COMMERCIAL TENANCIES (COVID-19 RESPONSE) 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) [6.52 pm]: I move —

That the bill be now read a second time.

The bill I am introducing today 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. 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 due to the COVID-19 coronavirus 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, it endorsed the mandatory code of conduct, the National Cabinet Mandatory Code of Conduct for 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.

This bill introduces a moratorium on evictions for small commercial tenancies and incorporates a range of other measures to provide urgent relief for commercial tenants in response to the COVID-19 pandemic, including a mechanism for the introduction of a code of conduct for landlords and tenants.

The bill will introduce a six-month moratorium on termination for certain breaches; a freeze on rent increases; a restriction on penalties for tenants who do not trade or reduce their trading hours; a prohibition on landlords charging interest on rent in arrears; a prohibition on landlords making a claim on any form of security for the performance of the tenant's obligations under the lease, for example, a bank guarantee or security deposit; and a prohibition on landlords progressing proceedings against a tenant for a breach that occurred after the COVID-19 restrictions were implemented, but before the new laws come into operation.

The new provisions will apply to a broad range of small commercial tenancies for six months. This period may be extended as necessary. The bill enables a regulation to be made to adopt the code of conduct. This provision will provide the mechanism for the adoption of a code of conduct based on the National Cabinet Mandatory Code of Conduct for SME Commercial Leasing Principles during COVID-19. The bill allows for the code to be adopted in whole, in part, or with modifications. The national code of conduct imposes a set of leasing principles on landlords that apply to certain commercial tenancies when the tenant is suffering financial stress or hardship as a result of the COVID-19 pandemic. The code requires landlords and tenants to negotiate in good faith and agree to measures for the provision of rent relief. The rent relief granted by landlords should be proportionate to the losses suffered by a tenant due to a reduction in trade. The relief provided for by the code of conduct can be a combination of waiver and deferral.

In addition, the bill includes dispute resolution provisions to deal with disputes between parties arising out of, or in relation to, the operation of this legislation, including a code of conduct dispute. Mechanisms are included so that smaller businesses can seek the assistance of the Small Business Commissioner in conciliating or mediating disputes. Further, during the emergency period, a party to a dispute may apply to the State Administrative Tribunal, which may make any order that it considers appropriate to resolve the dispute or proceedings.

I implore members to support this bill in the spirit of a unified parliamentary effort to deal with the economic impacts of this unprecedented public health emergency. I commend the bill to the house.

MR P.A. KATSAMBANIS (Hillarys) [6.58 pm]: I rise to contribute to the second reading debate on the Commercial Tenancies (COVID-19 Response) Bill 2020. Once again, we are in the same predicament that I raised earlier today about the Residential Tenancies (COVID-19 Response) Bill 2020 and raised last week about the Guardianship and Administration Amendment (Medical Research) Bill 2020. We were given this bill earlier today, about an hour or so before the commencement of Parliament. Since midday, we have been in this place either during question time or dealing with the residential tenancies bill. Immediately on conclusion of that bill, we dovetailed straight into this bill. The opportunity for any opposition to scrutinise this bill is effectively zero. I realise and recognise that there was some consultation with stakeholders; however, I am still unclear as to whether the final

version of the bill has been provided to stakeholders for their input. I am informed from some stakeholders, as of about an hour ago, that they have not seen the final version of the bill. Therefore, there is limited opportunity for the impact of stakeholders to provide comment and feedback, and to perhaps inform both the government and us as an opposition whether this bill is properly calibrated.

At the heart of it, there is no dispute around the principles. As the member for Hillarys I have witnessed the absolute devastation of small business people and their employees who have had to endure the trading restrictions and other restrictions imposed on our community in response to the COVID-19 pandemic. It is absolutely devastating, and I am sure that it is the same across Western Australia. I am sure every member of Parliament, of all political persuasions, has spoken to those people who are suffering. Those people have either had to completely close their premises or, in some cases, have had to find ways to adapt, keep on a few of their staff and try to make ends meet, hoping that something could happen to assist them. A bill such as the one before us and the code of conduct that this bill tries to give effect to are some of those things that these small business people have been seeking.

Of course, we want to protect those people. I am in constant communication with them and the staff. They have been heavily impacted. As we say, across the board, whether it is residential or commercial tenancies, the vast majority of landlords and tenants do the right thing. In the main, they talk to each other; they coexist, especially in commercial tenancies. Without a good tenant, without a successful tenant, there is not a successful landlord. They are going to struggle. We know that in the past decade it has not been easy out there in the small business world. It is not easy to replace a tenant in commercial premises of any type, be they retail or, more broadly, commercial or industrial for that matter. Therefore, we want to protect those people, but, at the same time, any response needs to be properly calibrated. It also needs to recognise who we are asking to bear the burden of the protection.

