

PICABAR

Standing Orders Suspension — Motion

MR A. KRSTICEVIC (Carine) [3.08 pm] — without notice: I move —

That so much of standing orders be suspended as to allow the following motion to be moved forthwith —

That this house condemns the McGowan government’s mean-spirited attack on Picabar, a family run small business that is now having its future stolen from them by the heartless Minister for Local Government.

Standing Orders Suspension — Amendment to Motion

MR D.A. TEMPLEMAN (Mandurah — Leader of the House) [3.08 pm]: I move —

To insert after “forthwith” —

, subject to the debate being limited to 15 minutes for government members and 15 minutes for non-government members

Amendment put and passed.

Standing Orders Suspension — Motion, as Amended

The SPEAKER: Members, as this is a motion without notice to suspend standing orders, it will need the support of an absolute majority for it to proceed. If I hear a dissentient voice, I will be required to divide the Assembly.

Question put and passed with an absolute majority.

Motion

MR A. KRSTICEVIC (Carine) [3.09 pm]: I move the motion. Today, during question time, for the first time since I have been involved in this issue, I have been given a date—March 2019. Prior to that, no date had been given apart from 14 November.

Let me tell members very quickly a little about Picabar. Picabar, as we know, is located at the Perth Cultural Centre. There is Brian and Melissa, with their three children aged under five years, their brother Conor and 15 staff. They took over Picabar in 2012. The space had been vacant for some 12 years prior to that and people will remember very clearly that that precinct of Northbridge was considered to be extremely undesirable and dangerous during that period.

The ACTING SPEAKER: Members, if you want a conversation, please take it outside.

Mr A. KRSTICEVIC: Brian and Melissa took a sublease from the Perth Institute of Contemporary Arts at the beginning of 2012 for a period of six months with an option to renew for another 10 years once PICA had its lease agreement re-signed. That is the history of when they started Picabar. It was very difficult to make a profit in the early years and they worked for nothing.

The minister said that he is not closing Picabar, but interestingly enough, I have a letter that was sent from the Perth Institute of Contemporary Arts to Brian. The letter states —

We have received a notification (by a letter dated 9 October 2018) from the Minister for Local Government, ... Hon. David Templeman MLA, that the Lease will terminate on 14 November 2018— ...

Please note that while the Minister’s letter is dated 9 October 2018, PICA did not receive the letter until 22 October 2018.

As a consequence of the Minister’s notification, Lazarus Road’s Sub-Lease of, and right to occupy, the Sub-Leased Premises will terminate on 13 November 2018 ...

On 25 October, Brian and Melissa were told that they had been given 19 days to leave the premises and that it was closing. The letter sent by the minister to the Perth Institute of Contemporary Arts says —

I, David Templeman, Minister for Culture and the Arts, being the landlord of the premises GIVE NOTICE that your lease will terminate on the date described below.

The date of termination is 14 November 2018. When we look at the letters that have transpired between the minister’s office, PICA and Picabar, we very clearly see that the premises were closing on 14 November 2018, not March 2019, as the minister indicated today. As a matter of fact, I am led to believe that Brian had a meeting with the Perth Theatre Trust on 26 October, the next day, and after some vigorous discussions he was told, “Maybe we will let you stay there until the end of the expression-of-interest process.” But no dates were given for when the expression-of-interest process would start or finish. A loose statement was made at a meeting, but no commitment or dates were given.

Extract from Hansard

[ASSEMBLY — Tuesday, 30 October 2018]

p7438f-7443a

Mr Tony Krsticevic; Mr David Templeman; Mrs Liza Harvey; Mr John Carey

Picabar has 15 staff. Members can imagine the shock and horror these people felt after being told the bar will close on 14 November, leading up to Christmas, the Perth Festival and the Fringe World Festival, and that Picabar is being closed by the minister. That is what the letter states. The minister can deny it, but he has signed the letter that says PICA's lease is terminated and PICA has sent the letter to Brian saying, "You're out. See you later; thanks for coming." That is the starting point of all this. The minister said that that is not happening. Maybe that is not happening now, but that was definitely happening on 25 and 26 October. I know from speaking to Brian, Melissa and Conor that they have found it very difficult to communicate with anybody on this issue—people have been reluctant. I think that they have tried to meet with the minister. I believe, for the first time today, the minister's chief of staff rang them at one o'clock to have a chat with them and say, "Look, I'm sure we can work through this, I'm sure we can find a solution." Who would have thought that was going to happen today? I said to Brian that if anybody talks to him and shows any interest in what is going on, apart from the fluffy statements being made by the minister in the media, to please tell me. He rang me and said, "I just got a phone call from the chief of staff, but he didn't really say anything concrete. He said that they're looking at legal options and other bits and pieces." It is very unfortunate that this has happened. This is now sitting with the Perth Theatre Trust; it has been embroiled in this as well.

