

**RESIDENTIAL TENANCIES (COVID-19 RESPONSE) BILL 2020**

*Committee*

Resumed from an earlier stage of the sitting. The Chair of Committees (Hon Simon O'Brien) in the chair; Hon Alannah MacTiernan (Minister for Regional Development) in charge of the bill.

**New clause 30A —**

Progress was reported after the new clause moved by Hon Alannah MacTiernan (Minister for Regional Development) had been partly considered.

**The CHAIR:** I draw members' attention to supplementary notice paper 187, issue 3, of today's date.

**Hon ALANNAH MacTIERNAN:** As I have outlined, this new clause replicates the provision that we dealt with earlier relating to residential tenancies. This new clause extends that provision to include people who are boarding and lodging.

**Hon NICK GOIRAN:** I seek the indulgence of the minister. As she would be aware, at the moment we are flipping between bills faster than people could flip hotcakes! I seem to recall that there was some dialogue between the minister and some other members about the language in an amendment that had been proposed; it included the word "owner". I want to be sure that it is consistent, acceptable and appropriate that this amendment uses the word "landlord". Earlier, the minister was bristling about the need to use the word "owner". There may be a very good reason, but I am seeking confirmation from the minister that all is in order and she is satisfied with that.

**Hon ALANNAH MacTIERNAN:** Yes, I am. This new clause deals with accommodation agreements with a boarder or a lodger. That is very different from the provision under a residential tenancy when the entire premises are being rented. This is the language that is used in the legislation relating to accommodation agreements.

**New clause put and passed.**

**Clause 31: Termination without specifying grounds —**

**Hon NICK GOIRAN:** I understood that the premise of this bill is that rent will not be required to be paid by a tenant when they are suffering financial hardship due to circumstances arising from COVID-19 until the end of the emergency period. Clause 31 of this bill provides that a resident can terminate their accommodation agreement without specifying any grounds for the notice of termination and the landlord is not entitled to compensation for loss, including loss of rent. Why is this clause deemed necessary for inclusion?

**Hon ALANNAH MacTIERNAN:** The amendment before us brings back the limitation so that it is not just a general right; it is a right that is predicated on financial hardship emanating from COVID-19. It is not a right to terminate at large. The right to terminate is constrained by the requirement of financial need.

**Hon NICK GOIRAN:** That means that the proposed amendment to clause 31 mirrors the proposed amendment to clause 19. Earlier, clause 19 was postponed. Hon Rick Mazza put to us that we should oppose the clause. It strikes me that if one were inclined to oppose the mirror clause, clause 19, then one should also oppose clause 31. When I suggested that on the last occasion we were considering clause 19, prior to it being postponed, the minister indicated that that was not necessary because the government's amendment fixed the concern. The drafting of clauses 19 and 31 is substantially the same, if not identical. My concern is that it is not apparent where in clause 31 a resident must give a reason for termination. The amendment put forward by the government implies that if a resident wishes to terminate an agreement, they should do so only if they are suffering financial hardship caused by the economic effects of the COVID-19 pandemic. That is the spirit of the amendment, but there are no words in clause 31 that require or mandate that the termination notice from the resident be based on a specific ground. In fact, the entire clause is titled "Termination without specifying grounds". My concern is that the clause provides for a resident to terminate without specifying grounds, but then behind the back of our hand we are whispering to members in the chamber, "Don't worry about that. The government has an amendment and it's all fine. The resident should only do that if they suffer financial hardship." I agree that they really should only do it under those circumstances, but saying that they "should" do it is entirely different from saying that they "must" do it.

Clause 31 should specify that if a resident wants to avail themselves of this luxurious right in clause 31 to tear up an accommodation agreement, then they must specify that the ground upon which they are doing that is financial hardship. It is not clear to me that that is anywhere in the existing clause, nor is it in the amendment the government is proposing to move at 12/31.