It is a horrific landscape out there. It was on a Monday morning about three weeks ago when the national cabinet decision was communicated that restaurants and the like had to close and not be open for people to sit down. Pubs and clubs and the like had to close. On a Monday morning I witnessed the devastation of the shopkeepers and tenants of the Hillarys Boat Harbour. It spread beyond the hospitality premises because those hospitality premises attract the foot traffic and all the other smaller retailers rely on the foot traffic that is coming there for the hospitality and they get some flow-on effect as well. Within days, almost all the businesses down there at the beautiful Hillarys Boat Harbour were closed. The same thing happened across all of the shopping centres in my electorate, whether it is in Padbury, Warburton Avenue, Forest Road, Flinders Avenue in Hillarys, Kallaroo, Craigie, Mullaloo Plaza or Beldon Shopping Centre—everyone has been heavily impacted. We absolutely want to protect those people, but we need to make sure that the provisions that are being introduced are properly calibrated, as I keep saying, and that they do not cause undue harm to either tenants or landlords because they have to coexist. They recognised that; I think the law needs to recognise that.

The government asks us to tick and flick this bill. We saw with the Residential Tenancies (COVID-19 Response) Bill 2020 that we just dealt with that further exposure highlights that we can do better. The government, to its credit, accepted that, and it foreshadowed some amendments to be dealt with in the upper house. That is good. That is exactly what we want to see happen. But for that to happen, we have to have the opportunity to scrutinise this legislation. We have to have the opportunity to have some feedback from stakeholders. Stakeholders have seen some consultation drafts, others have been spoken to and the like, and there are some serious concerns with both this legislation and the impact that this legislation will have. The contents are multifaceted.

First, the concerns are around what constitutes a small commercial lease. The definition is in clause 3 of the bill, which states —

> (a) a retail shop lease as defined in the *Commercial Tenancy (Retail Shops) Agreements Act 1985* section 3(1); or
>
> (b) a lease where the tenant owns or operates a small business and uses the land or premises that are the subject of the lease for the purpose of carrying on that business;

That tends to indicate an owner–operator. Subclause (a) is "a retail shop" that is well known, which can be anything from Coles, Woolworths, McDonald's, Hungry Jack's, Burger King and the like all the way through to the local pharmacy, hairdresser, baker, newsagent and the like. We know what a retail shop is. Subclause (b) tends to indicate that it is someone who is an owner–operator rather than a big subsidiary or something else.

Subclause (c) states —

> a lease where the tenant is an incorporated association as defined in the *Associations Incorporation Act 2015* …

That is calibrated to not harm not-for-profit associations and the like. It could be anything. All sorts of different associations are incorporated under the Associations Incorporation Act, and some of them have leases. We do not want those not-for-profit associations and the like to be impacted.

Subclause (d) states —

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

That means, basically, anyone the government thinks should be subject to this apart from the three other groups. There is a concern out there because when dealing with commercial tenancies, the real harm comes when there is an imbalance of power between the two contracting parties. This definition is calibrated on the assumption that the imbalance of power is always in favour of the landlord, and we know that that is not the case. In recent days, powerful tenants have made unilateral declarations. The first one was Mr Solomon Lew from Premier Investments, who simply declared he is not paying rent. I have done a bit of quick googling research and I am not aware whether the business premises that Mr Lew operates here in Western Australia are premises on let us call them high streets where the landlord is likely to be a single holding landlord or a small landlord. I know he has those sorts of premises in other states. I know because I can visualise those premises, and in some cases I know the owners of those premises. I think most of his operations in this state are in large centres. It is big guy against big guy. Can I be brutally frank: if it is big guy against big guy, if it is Premier Investments up against Scentre—the people who run the tenancy arm of Westfield shopping centres—I am happy for them to duke it out on their own. They are big boys.

Dr D.J. Honey: Or girls.

Mr P.A. KATSAMBANIS: Or girls; or people. They can deal with it well and good. But let us wind back the clock. Premier Investments has a number of brands including Smiggle, Peter Alexander and Portmans. It has lots and lots of brands. Most of them are in the big shopping centres. I have not found one yet, but there might be one under a small landlord. Let us wind back to a couple of days ago. On Saturday, I was privy to correspondence from an affected landlord, Hungry Jack's, which said, "We're not paying rent for three months." Hungry Jack's has some premises in big centres. I am aware of one of its stores at Karrinyup, and lots of other places besides. It has one outside Whitford City as well. I am sure the ultimate landlord there is Scentre as well, but it also has landlords who are not big people; they are little people. That is one area where already we are seeing that the power imbalance is not always in favour of the landlord. Many owners and landlords of premises that are leased to fast-food operations like Hungry Jack's may have that as their only holding; a lease that is for the long term and offers regular income. A lot of these leases run for 15 to 20 years or more. Many of these people are retirees. They might own it through their self-managed superannuation trust or a family trust, or it is just simply in their own names. They rely on that income just like some of the residential landlords rely on that income for their living expenses. Quite clearly, they are people who have done okay in life so they can afford to own these premises. If their income stream is turned off, they do not qualify for any form of welfare because they are subject to income test requirements; in particular in this case asset test requirements would knock them out. If legislation related to commercial tenancies is calibrated on the fallacy that all landlords are more powerful than the tenants, the government is going to get it wrong. After working out a scheme that will benefit small retailers, small tenants and small business people, the first thing the government has to work out is how to protect the smaller landlords in this case. If they are unduly punished in order to protect the small tenant, or the big tenant in this case, those people are going to suffer undue hardship and this Parliament should not be passing legislation that impacts on those people.