This is not the first time. How does this work? Let us remember. The entire building of the Old Perth Boys' School was leased to PICA, and PICA subleased the bar. It signed an agreement giving a 10-year option to Picabar once PICA renewed its lease. In the intervening period, it changed its mind. PICA did not want these people to run Picabar; it wanted to run it itself or it had other ideas for it. There was no way PICA could get out of it because if its lease were renewed in its entirety, it would have to give Brian the first option for a 10-year lease on Picabar. However, if its lease were renewed but the bar area was excised by the minister and the minister said, "We will renew PICA's lease, we will give you those facilities, but we will excise the bar", that would give the government a legal loophole not to renew that 10-year option because the lease is between PICA and the operator. But that facility is no longer available to PICA because the government has not given it to PICA so it cannot lease it. That seems like a very shifty way to try to resolve this issue so that someone else can manage this business that started from nothing. These people put their blood, sweat and tears into it and now the minister wants to take it away from them and not honour the option of giving them a 10-year lease or being the first to take that up. Brian and Melissa are not looking to get it for free; they are looking to pay the appropriate rates for it. They are looking to do exactly what needs to be done to run a business in Northbridge. I walked through Northbridge the other day and there are plenty of closed facilities and businesses. If the minister is keen to set up another business somewhere, I am sure he can lease a vacant premises rather than try to kick out the people at Picabar who have done all the hard work to pull it together.

This is not the first time this has happened. In April 2017, Brian sent a legal letter to PICA because there were rumours that it was threatening to kick them out as of 30 June 2017. As soon as PICA got the letter from the lawyers, it wrote back and said —

... no steps were taken at that meeting to terminate the sublease. ... your client remains in occupation of the PICA Bar space.

On that basis, there is no reason to refer any matter to the Small Business Commissioner.

PICA very quickly said to Brian, "No, we are not going to kick you out in April 2017", and it wrote back in May 2017. It is not as though this is its first attempt, from what I am led to believe, to try to get Brian, Melissa and Conor out of that space for other reasons.

It is also interesting to note that Brian said he had a meeting with the now director general, Duncan Ord, in 2014. This has been going on for a while. That was probably the last time he spoke to him. Brian told me that Duncan had said to him that there were no problems and it should be just a formality. Obviously, that has not eventuated many years down the track and that formality has fallen through. The other interesting thing to note is that Brian and Melissa overpaid their outgoings to PICA. They were fighting with PICA to get a repayment of their outgoings to a tune of, believe it or not, \$110 000. PICA was refusing to pay them anything to do with that. Lo and behold, on 26 October 2018—how strange—PICA wrote to Brian. The letter says —

However, to resolve the outstanding dispute —

Which has been going on for years —

as to the payment of outgoings for the period 1 January 2012 to 30 September 2018, ... PICA is prepared to offer the sum of \$89,022 (inclusive of GST, if any) to the Lazarus Road as full and final settlement of this dispute.

The sum of \$89,022 (inclusive of GST, if any) will be paid in two instalments, 50% within 10 days ...

And the rest by 1 March 2019, which, lo and behold, coincides with the minister's date of March 2019 as well.

The other important fact is that PICA was receiving the bar's rent of \$60 000. Who is going to fund it now that it no longer has this rent? Has the minister, PICA or somebody else done a deal? I want to know why these people have been discriminated against. Why is the minister so mean-spirited and why is he not honouring that 10-year lease? From all the paperwork and documentation we can see, these people are being hard done by, and the minister should step up and do the right thing.

MRS L.M. HARVEY (Scarborough — Deputy Leader of the Opposition) [3.19 pm]: I rise to add my comments towards this motion. I was quite astonished speaking to Brian Buckley and Melissa Bowen about this issue over the past few weeks. Being a small business, particularly in hospitality, is really tough. Picabar is the only source of income for a husband and wife team with three little kiddies, in business with Mr Buckley's brother, so it is very concerning that they find it difficult to negotiate anything longer than a month-by-month lease. Mr Buckley and Ms Bowen were about to take their family on holiday to Kalbarri this week. I can only imagine, as owners of a small business, how long it has taken them to plan for it. I understand what it is like to run a business. They need to make sure people can cover for them so they are able to take precious time off with their family since they spend a lot of time on the business. They had to cancel their holiday on Friday because on Thursday they received a letter that categorically stated that their lease had been terminated and that they need to get out by 14 November. Before 14 November they have to restore the premises to the state it was in prior to them taking occupancy and they have to yield the keys and remove all the sublessee's fixtures. It is pretty clear to anybody in business that they are being kicked out—terminated—and their business is over. It will end. There is no goodwill. All they are left with is having to pay their employees their entitlements, trying to pay off their debts to creditors, and trying to pick up the pieces of their lives and work out what they are going to do next to provide for the family.