**Hon ALANNAH MacTIERNAN:** We believe that it is inherent in the clause that the resident has the right to take that action only if they have been suffering financial hardship. The whole right to take this action is predicated on them suffering financial hardship. It follows logically then that without those grounds, they are not able to take this process. We believe that this is very clear. The member is right that this raises the issue of new clause 19 and

the alternative proposition by Hon Rick Mazza, which we postponed to the end of this deliberation because we were going to take some advice on Hon Rick Mazza's proposition for new clause 19. Presumably, he would want to have a mirror here—maybe, maybe not. Perhaps he does not see these types of agreements so written. He has not proposed it here. They tend to be a different type of agreement. Hon Rick Mazza's proposition for new clause 19A was to require the tenant to make the application before the tenant could terminate and to seek the relief of the court based on that—that is, putting the onus on the person wanting to quit the premises to take that court action. The government said we would defer consideration and go back and look at that. It is certainly felt very strongly across government that that is problematic for two reasons: one is the advice we have on the likelihood of that matter being dealt with by the courts. We know that the courts at the moment are dealing with only essential services, such as people's liberty, public safety and other emergency matters that cannot be delayed. There would be months and months and months at the very least that a person in distress would not be able to terminate that lease. We understand the member's concern but that is what we think. We point out that the vacancy rate is very low, so we are not in an environment in which it is difficult to lease a property.

A situation in which a person has lost their job and simply is unable to pay the rent and needs to move home with their parents or needs to move in with someone else is not something that can be left unattended. Nevertheless, this amendment, and the amendment to clause 19, provides that ability for the landlord to contest it; so the person has terminated, but the landlord contests it. If the landlord contests it and at the end of the day he is successful and the person has just rorted the environment, he will get an award of damages for the tenant having walked out without having satisfied that basic criteria that their loss is predicated on the financial hardship created by COVID-19; rather than the tenant who has lost their job and who in no way can afford to pay that rent, being stuck in that premises, maybe for the entire six months, waiting to get a matter on in the Magistrates Court when the court has made it very clear that it was dealing only with people's liberty, public safety and other emergency matters that cannot be delayed. When we look at the national principles and the way this principle has been enshrined in every other state, we see that our government is simply not prepared to accept a bill that would go forward in a way that would not allow that. We have acknowledged and taken on board the member's concerns. However, we do not agree that we can have a situation in which the tenant is the one who has to prove this matter.

**Hon NICK GOIRAN:** If we agree to the amendment that the minister has proposed at clause 31(2), it will be carved out and will only be able to be referred to when a resident says that they are affected by COVID-19. They will be the only people who can avail themselves of the provision in subclause (2). If that is the case, minister, what day can a person specify on one of these notices of termination under clause 31(1)(a) if they are not affected by COVID-19? That person cannot avail themselves of subclause (2) anymore because the government's amendment will carve it out for use only by COVID-19 hardship applicants, but other residents can still avail themselves of the termination notice under subclause (1)(a) without specifying grounds. What is the day on which they can specify that it all comes to an end?

**Hon ALANNAH MacTIERNAN:** That is only if it is a periodic agreement.

**Hon NICK GOIRAN:** Clause 31(1) states —

An accommodation agreement is terminated if —

- (a) the resident gives notice of termination of the accommodation agreement to the landlord, whether or not the notice specifies grounds for the notice;

A Western Australian resident of an accommodation agreement can terminate without specifying grounds pursuant to clause 31(1)(a). However, a resident who is affected by COVID-19 needs to comply with clause 31(2), which states that they can specify a day earlier than the last day of the term as the day on which the agreement is terminated. The bill's provisions are silent with regard to the day on which a resident can specify termination if they do not comply with the provisions in subclause (2).

**Hon ALANNAH MacTIERNAN:** We believe that the member has to read this thing as a whole. This requirement kicks in when a person is on a fixed term. The people who are not required to specify COVID-19 are those who are on a periodic tenancy. Most periodic tenancies are on a monthly basis, some are on a weekly basis. The 21 days' notice is totally appropriate for them. It would be a complete overkill to put in the other requirement. It would make this bill immensely complex. We are talking about lodging agreements. If a lodger has a periodic tenancy that requires seven days' notice of termination and is normal practice, they are short-term leases. This particular requirement comes in only when it is a fixed-term lease. If it is not a fixed-term lease but a periodic lease, we will allow a seven-day termination without the other requirement.