I am not sure that this bill strikes the right balance. I know that stakeholders such as the Property Council of Australia have highlighted this, not just to this government but to other governments, and they have said that there should be an appropriate carve-out from some of the provisions of the national code, which I will come to in a minute, for smaller landlords, and so there should be. Nobody is suggesting that smaller landlords should walk away from this completely, but there needs to be properly calibrated measures. I have discussed with the member for Darling Range, the shadow Minister for Small Business—who cannot be here today because of the way limited numbers in the chamber are operating—that the government needs to look at what it can do for those small landlords who are impacted. If they are not carved out of this scheme, what can the government do for them as they are shouldering the burden to their financial hardship? There are things we can do; we have already discussed them in the residential tenancies legislation. We can look at land tax relief. Where is that? Most other states have already announced land tax relief. What is stopping this Premier or this Treasurer from announcing land tax relief for people impacted by this legislation? Why have they not announced it? Are they going to announce it? We do not know. They should announce it; they should have already done it.

The government could also work on all the other charges. The shadow Minister for Small Business, the member for Darling Range, pointed out to me the Perth parking levy in the City of Perth. Landlords have been asked not to collect rent or to renegotiate the rent to a lower amount, yet they are still subject to the full impact of the Perth parking levy. That does not seem to make any sense to anybody. Where is the relief from that?

I now refer to water rates and charges. Charges are sometimes calibrated on the number of sewers on a property. All sorts of other mechanisms are used by the Water Corporation to impose rates and charges on landlords. Where is the relief in local government rates? That would probably necessitate a conversation between state and local governments to come up with a scheme that applies across the state to local government rate relief for landlords, and ordinary residents in their household properties as well. Perhaps there could be an agreement about how that relief could cascade down into tenancies where some of those costs are passed on by landlords to tenants to make sure that if landlords benefit from rates and charges relief, they do not pocket it; that they pass it on to the tenant as well. We know that the vast majority of leases are struck on a passing down of the land tax on a single holding basis, and so it should be—no tenant should be responsible for in globo land tax, to use a Latin term, which I do not particularly like using too often. They should not be subject to land tax based on how many properties are owned or the value of all the properties that their landlord owns; they should be subject only to the land tax applicable to the premises they are renting on a single holding basis, which means the rest of the land tax is borne by the landlord. They will still have to pay it, no matter what rent they are getting.

The bigger fear here is what will this entire period do to the calculation of the actual worth of a commercial premises based on the recalculation of rent. We do not know what will happen with this in the future. Essentially, when valuers value a property for the purposes of a loan using the loan to value ratio, rental income is an important criterion in calculating the value of those premises. Landlords use that to borrow against. If rent is renegotiated to a level at which the new valuation of the property comes in below an appropriate LVR for a bank or financial institution, or completely below the value of the existing borrowings so that the property is in negative equity, what will financial institutions do? These are the cascading financial implications that occur in this period. We are asking landlords to bear that risk. I think that is inappropriate, especially for small landlords. We do not know what the future holds but they are being asked to carry a lot of risk. I think a carve-out for small landlords or a carve-out of some of these provisions would be a good starting point. Some state and local government fee relief, particularly in land tax, the parking levy for the City of Perth, water charges and local government rates and charges would also be axiomatic.

The other issue is defining a small business. As the definition of "small commercial lease" in clause 3 is calibrated, any retail shop lease, irrespective of the size or might of the tenant, is captured by this legislation. Mr Cowin, Mr Lew or any of those other people can seek protection under this bill to the detriment of a small landlord—a ma and pa, if you like, a couple who have invested in the property as their superannuation and income for retirement, or a couple who have perhaps borrowed against the property and are relying on that income to pay off their loan or a combination of relying on the rental income to pay off their loan and having some income to utilise in their retirement. Why should we allow big business to come into these provisions in circumstances in which there is a retail shop and the landlord is a small landlord? As I said, whether it is Woolworths, Coles, Premier, Hungry Jack's or McDonald's, if they are negotiating with Stockland, Lendlease and Scentre, good luck to them. They are all big businesses; they can deal with it. I do not like thinking of the consequences of the broader economic parameters that we will have to live with for a long time because we do not know what they will look like. Everyone tells us that it will be difficult for the next 12 months. I want all those retailers to be successful. I want the big retailers and the small retailers to be successful. Why are we setting up a system that allows large groups to benefit? I would have thought that in relation to retail shop leases, a ring-fence could have been provided for any small and medium-sized businesses to gain the benefit of these provisions.