The business supports two families and 15 employees. What do we get from this minister? He was on the radio today and when he was finally flushed out to comment on the matter, he said that opportunities for the Perth Institute of Contemporary Arts were being considered but he said nothing about opportunities for Picabar. All of a sudden, the minister is backtracking, saying that his office has been negotiating with the Perth Theatre Trust and that there is now an agreement that they can stay in the premises until March. Guess what, members? There has been no negotiation. Negotiation is prior to a termination. It means sitting down with people and saying, "This lease is going to end on this date and we will replace it with another one." That is if the negotiation is genuine. Instead, these people who have built a business out of nothing—a premises that was vacant for 12 years—are being given short shrift and we want to know why. We want to know why the minister is talking about PICA having a place there but not Picabar and its current owners. The process can be transparent. All the minister needs to do is go to a couple of commercial leasing agents, get a valuation on the lease, and negotiate with the owners for something that is fair. Then taxpayers would be able to see they are getting value for money. Something else is going on here and we need the minister to explain why Mr Buckley and Ms Bowen are being treated this way.

This has been an ongoing issue for a long time because the lease was transferred from the responsibility of the Department of Lands to the Perth Theatre Trust and then, because of the machinery-of-government changes, it was delayed even further. That has been the issue with changing over the old lease and establishing a new lease. However, it was not until Friday afternoon that Mr Buckley and Ms Bowen decided that they needed to seek the assistance of the opposition and the media. They have had this issue since 2012. Finally, in 2018, they sought the support of the opposition and the media because on Friday when Mr Buckley rang the minister's office and said, "I'm desperate. I'm about to lose my business. I need to speak to the minister", what did he get? He got the minister's acting chief of staff, who said that a meeting with the minister was not going to happen. He said they could meet with Paolo Amaranti from the Perth Theatre Trust but that the minister was not going to meet them. That is what he got. For the minister to go out and pretend that his office is negotiating with the Buckleys is a falsehood. The first negotiation they have had was a meeting with Paolo Amaranti after they were told they were out. They were told they had to leave by 14 November. Now, all of a sudden, the minister is backtracking, which is good news because we want to see a sensible outcome for this family business. We want a sensible outcome that does not include some kind of protectionist policy around the new bar spaces that might open up in the new Museum, which was started by the Liberal-National government. Yes, that space is activated. The lease now has value because of Mr Buckley. The minister needs to honour that value.

MR D.A. TEMPLEMAN (Mandurah — Minister for Local Government) [3.24 pm]: I thank members for the opportunity to speak to this. I want to make it very clear that Picabar is and will continue to be an important, integral part of the Perth Cultural Centre Precinct. Any conspiracy theories about subleases or ideas from the opposition spokesperson about excising sections is fantasy. The opposition is making the assumption that there is some secret conspiracy about someone else who is looking like being favoured. Let me be very clear —

Mr S.K. L'Estrange interjected.

Mr D.A. TEMPLEMAN: I listened in silence and I would expect that the member would give me the opportunity to respond.

There is no conspiracy, but as the opposition has already alluded to, the fact is that an unsatisfactory arrangement has been allowed to operate since 2012. I think we would all agree that it is unsatisfactory for a lease agreement to be month by month for over six years. I think that is ridiculous. Let me go back to the processes that have occurred. Through the machinery-of-government changes, obviously the Department of Local Government, Sport and Cultural Industries was created. A decision was made to transfer the jurisdiction of the Perth Cultural Centre from the Metropolitan Redevelopment Authority to my jurisdiction. In my view, it was a sensible move and I think it was widely supported because we have in the Cultural Centre key elements that make up the cultural precinct, including the State Library of Western Australia, the new Museum, the Art Gallery of Western Australia, the Perth Institute of Contemporary Arts and Picabar. As members are well aware, there is now a major infrastructure project of \$400-plus million for the new Museum. Some parts of the precinct are still to be constructed and made available, including future tenancies in the new Museum project, and the Art Gallery has a tenanted arrangement with the cafe. To ensure there is a total plan and activation for all the entities that are part of the precinct, it makes sense to ensure there is a clear and transparent process as we gear towards those entities becoming activated, and that we deal with the lease issue. I am sorry, but members opposite refused to deal with it when they were in government. The opportunity for the transition of the responsibility of the cultural precinct to my department was part of that process.