**Hon NICK GOIRAN:** I am not interested in periodic leases so let us not spend any time talking about them. I just want to talk about fixed-term leases for residents with an accommodation agreement. A resident with a fixed accommodation agreement will either be subject to COVID-19 hardship or not. If they are subject to COVID-19 hardship and they want to terminate without specifying grounds, they have to comply with the government's new

clause 31(2). To what extent can a resident who is on a fixed-term accommodation agreement and who is not affected by COVID-19 avail themselves of the provision under clause 31?

**Hon ALANNAH MacTIERNAN:** Our interpretation and advice is that that person cannot. This comes into play only when a resident is affected by COVID-19. If they are not a resident affected by COVID-19, the rest of the clause does not apply. They will not be able to give notice. They can use other provisions of the act that might exist for whatever reason, but not provisions that arise out of this bill. This states that the new rights or capabilities that come out of this bill are restricted so that they will apply only when a person has been subject to COVID-19.

**Hon NICK GOIRAN:** I simply indicate that I do not agree with that interpretation. I think there is a gaping hole under clause 31 that is going to be used. The minister assures us that that hole does not exist. We will rely on the advice that the minister has received, and if there are problems in the future, we know where it has come from.

**Hon ALANNAH MacTIERNAN:** I move —

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

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

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clauses 32 to 43 put and passed.**

**Clause 44: Term used: relevant dispute —**

**Hon NICK GOIRAN:** What is the class of dispute intended to be excluded by regulations?

**Hon ALANNAH MacTIERNAN:** There is none at this stage.

**Hon NICK GOIRAN:** Should this clause state “class of relevant disputes”, as is the case in clause 47, which refers to “class of relevant applications”?

**Hon ALANNAH MacTIERNAN:** We do not think so. The term in clause 44 is “relevant dispute”. Clause 43 makes it clear that “relevant dispute” has the meaning given in section 44. Section 44 sets out what is a relevant dispute.

**Hon NICK GOIRAN:** Clause 44(2) states —

... *relevant dispute* does not include a dispute that is of a class of dispute ...

In clause 44(2), the term “relevant dispute” is used once, whereas the word “dispute” is used thereafter. I ask the minister to compare and contrast that with clause 47, which is the same type of provision—if you like, the mirror provision—and it refers to a “class of relevant applications”. Throughout the clause, it refers to the “class of relevant applications”. That is not the case in clause 44. It strikes me that it should read “class of relevant disputes”.

**Hon ALANNAH MacTIERNAN:** I totally disagree. It states —

... *relevant dispute* does not include a dispute that is of a class of dispute prescribed by regulations ...

**Hon Nick Goiran** interjected.

**Hon ALANNAH MacTIERNAN:** I do not agree. The clause states that this is what a relevant dispute is. A relevant dispute does not include a class of dispute. Of course, to say it is a class of relevant dispute is absurd. It would say that we are carving out from the definition of “relevant” something that is the type of dispute that is going to be pursued via regulation. I simply do not accept that amendment; I think it is nonsensical.

**Hon NICK GOIRAN:** First of all, I have not moved an amendment; I was just asking the minister about it. Secondly, if it is absurd, I will draw that to the minister’s attention when we get to clause 47.

**Clause put and passed.**

**Clause 45: Application for relief in relation to relevant dispute in respect of residential tenancy agreement —**

**The CHAIR:** I am aware that our time is elapsing fast. Minister, would you like to move the amendment?

**Hon ALANNAH MacTIERNAN:** I move —

Page 34, lines 4 and 5 — To delete the lines and substitute —

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

This is just a technical tidy up to amend that a dispute about a noncompliance order goes to the Magistrates Court and not the Supreme Court.

**Amendment put and passed.**

**The CHAIR:** There is a further amendment relating to this clause. Is the minister going to move that?

**Hon ALANNAH MacTIERNAN:** I move —

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

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clause 46: Application for relief in relation to relevant dispute in respect of accommodation agreements —**

**Hon ALANNAH MacTIERNAN:** I move —

Page 34, line 27 — To insert after “the agreement,” —  
or that a person has failed to comply with an order made in connection with the agreement under section 57(1),

**Hon NICK GOIRAN:** We said earlier that if the minister was going to move these amendments, which span seven pages and which we were given earlier today, there needs to be some explanation of what is being moved. The government now says that these provisions are important and should have been in the original bill. There is nothing in the explanatory memorandum about them and now we are just going to say yes to them. The joke of the whole matter is that in three minutes we are going to be saying yes or no to a whole range of things for which no explanation will be provided to the chamber. In the minuscule amount of time available now, could the minister at least advise what we are doing?