Perhaps one of the definitions that could have been utilised is the Australian Taxation Office definition of a small and medium business or perhaps the definition of a large business in section 45A of the commonwealth Corporations Act 2001. We could use that as a carve-out. That definition defines a large proprietary company for a financial year if it satisfies at least two of the following criteria: the consolidated revenue for the financial year of the company and any entities it controls of $50 million or more; the value of the consolidated gross assets of the company at the end of the financial year and any entities it controls is $25 million or more; and the company and the entities it controls have 100 or more employees at the end of the financial year. It looks like a pretty good definition of a large business. Any business that does that has two of the following: turnover of more than $50 million; assets of $20 million or more as a group; or 100 or more employees as a group. If it meets two of those criteria, it is a big business. I think that would have struck a better balance than lumping all retail tenancies into the same pool, especially when it comes to those retail tenants that are dealing with small ma-and-pa landlords when the imbalance is clearly tilted in favour of the tenant.

The other issue that I have been able to identify as causing concern in the short period I have had this legislation is the way the mandatory code of conduct will operate or interoperate, if you like, with this legislation. I note that the legislation itself does not list which code of conduct will apply.

Mr J.R. Quigley: The one that is passed by the Legislative Council.

Mr P.A. KATSAMBANIS: It allows for a code of conduct to be prescribed by regulation, not one that is passed by the Legislative Council at all.

Mr J.R. Quigley: It can be disallowed by the Legislative Council.

Mr P.A. KATSAMBANIS: It can be disallowed but the bill does not give the Legislative Council the power to pass a code of conduct. At best, it will look at it to disallow it. We know that a National Cabinet Mandatory Code of conduct is floating around. The second line of the code's title is "SME Commercial Leasing Principles During COVID-19". I presume SME means "small and medium-sized enterprise". The code really sets out principles. That is what they are. They are not provisions; they are certainly not legislative provisions. We know how hard it is to convert principles into legislation because as legislators, that is what we do. Will this code of conduct be the kind of code of conduct that is adopted? We do not know. Industry does not know. Will it be a different type of code of conduct? Will it be one that is created solely by the state government? Will it be a code of conduct that will apply nationally? The minister shakes his head and says no. That is already providing a little more clarity.

Mr J.R. Quigley interjected.

Mr P.A. KATSAMBANIS: Which code of conduct will be adopted? It will be one that will be drafted by someone at some time. I think landlords and tenants would like to know what that code of conduct will look like.

Mr J.R. Quigley interjected.

Mr P.A. KATSAMBANIS: How?

Mr J.R. Quigley: Just look at the SME. We're not adopting that; we're going to do our own. There it is, in the SME.

Mr P.A. KATSAMBANIS: That does not make any sense whatsoever.

Mr J.R. Quigley: Why?

Mr P.A. KATSAMBANIS: The minister is telling me I am looking at a document that we will not adopt, but there it is in that document.

Mr J.R. Quigley: We're going to write a document that will reflect that SME.

Mr P.A. KATSAMBANIS: Will it be word for word what is in here?

Mr J.R. Quigley: We're not going to adopt it. Standing order 126 of the Assembly would require that go to the Standing Committee on Uniform Legislation and Statutes Review. We'll do our own, but it will be like that. We have to get this through.

Mr P.A. KATSAMBANIS: It will be the Western Australian version of the national cabinet mandatory code of conduct?

Mr J.R. Quigley: Correct.

Mr P.A. KATSAMBANIS: That will be the technical mechanism utilised to avoid the legislation going to the uniform legislation committee in the other place?

Mr J.R. Quigley: It doesn't have to, if it is not uniform legislation.

Mr P.A. KATSAMBANIS: Correct.

Mr J.R. Quigley: Otherwise we would never get this through.

Mr P.A. KATSAMBANIS: This is the issue. We will not be picking up this code and adopting it. Believe me, and I think the minister knows already, there are a lot of question marks around how this code will operate in practice. I think the code gives a grand total of one example of how it might operate in practice.

Mr J.R. Quigley: Can I interrupt for a moment?

Mr P.A. KATSAMBANIS: Sure, if it could be helpful.

Mr J.R. Quigley: At national cabinet, these principles were laid out by the Prime Minister after discussion with the Australian Retailers Association and shopping centres, and left to the states to implement. A national code was not legislated for us to adopt. It said, "We've spoken to all the centres. Here's your principles of the SME. States, go away and do it." As a sovereign state, we're going away to do it; we're not adopting anyone else's.