I have had some correspondence from people who would know a lot about this and would be considered to have been on the side of politics of members opposite. They highlighted the longevity of this issue. I can give members the name of the person I am speaking about; in fact, I will give members a copy of the email I have. It highlights the longevity of the issue and the fact that there has been, in many respects, an interesting relationship between PICA and the current tenant, Mr Buckley, and his family. Some would describe it as being in some ways a fractured relationship over the period. There are issues but we need to be very clear and understand that those issues between PICA and the tenant are between them. Any promises, verbal agreements or anything of that nature are not attributable to government making a commitment. That is the reality. I have to look at, in the balance form, what is still a state asset. It is not a private tenancy. It is not a private entity in which a formal, legal arrangement can be made under normal business conditions. It is a state entity, which is part of a greater complex. Therefore, in terms of transparency, processes need to be adhered to. It is very interesting that if other actions had been taken, I am sure that members of the opposition would be in here accusing the government of favouritism. I am sure they would. The opposition should just think about the argument it is putting.

We have made a commitment. I was not happy with the processes. I am not saying they were perfect, but the reality is a messy tenancy and the will to transition to a new approach so that it is seen in the context of the whole cultural precinct. We need to dispense with the one-month by one-month practice; it is not appropriate. The member for Scarborough needs to understand that the Perth Theatre Trust is the entity that has the management authority to undertake the negotiations. That is the entity that is carrying out negotiations with the current tenants. I put this on the record again: what has been offered does not require the current tenants to vacate the premises by 13 November. Yes, that is in the letter between the Perth Institute of Contemporary Arts and the tenant, but as we sit here today the fact of the matter is that the Picabar operators are not being required to vacate the premises. Discussions are underway and I encourage the tenants to come to an agreement so that they can continue to operate Picabar to the end of March. In the meantime, we will be looking at the options available so that we can assess, in a transparent way, the best way forward. That is what we intend to do and that is what we are going to do. Yes, we need to see the ongoing activation of Picabar, particularly as we come towards the Christmas and festival period.

The letter was written to Picabar as the entity that holds the sublease; that is what happened.

Mr A. Krsticevic interjected.

Mr D.A. TEMPLEMAN: As the member has highlighted, the letter was about their tenancy, their arrangement. I am not walking away from that; it exists and it is there. The point is: is Picabar to continue? Yes. Is there a requirement to vacate the premises by 13 November? No. Are we going to keep working and encouraging the current tenant to come to a negotiated agreement? It is my understanding—I am happy to confirm this later—that a deed has been agreed to; that is my understanding, and I will check that. It is my understanding that there was an agreement about the extension. I am happy for that extension to continue. Do I understand and acknowledge that the business has been run well? Yes, it has. No-one is disagreeing with that, but the member's emotional reference to throwing families out on the streets is the wrong premise. I hope the surety is there now.

Secondly, I put it to the member that we need to go through due process because it is a state-owned asset. Remember, this is a heritage building. As the member would be well aware, there are requirements on heritage buildings into the future that can involve substantial costs. They would need to be considered in any long-term lease, no matter what that term may be. We are not going to rush into signing off on a 10-year lease without any due diligence, which is what the member is saying we should do. That is what he is alluding to.

Mr A. Krsticevic interjected.

Mr D.A. TEMPLEMAN: I listened to the member in silence.

We need to consider those elements in balance. I want to reassure the house that Picabar will be an important component of the activation of the cultural centre going forward. It will stay open whilst this process takes place. It is my understanding that the trust is continuing to meet with —

Mr A. Krsticevic interjected.

Mr D.A. TEMPLEMAN: I am happy to have a chat with Mr Buckley, but, again, remember that the authority to do that is with the Perth Theatre Trust. At the end of the day, we want to make sure that Picabar remains active. I have been there on numerous occasions, particularly before events at the Perth Cultural Centre Precinct, whether it is the theatre or events at the Art Gallery of Western Australia. We are going to work closely with Mr Buckley on these issues going forward, but we are going to do it in a balanced way and we are going to be mindful that we are talking about a state asset, not a private entity. We will make sure that we work towards an outcome that continues the activation of the Perth Cultural Centre Precinct and we will ensure that other future tenancies are taken into consideration so that the Perth Cultural Centre Precinct will ultimately be a vibrant, active place that encourages both young and older people to participate. It is a great opportunity for the state; the cultural precinct is going to be magnificent. There are great plans to address some of the access issues and all the other issues relating to people accessing the site. The new Western Australian Museum will have wonderful entry points that will open up the cultural precinct in general.