**Hon ALANNAH MacTIERNAN:** This is the same as the previous provision. It is just to ensure that these matters can go to the Magistrates Court and not the Supreme Court.

**Amendment put and passed.**

**Hon ALANNAH MacTIERNAN:** I move —

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

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clause 47: Conciliation process must occur before application for relief —**

**Hon NICK GOIRAN:** I draw the minister’s attention to lines 26 and 27 on page 36, where it states —

a relevant application that is of a class of relevant applications prescribed by regulations ...

In light of the minister’s remarks on clause 44 that this is patently absurd—I think those were the words she used, or words to that effect—is any amendment required at lines 26 and 27 to ensure consistency with the absurdity to which the minister referred under clause 44?

**Hon ALANNAH MacTIERNAN:** It is very simple. In the previous case, we were prescribing things that were not going to be included, so they were not going to be relevant. In this case, we are prescribing things that are going to be included, so they are going to be relevant.

**Hon NICK GOIRAN:** Subclause (3) states, in part —

Subsection (2) does not apply to —

We are doing the exact opposite of what the minister just said. Does the minister want to correct the advice she has just given to the chamber?

**Hon ALANNAH MacTIERNAN:** I am advised that that is correct. I do not think anything turns on this, of course.

**The CHAIR:** Minister, are you moving amendment 17/47 standing in your name?

**Hon ALANNAH MacTIERNAN:** Yes. I move —

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

in relation to a failure by a person to comply with

**Amendment put and passed.**

**Hon ALANNAH MacTIERNAN:** I move —

Page 36, after line 25 — To insert —

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

**Hon ALANNAH MacTIERNAN:** This is the provision with the class of action that we described today, in which a landlord can take action against a tenant who is not paying rent and who has refused to participate in conciliation processes. This is to make sure that they do not have to then go through a second conciliation process, that after the end of that dispute resolution process, they can go straight forward.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**The CHAIR:** Unless there is any other procedural motion coming from the government benches, I observe that we have exhausted the 30 minutes that was allocated for the committee stage of this bill. Therefore, under the terms of the orders adopted by the house, I am required to put all the remaining questions in seriatim. This will take some time, but I will do it. The question is that clauses 48 to 52 do stand as printed.

*Point of Order*

**Hon NICK GOIRAN:** Point of order, Chair. Some members may want to support one clause and oppose others. How is that to be dealt with in that situation?

**The CHAIR:** At this stage I have indicated that we are going to move through clauses 48 to 52 inclusive. Does any member wish to vote against any clause before that?

*Committee Resumed*

**Clauses 48 to 52 put and passed.**

**The CHAIR:** In putting questions, some of the questions are amendments being moved. I will have to seek a mover for the amendment before I can frame a question around it. However, as there is no debate on these matters, I will simply be putting the motions.

**Clauses 53 and 54 put and passed.**

**New clause 54A —**

**Hon ALANNAH MacTIERNAN:** I move —

Page 41, after line 7 — To insert —

**54A. Evidence of financial hardship**

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

**New clause put and passed.**

**Clauses 55 to 57 put and passed.**

**Clause 58: Evidence of certain things inadmissible —**

**Hon ALANNAH MacTIERNAN:** I move —

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

in relation to a failure by a person to comply with

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clauses 59 to 75 put and passed.**

**Postponed clause 19: Termination without specifying grounds —**

Resumed from an earlier stage of the sitting.

**The CHAIR:** I direct members' attention to page 5 of supplementary notice paper 187, issue 3. It has already been indicated by Hon Rick Mazza that he wants a separate vote on this clause. Minister, I believe you have an amendment to move.

**Hon ALANNAH MacTIERNAN:** I move —

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

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

*Point of Order*

**Hon RICK MAZZA:** Do we not move my amendment to oppose clause 19 at 2/19 of the supplementary notice paper 187, issue 3, before we move to the minister's amendment?