Mr P.A. KATSAMBANIS: We are in heated agreement. It is now left to the states to legislate this. How much will it be like this national cabinet mandatory code of conduct, which, as I keep saying, is not a Sermon on the Mount delivered by the Prime Minister. As I understand it, national cabinet agreed that Western Australia and New South Wales go away and turn their minds to these things.

Mr J.R. Quigley: Can I just tell you that? I went away and turned my mind to these things, we got it all ready then New South Wales Treasury at the last moment said, "Nada! Go back to square one and start again." I went

back to square one and started again, then I looked at my television and a new announcement was made by the Prime Minister, which I am trying to keep up to in drafting all the time. Last Tuesday week, as I said before, was the last pronouncement. Then I got working. As far as the code of conduct goes, we have not drafted that yet, but I promise you it's going to be reflective of the national position.

Mr P.A. KATSAMBANIS: I am not criticising the minister, in fact he has been a participant in the process and he has been working in good faith, but it highlights the concern out there of stakeholders, tenants and landlords and their representatives, that they really do not know what the operative provisions of this bill are going to be because, really, the operative provisions will be what is in the code. This is a skeleton bill for want of a better word. It has got some meat to it, it is not totally a skeleton.

Mr J.R. Quigley: Faced with these problems, what the New South Wales government did with residential tenancies, not commercial tenancies, was pass a very small bill which conferred a head of power on the executive to do it all by regulation. When the Liberal government of New South Wales activated the Prime Minister's wishes, it created a head of power and then the minister will subsequently do it all by regulation. We're not going there; we're trying to put it all here.

Mr P.A. KATSAMBANIS: Perhaps that is not a good way of doing things. As a legislator, as someone who believes in the parliamentary process, I do not think that is a good way of doing things, but perhaps in this particular instance, that state government may be more nimble and flexible in dealing with some of those other issues I highlighted before, such as the potential carve out of small landlords, or potential ring-fencing of which retail tenants this will apply to, to carve out the big ones. Maybe they can be more nimble in this case. I am not arguing that that is the right way to go whatsoever.

Mr J.R. Quigley: Through the Chair —

Mr P.A. KATSAMBANIS: You can do this in summing up.

Mr J.R. Quigley: The point I was trying to make was, its Parliament passed it without the regulations. The executive was going to make those regulations up.

Mr P.A. KATSAMBANIS: I understand that.

Mr J.R. Quigley: We are giving members the whole structure, and we are presenting to all members what the Prime Minister's SME is, and we will follow that.

The SPEAKER: Members, can I just say something? This is not a discussion between you and the minister. We are trying to get a bill through. You have an opportunity to make your speech. The minister will make a reply, otherwise we will be here all night just on different people's ideologies.

Mr P.A. KATSAMBANIS: Thank you, Mr Speaker.

The SPEAKER: My pleasure.

Mr P.A. KATSAMBANIS: The exchanges have perhaps gone on too long, but they have been useful to highlight these shifting sands we are working in.

We are asking real people out there in the real economy and society to do things that even this minister, who is involved in the process, really does not know where it is going to land yet. What comfort can we give those people out there in their time of need, both tenants and landlords? I know the majority want to do the right thing, but there are serious gaps here. In the minutes we have had to look at this, we have already identified that there is a bit of conjecture about what the code will actually look like, perhaps not because of the minister's failing—this code might change tomorrow for all we know. That is what the minister just told us. He wakes up in the morning and finds out something new. He might find out something new tomorrow or the next day, we do not know that. Certainly, the people who want to use this legislation to their benefit do not know that. Then there are other issues about power imbalances. These provisions seem to be calibrated on the basis that all landlords are powerful and all tenants are not. In the vast majority of cases that is the case, but not always. In fact, when it comes to small landlords and small businesses, the power is about the same. They both need advisers to help them. They are not experts; they do not have big legal departments. A small landlord does not have a big legal department, and small business does not have a big legal department. They rely on their advisers, they get together and they usually work things out.

This is a tough period. We want to provide assistance but we do not want to create more uncertainly and we do not want that assistance to create a new category of losers, be they tenants or landlords. The starting point to that does not happen in this legislation. This legislation can be made better, but the starting point for providing better assistance in a time of crisis and need, to both landlords and tenants, is for this government to recognise that it cannot continue to levy taxes, rates and charges on landlords and small business at the same level it has been prior to the start of this emergency. It needs to put its money where its mouth is. I recognise that is not in this minister's hands to do that. Yes, this is a skeletal bill, that will then be given some backup by a code that can be disallowed