Mr W.R. Marmion interjected.

Mr D.A. TEMPLEMAN: We also want those who run the proposed commercial tenancies in the Art Gallery and the new Western Australian Museum to prosper and to provide great services, so we are doing it in that context.

I reassure members opposite that we are not going to require the tenants to vacate the premises. This has not been an easy process. The tenancy arrangements should have been dealt with a long time ago, but we have acted to address them, and we have done so in the context of a change of responsibility. I reassure members opposite that we will work out a solution that delivers quality to people when they visit that site.

MR J.N. CAREY (Perth — Parliamentary Secretary) [3.37 pm]: In the few minutes left I just want to say that I have previously met with Brian and Melissa on this issue. I want to put it on the public record that they are hardworking, decent people who have been frustrated by a process that the government inherited, dating back to 2012.

Mrs L.M. Harvey interjected.

Mr J.N. CAREY: No, let me speak.

It is important to say that there is no doubt that a month-to-month rolling lease is not at all sufficient for any business to invest in for its future. This is an issue that the government inherited and that those opposite did not resolve when they were in government. Now Johnny-come-lately, the member for Carine, takes any opportunity to promote himself on Twitter —

Several members interjected.

The ACTING SPEAKER (Mr S.J. Price): Members! We have been pretty good so far; we are just about through this.

Mr J.N. CAREY: Let us face it: for the member for Carine, this was just another social media opportunity to put a photo on Twitter. I am surprised Lisa Scaffidi did not pop up in the background, because that is how he normally operates—with Lisa in the background, controlling him. But what a Johnny-come-lately to this issue.

The reality is that this has been a frustrating process between PICA and Picabar. I agree with Brian and Melissa that they have not been treated well by PICA and that the idea of rolling on with month-by-month leases is completely unacceptable. They have done a lot for the community and are strongly supported by the Fringe World Festival and arts communities and by my constituency, and I applaud them for the work they have done. With regard to the transition, it is not the most perfect solution, but it will at least tide them over for the Fringe Festival and summer season so that negotiations can be continued. That is a reasonable start.

Division

Question put and a division taken, the Acting Speaker (Mr S.J. Price) casting his vote with the noes, with the following result —

Extract from *Hansard*
[ASSEMBLY — Tuesday, 30 October 2018]
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Mr Tony Krsticevic; Mr David Templeman; Mrs Liza Harvey; Mr John Carey

Ayes (19)

Mr I.C. Blayney
Mr V.A. Catania
Ms M.J. Davies
Mrs L.M. Harvey
Mrs A.K. Hayden

Dr D.J. Honey
Mr P. Katsambanis
Mr Z.R.F. Kirkup
Mr A. Krsticevic
Mr S.K. L'Estrange

Mr R.S. Love
Mr W.R. Marmion
Mr J.E. McGrath
Dr M.D. Nahan
Mr D.C. Nalder

Mr K. O'Donnell
Mr D.T. Redman
Mr P.J. Rundle
Ms L. Mettam (*Teller*)

Noes (35)

Ms L.L. Baker
Dr A.D. Buti
Mr J.N. Carey
Mrs R.M.J. Clarke
Mr R.H. Cook
Mr M.J. Folkard
Ms J.M. Freeman
Ms E. Hamilton
Mr T.J. Healy

Mr M. Hughes
Mr D.J. Kelly
Mr F.M. Logan
Mr M. McGowan
Ms S.F. McGurk
Mr K.J.J. Michel
Mr Y. Mubarakai
Mr M.P. Murray
Mrs L.M. O'Malley

Mr S.J. Price
Mr D.T. Punch
Mr J.R. Quigley
Ms M.M. Quirk
Mrs M.H. Roberts
Ms C.M. Rowe
Ms R. Saffioti
Ms A. Sanderson
Ms J.J. Shaw

Mrs J.M.C. Stojkovski
Mr C.J. Tallentire
Mr D.A. Templeman
Mr P.C. Tinley
Mr R.R. Whitby
Ms S.E. Winton
Mr B.S. Wyatt
Mr D.R. Michael (*Teller*)

Question thus negatived.