

COMMERCIAL TENANCIES (COVID-19 RESPONSE (EARLY TERMINATION)) BILL 2020

Introduction and First Reading

Bill introduced, on motion by **Mr J.R. Quigley (Minister for Commerce)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MR J.R. QUIGLEY (Butler — Minister for Commerce) [10.15 pm]: I move —

That the bill be now read a second time.

The bill I am introducing this evening is essential to support the continuity of commercial tenancies during what is likely to be a period of significant social and economic upheaval for all Western Australians.

I hope I am reading the right bill! Yes.

The social and economic health and wellbeing of Western Australians is the government's highest priority as we face the significant challenges presented to us by the spread of COVID-19. On 29 March 2020, the national cabinet announced that a moratorium on evictions for non-payment of rent would be applied across commercial tenancies impacted by financial distress.

A member interjected.

Mr J.R. QUIGLEY: They have given me the wrong one, I am sorry.

The ACTING SPEAKER: It seems to be the wrong copy.

Mr J.R. QUIGLEY: They have attached the wrong one.

The ACTING SPEAKER: Do you have another copy for the clerks as well?

Mr J.R. QUIGLEY: I am sorry. They attached the wrong one to the bill.

The ACTING SPEAKER: Hang on, minister. I will make sure the clerks have what they need before we go any further. Okay, we are all good. Start again, minister.

Mr J.R. QUIGLEY: I am glad the member for Riverton is still smiling at this late time of the evening, even though I was the subject of it!

The Commercial Tenancies (COVID-19 Response (Early Termination)) Bill 2020 before us this evening responds to these significant challenges in circumstances that commercial tenants are experiencing severe financial hardship to such an extent that it is not possible to continue their leasing arrangements. The social and economic health and wellbeing of Western Australians is the government's highest priority as we continue to deal with significant challenges presented to us by the spread of COVID-19.

On 29 March 2020, the national cabinet announced that a moratorium on evictions for non-payment of rent would be applied across commercial tenancies including retail tenancies, small businesses and incorporated associations impacted by financial distress due to the COVID-19 pandemic. On 3 April 2020, the national cabinet announced a set of common principles to provide protections and relief for tenants in relation to commercial tenancies and, on 7 April 2020, agreed to the introduction of the National Cabinet Mandatory Code of Conduct: SME Commercial Leasing Principles During COVID-19, aimed at mitigating and limiting the hardship suffered by the community as a result of the spread of COVID-19 in our state and across the nation. The moratorium will apply to a broad range of commercial tenancies for the emergency period. The emergency period will commence on 30 March 2020 and run for an initial period of six months. This period may be extended as necessary.

The Commercial Tenancies (COVID-19 Response) Bill 2020, also introduced in this house this evening, seeks to implement the national cabinet proposals and will allow regulations to be made to adopt, as appropriate, the National Cabinet Mandatory Code of Conduct: SME Commercial Leasing Principles During COVID-19. The proposed code of conduct will require landlords and tenants to negotiate and agree to measures for the provision of rent relief. The code of conduct provides that rent relief granted by landlords should be proportionate to the losses suffered by a tenant due to a reduction in trade and should be a combination of waiver and deferral. Despite the relief that may be offered by some landlords, it has become evident that some tenants will not be able to pay deferred rent or maintain their financial viability during and after COVID-19. In these circumstances, there will be limited opportunity for the tenant's business to recover following COVID-19 and the tenant may experience severe financial hardship, including the risk of insolvency or bankruptcy if pursued by the landlord. Measures in addition to those included in the Commercial Tenancies (COVID-19 Response) Bill 2020 are therefore required in the event that any rent relief offered by landlords is not adequate to address this issue.

The bill before the house includes a mechanism for small to medium commercial tenants who are suffering severe financial hardship and, despite all reasonable endeavours, have been unable to negotiate waivers or deferrals of rent, or other concessions from the landlord, and as a result are unable to perform their obligations under the lease. They

will, by virtue of this bill and the COVID-19 pandemic, be able to terminate their lease. If a tenant terminates on this ground, the tenant will not be required to pay the usual compensation or damages to the landlord associated with the early termination of a lease, often referred to as “break lease costs”.

I want to reassure the Parliament and the community that there is appropriate accountability around the use of the powers in this bill. A number of checks and balances are built into the bill. Importantly, the proposed powers to override existing legislative provisions or vary contractual arrangements in this bill will only apply when a tenant is in severe financial distress and has used or raised reasonable endeavours to negotiate waivers or deferral of rent. “Severe financial distress” is defined in the bill as —

- (a) the tenant is suffering financial hardship as a result of COVID-19 consequences; and
- (b) the tenant has made reasonable endeavours to negotiate waivers or deferrals of rent, or other concessions, from the landlord; and
- (c) despite those reasonable endeavours and any waiver or deferral of rent, or other concessions, made by the landlord, it is reasonable to conclude that, because of the tenant’s financial hardship, the tenant is not, or will not at some later time, be in a position to perform the tenant’s obligations under the commercial lease;

In addition, the bill includes a provision that allows a landlord to make an application to the State Administrative Tribunal to determine whether the lease should be terminated by the tenant on the basis of severe financial hardship when all reasonable endeavours, conducted in good faith, to negotiate waivers or deferrals of rent, or other concessions from the landlord, have been unsuccessful. In those circumstances, the tribunal is authorised to consider whether the tenant is in severe financial distress and to order that the lease be terminated.

I implore members to support this bill in the spirit of a unified parliamentary effort to deal with this unprecedented public health emergency and the devastating effect that it has had, and continues to have, on commercial tenancy arrangements in Western Australia.

Importantly, it is not the government’s intention to proceed immediately to list the second reading debate of this bill and will only do so if there is evidence of widespread abuse by landlords of their obligation for good faith negotiations for rent relief for commercial tenants as provided for in the Commercial Tenancies (COVID-19 Response) Bill 2020. Should those circumstances arise, this bill will have laid on the table in this chamber for the 21 days as required by standing orders and, if needed, will be enlivened immediately.

I commend the bill to the house.

Debate adjourned, on motion by **Mr A. Krsticevic**.