in the other place. We recognise that. But we know tenants are doing it tough. We also know landlords are doing it tough, because some tenants have stopped paying rent, most of them because they cannot afford to pay the rent, which is understandable. Do not add to their problems. Do not add to the hurt by sending out land tax assessments as though nothing is going on. Do not send out water rates and charges as though nothing is going on. Bring local government to the table and come to an agreement so that every local government authority is not scurrying around trying to see what they can do. Come to an agreement that will apply across the state. That is what leadership is in a time of crisis. This requires leadership as much as it requires legislation. Yes, I agree that it requires legislation and that a code of conduct is good, but I am concerned that the principles in the code of conduct are not really fleshed out. They will need to be fleshed out through the conciliation and arbitration processes and perhaps even, unfortunately, in court processes, but the real leadership in this space should have already happened and it should have happened at the level of the Premier and the Treasurer. They should have stepped up and told commercial tenants, retail tenants, small business and small business landlords that they are doing it tough and that the government will be giving them some practical assistance. Unfortunately, we have not seen that. That really is a shame. Even at this late stage the government should be stepping up and giving those people some comfort. I can tell members that very few small business people outside the little sectors of the economy that have already been protected are sleeping well at night. Very few landlords of small business people are sleeping well at night.

Mr J.R. Quigley: The Attorney General is not sleeping well at night!

Mr P.A. KATSAMBANIS: Perhaps, but we will not get into that because we might open up a can of worms that will be ruled totally out of order.

Those people are not sleeping well at night. They are seeking comfort, but so far all they are hearing is crickets. It is not good enough.

DR D.J. HONEY (Cottesloe) [7.41 pm]: I rise to make a brief contribution to the Commercial Tenancies (COVID-19 Response) Bill 2020. I do not wish to extend this debate any longer than needs be. The shadow Attorney General has covered the topic quite well but I want to cover a few points.

Mr P.A. Katsambanis interjected.

The SPEAKER: Listen, you are talking even when you are sitting down. I know it is hard for you to stop, but just let the member for Cottesloe speak.

Dr D.J. HONEY: Thank you for your protection, Mr Speaker, from my own!

I certainly understand the motivation for the bill. In fact, the level of hardship, particularly for smaller enterprises is quite frightening. In fact, I was surprised the other day when I was walking down Bay View Terrace, Claremont, to see that a large number of shops are in fact empty. As many members would know, there were problems before this crisis—many small businesses were suffering a great deal of hardship, but that has now dramatically accelerated. Some businesses related to the mining industry, particularly in gold mining, iron ore and the like, are in fact doing extremely well and are not suffering hardship, but many businesses, especially those involved in normal retail, are suffering hardship. There has been a tremendous impact on them, so I definitely understand the motivation behind and the need for this bill, and I am keen to support its progress through Parliament.

However, as with the Residential Tenancies (COVID-19 Response) Bill 2020, there are a number of issues with this bill. As the member for Hillarys pointed out, there will be overall benefits to society in promulgating this bill. In particular, we want business to recover quickly at the end of this process. If tenants are evicted and are unable to maintain their premises and equipment on premises, the recovery from the economic crisis that goes with this COVID-19 crisis will be drawn out and slower than it otherwise would need to be. There is definitely a substantial overall social benefit for businesses to sustain themselves and to sustain the occupation of premises during the height of this crisis. In a similar vein to the residential tenancies amendment legislation, the burden will fall upon a few. As pointed out, in some cases those few are people or organisations with deep pockets, but many of them are small investors. We know that the residential property market has been depressed and flat for some years now and that has seen a number of smaller investors moving into the commercial market. Until relatively recently the commercial market was buoyant. That may not have been the case perhaps in shopping malls and shopping strips, but in industrial areas and the commercial sector, particularly in relation to servicing the mining industry, it was quite buoyant. A lot of smaller investors who would otherwise have invested in the residential area have been attracted to commercial areas. As pointed out, there are some major tenants who occupy premises owned by small individual investors and not by large commercial operations. Again, I can see that this bill will have an overall social benefit. I certainly champion and recognise there will be a need to support those businesses going forward, especially as the economy begins to recover and restart, but the burden will fall on a relatively few individuals, many of whom do not have deep pockets. It is a hackneyed phrase, but many of them are typically mum-and-dad investors. There will be people who will seek to take advantage of this legislation for their own purposes. I have an example of that in my own

electorate. I know one business, which I will not describe, that has not been affected by COVID-19—in fact, it has benefited substantially from COVID-19. It is a health-related business and it has told its small landlord—a landlord who has only a small investment in one particular property—that under this legislation it will break its lease so that the business can find better premises at a lower rent. Otherwise they have not been impacted by this crisis.

I have heard the Attorney General's assurances and have had a very brief look at the code of conduct. As the member for Hillarys pointed out, I am also concerned about literally seeing a bill only when the second reading speech is being presented. It contains a reference to a code of conduct, but we have simply not had time to review it properly to make sure that it will cover everything. I have only briefly read the code of conduct, but I accept the Attorney General's assurances that the Western Australian code of conduct ensures that good faith principles, as they are described, will apply and that the people who seek relief are genuinely people under COVID-19-related financial distress.

