think of as a small business, and they would want this opportunity. By knocking them out at this point, we would lose those medium-sized enterprises that might find it much easier and simpler to go to the tribunal for dispute resolution. I agree that there may not be too many cases like that, but I do not see any benefit in closing off that option right now, even though I understand that it could be included later in the regulations. At this point, the Greens will not be supporting the amendment.

Hon ALANNAH MacTIERNAN: I thank the member for that very important contribution. As I said, I think this is a dangerous path to go down. It is not that we are seeking to pre-empt involvement in the negotiation and determination of what the appropriate scale will be for access to the code, but as the member has said, one of the great things about the code is that it will provide a strong environment to negotiate and will enable businesses to have access to this superior dispute resolution mechanism. I think it would be most unfortunate if this code were limited in such a way only in Western Australia. As I said, we are absolutely open to having dialogue with members to get the code right, but to really cut the code off at its knees here I think would be very wrong.

Hon NICK GOIRAN: With all due respect to the minister and Hon Diane Evers, I encourage them to look at clause 14 of the bill, which outlines the type of disputes that will be subject to resolution. There are two types. One is a dispute that arises under the operation of a lease under the act; in other words, a small commercial lease in regard to those prohibited actions and the like. The second is a code of conduct dispute. Of course, we do not know about the code of conduct; that is the point. I thank both the minister and Hon Diane Evers for raising that because it only further ensconces the need for the amendment.

Hon DIANE EVERS: The code of conduct dispute is described further up, in line 4 on page 12, and outlines that it is —

> … a dispute that arises out of, or in relation to, the application of the adopted code of conduct in relation to a lease (including, without limitation, a dispute about the waiver or deferral of rent payable under a lease);

Division

Amendment put and a division taken, the Chair of Committees (Hon Simon O'Brien) casting his vote with the ayes, with the following result —

Ayes (12)

Hon Jacqui Boydell	Hon Donna Faragher	Hon Rick Mazza	Hon Charles Smith
Hon Peter Collier	Hon Nick Goiran	Hon Simon O'Brien	Hon Aaron Stonehouse
Hon Colin de Grussa	Hon Colin Holt	Hon Robin Scott	Hon Ken Baston *(Teller)*

Noes (11)

Hon Tim Clifford	Hon Diane Evers	Hon Kyle McGinn	Hon Alison Xamon
Hon Stephen Dawson	Hon Adele Farina	Hon Martin Pritchard	Hon Pierre Yang *(Teller)*
Hon Sue Ellery	Hon Alannah MacTiernan	Hon Matthew Swinbourn	

Amendment thus passed.

Hon NICK GOIRAN: I am pleased to move —

> Page 10, line 28 — To insert before "lease" —
>
> small commercial

By way of explanation, it is complementary to the one that has just been passed.

Amendment put and passed.

Clause, as amended, put and passed.

Progress reported and leave granted to sit again at a later stage of the sitting, on motion by Hon Alannah MacTiernan (Minister for Regional Development).

Hon SUE ELLERY: Madam Acting President, I request that you leave the chair until the ringing of the bells.

The ACTING PRESIDENT (Hon Adele Farina): Members, I will leave the chair until the ringing of the bells.

Sitting suspended from 9.15 to 9.43 pm

Time Limits — Statement by Leader of the House

HON SUE ELLERY (South Metropolitan — Leader of the House) [9.44 pm]: I advise the house that in accordance with the temporary order, the maximum time for the Committee of the Whole stage of the Commercial Tenancies (COVID-19 Response) Bill 2020 is 30 minutes.