**The CHAIR:** Member, I understand the nature of the question, but the process we employ is this: firstly, we entertain amendments to a clause and they are dealt with by being adopted or rejected. In that way the final form of the clause to be voted on is hammered out and then we vote on the clause. That is why I am entertaining this amendment now.

*Committee Resumed*

**Amendment put and passed.**

*Division*

Postponed clause, as amended, put and a division taken, the Chair (Hon Simon O'Brien) casting his vote with the noes, with the following result —

Ayes (13)

Hon Tim Clifford  
Hon Stephen Dawson  
Hon Colin de Grussa  
Hon Sue Ellery

Hon Diane Evers  
Hon Adele Farina  
Hon Colin Holt  
Hon Alannah MacTiernan

Hon Kyle McGinn  
Hon Martin Pritchard  
Hon Samantha Rowe  
Hon Alison Xamon

Hon Pierre Yang (*Teller*)

Noes (10)

Hon Jacqui Boydell  
Hon Peter Collier  
Hon Donna Faragher

Hon Nick Goiran  
Hon Rick Mazza  
Hon Simon O'Brien

Hon Robin Scott  
Hon Charles Smith  
Hon Aaron Stonehouse

Hon Ken Baston (*Teller*)

**Postponed clause, as amended, thus passed.**

**The CHAIR:** We have also postponed new clause 19A, standing in the name of Hon Rick Mazza. Does the member wish to proceed with that?

**Hon Rick Mazza:** No.

**The CHAIR:** That discharges that from the supplementary notice paper.

**Title put and passed.**

*Report*

Bill reported, with amendments, and the report adopted.

*Third Reading*

**HON ALANNAH MacTIERNAN (North Metropolitan — Minister for Regional Development)** [5.56 pm]: I move —

That the bill be now read a third time.

**HON NICK GOIRAN (South Metropolitan)** [5.57 pm]: I rise to speak to the Residential Tenancies (COVID-19 Response) Bill 2020. I indicate to those observing the debate that there is less than 10 minutes for 35 members of the Legislative Council to debate the third reading of the bill. For those stakeholders who might be interested to know, the ordinary custom and practice of the Legislative Council is that at the end of every sitting day,

any member can speak on a members' statement on any topic whatsoever. With regard to the bill, the McGowan government has decided that the 35 Council members can have 10 minutes to discuss the third reading of a bill that had 17 amendments passed by the Committee of the Whole House and which will now be sent to the other place.

Due to the complete lack of any proper sense of time to have any meaningful debate today, I will simply say to those who have a keen interest in this matter that I know many of them will be particularly disturbed about clause 19. I simply ask those people who are disturbed about clause 19 to please direct their inquiries to those members who supported it. Ask them why they supported it, whether they understand what it will do and why they did not support Hon Rick Mazza's sensible alternative amendment. If they get a sensible response, please feel free to forward it to me.

**HON RICK MAZZA (Agricultural)** [5.58 pm]: I never had an opportunity during the Committee of the Whole stage to prosecute the issue I have with clause 19 of the Residential Tenancies (COVID-19 Response) Bill 2020. What the house has just done—I respect the numbers and the vote—is that it has torn up every single residential lease agreement in the state. It has torn them into pieces. All those leases that landlords have for one or two years that they rely on for their income have just been torn up. The law of contract has been trashed. This is an absolute tragedy. All I was asking for with my amendment was for the tenant to prove that they were affected by COVID-19. It would have been the responsibility of the tenant to prove that. The amendment put forward by the government simply provides that the landlord, through the clogged court system, could claim some damages at a later date. I feel for every landlord in the state over this. I feel absolutely and totally disgusted in the way that this whole process, on a very complicated matter, has taken place. Based on the outcome of this clause, I cannot support the third reading, notwithstanding that this is an emergency bill. I cannot and will not support the third reading of this bill.

Question put and passed.

Bill read a third time and returned to the Assembly with amendments.

**Hon SUE ELLERY:** Noting the time, Madam President, I ask you to leave the chair until the ringing of the bells.

**The PRESIDENT:** I remind members that during the dinner break, meals are available from the staff cafeteria. I will leave the chair until the ringing of the bells.

*Sitting suspended from 6.00 to 6.32 pm*