As I said before, I do not wish to extend this debate greatly, but as I said in more detail in debate on the previous legislation, we will need to see urgent relief for businesses that bear the burden of relief for tenants. I think about the buildings in Bay View Terrace and the other small shopping strips and malls around the place. Those businesses are still subject to water rates, power connection bills, land tax bills and, in Perth, they are subject to the parking levy and many have quite substantial council rates to pay as well, but they have no income. This financial distress will go well past the tenants. This crisis is obviously very dramatic for people who have lost their businesses, but the owners of those tenancies also carry an enormous and ongoing financial burden that they have no control over. I strongly urge the government to very rapidly and very seriously consider relief in those areas. I appreciate that the minister is doing his bit. He is lifting his substantial part of the load here to try to make things better, but I urge the Premier and the Treasurer to also take up that load and take a serious look at relief on those fixed charges. Again, it would be very straightforward to apply that good faith test—that is, that relief is provided for landlords who are providing relief to tenants. We know some businesses are doing very well.

The SPEAKER: Member for Balcatta!

Dr D.J. HONEY: We know some businesses are doing extremely well. I can say that the supermarkets in my area are doing extremely well. It clearly would not be appropriate for businesses doing well to be renegotiating tenancy agreements, but when businesses not doing well are provided relief—I think it goes further than providing relief, because many of those landlords have already lost their tenants due to COVID-19—I strongly urge the government to consider very urgently providing relief for fixed charges such as water charges and power charges, land tax and parking levies. I also encourage the Minister for Local Government to work very closely with local governments to see where they can provide rate relief to those businesses as well, so as we come out of this crisis—like everyone, I know this is not going to be a sudden ray of sunshine and it is likely to be a gradual climb—not only are tenants in better shape to prosper, but also landlords, and in particular that smaller landlords, if you like, or investors are in a good position to recover themselves.

MR P.J. RUNDLE (Roe) [7.51 pm]: I rise to support the Commercial Tenancies (COVID-19 Response) Bill 2020 on behalf of the Nationals WA. As I pointed out earlier, I understand that everyone is working under the tight time frames of the response to COVID-19, but once again I would like to point out that we only received a partially drafted bill and explanatory memorandum just 20 minutes prior to yesterday's briefing. I also want to point out that half of our regional members are not able to be here in the chamber. The likes of the member for North West Central, the member for Warren–Blackwood and the member for Geraldton were most concerned because they are getting a lot of information feeding into them and their offices about the plight of our small businesses and landlords in the regions. I want to point out their frustration about the fact that they are unable to be here to contribute. As I said, the Nationals WA will support the bill; however, I have many questions, once again, for the minister, which I hope he will answer in his reply to the second reading debate.

Mr J.R. Quigley: There was a time when I could charge for answers!

Mr P.J. RUNDLE: That is right!

When we do not have enough time to prepare, we can speak for only so long and then the rest of it is questions. As far as I am concerned, we have a real variation of landlords in the regions. They range from mums and dads with superannuation funds, and a lot of the time that is their only source of income, to the larger corporate landlords. In a lot of ways this bill is finding a balance, because sometimes we are trying to balance between the small business and corporate landlord and sometimes it is the big business and the smaller landlord. It is quite a challenge. I understand what the minister said about the changing environment he has been working in and the short time frame he has had. I have done my best to consult with as many landlords and tenants in that range as I can in my electorate of Roe and also here in Parliament over the last couple of days.

My first question to the minister and the Treasurer is: Where is the support package? Where is the package that is being provided by the other states? In debate on the legislation, the minister said that he was just the minister writing

the legislation, not the Treasurer. I would have thought that the minister would have been talking to the Treasurer and the Premier. When the question was asked today about where the support package of the state government was, the Premier gave us nothing. The silence is deafening. Our small businesses out there are waiting for something to come from the government and it is not appearing. Our small businesses, our tenants and our small landlords are all waiting for something. As I pointed out in debate on the previous bill, last week New South Wales Treasurer Dominic Perrottet announced a $440 million package for commercial and residential landlords and tenants—land tax waivers and rebates to pass on from landlords to tenants. In Queensland there is a $400 million land tax relief package. Victoria has a $500 million package for rent relief and mediation support for commercial and residential landlords and tenants, plus land tax relief. Even Tasmania and the Northern Territory have come to the fore, but there is nothing from this state government. I am waiting with bated breath.

My next question is about the state government's code of conduct that we have been hearing about. The minister has been referring to the National Cabinet Mandatory Code of Conduct, and the member for Hillarys gave us a pretty good run in his speech. I think it is really important that we get clarity, because as legislators, we are trying to legislate for something that does not even exist. In the briefing we were told that there was going to be a state government code of conduct developed over the next few weeks. I am looking forward to the minister going on record to confirm that state government code of conduct, which we have not seen and do not even know exists. The National Cabinet Mandatory Code of Conduct states —

> The purpose of … ("the Code") is to impose a set of good faith leasing principles for application to commercial tenancies (including retail, office and industrial) between owners/operators/other landlords and tenants, where the tenant is an eligible business for the purpose of the Commonwealth Government's JobKeeper programme.

As we know, the code applies to all tenancies that are suffering financial stress as a result of COVID-19, as defined by the JobKeeper program when an annual turnover is up to $50 million. Further, the code states —

> The objective of the Code is to share, in a proportionate, measured manner, the financial risk and cashflow impact during the COVID-19 period, whilst seeking to appropriately balance the interests of tenants and landlords.

That is the code that I think all our businesses, landlords and tenants out there are working on. That is the code, and that is why it is so important that the minister goes on record and tells us what the state government code will look like. Will it be a direct template of the national mandatory code? How will it work? In the spirit of the national code, landlords and tenants need to work together and communicate well, discuss those relevant issues and leases, and negotiate in good faith. Certainly, I want to take up the point of the member for Hillarys when he spoke about the likes of Premier Investments and Hungry Jack's. We do not want large tenants or landlords to use their market power to put pressure on smaller landlords and tenants who may not have the same negotiating power. The only slight variation from the member for Hillarys' point of view is that my understanding is that a couple of companies of that size may not be eligible as they do not fit into the JobKeeper scenario because their annual turnover is well over $50 million.

Mr P.A. Katsambanis: But we don't know whether that will be included in the code.

Mr P.J. RUNDLE: That is exactly right. That is why we are waiting for the minister to tell us all about the code. It is very important that that is clarified for us.

In my consultations, I have talked to an individual who deals with nearly 70 commercial leases in WA with successful independent small business tenants that are now 100 per cent closed. He is worried that many landlords are misinterpreting the intent of the scheme for businesses that have had to shut their doors due to COVID-19 and 100 per cent cease their trading activity. I refer to the Prime Minister's speech of 3 April. I will quote from a paragraph that I think explains the core principles that both landlords and tenants need to meet. It states —

> What is important as part of this code is that both parties negotiate in good faith, that there is a proportionality principle that needs to be in this code. And that proportionality principle is simply this, that the turnover reduction of the tenant needs to be reflected in the rental waiver of the landlord. Now, how that is done inside the lease is up to the landlord and the tenant. There are many different ways you can achieve this. If, for example, there was a 3 or 6 month rental waiver because a lessee, a tenant would have had to close their doors and there's just simply no money coming in. Then one way to achieve that is to extend the overall lease by 6 months on the other side, if they're going to give a rental waiver. Similarly, they could agree to a different level of rent over the entire term of the lease. And that was shared over a longer period of time.

In the context of the Prime Minister's speech, that shows that we need good faith principles. We need people to work together and not abuse market power, which I think we are now seeing come to the fore. It is quite a concerning attitude. I would say that the turnover of some of the fast-food and drive-through take-away businesses is almost increasing. For them to use their market power to try to manipulate their landlord is a very disappointing aspect

that we have seen coming through in the last week or two. Quite often, large tenants are taking advantage of small landlords. That is the other side of it; large landlords and large tenants are using their market power. Sometimes large landlords cite legal advice and try to assert their authority over small business owners with their interpretation of the code. That is another concern for us. Hopefully, when the minister enlightens us about the state mandatory code, we will be able to get a better understanding of that.

The other point that the Prime Minister mentioned was proportionality. That is really important. A lot of our small businesses basically have no ability to pay any economic rent. Some of the landlords have interpreted the code to their advantage by saying that their understanding is that, regardless, the tenant has to pay 50 per cent of the rent. In fact, quite often the tenant has closed their business and lost 100 per cent of their income, so 100 per cent of nothing is nothing. It is very important that the landlords are not able to take advantage at this time. This is where they need to talk about waivers, rental extensions et cetera. Extending leases is an important part of the solution. It gives the tenant more time to pay their economic rent and it ensures that the landlord eventually gets all their money. As I said earlier, we wait with bated breath for the state government to bring in its land tax relief package. I do not know whether it is waiting, as it has appeared to do on quite a few other occasions, for the federal government to come in on the white horse, save its bacon and come through the ranks. On this occasion, it is absolutely essential that the state government steps up. It has the ability to pass on land tax relief. Local governments have the ability to help out with council rates, although they are also under extreme pressure. Of course, the Water Corporation has the ability to help out with water rates. To me, it is a combination. One of my constituents pointed out that if an asset is not producing any income or rent, it cannot be paying rates and land tax, and banks and governments cannot still feed from those troughs that are empty due to COVID-19. That is exactly right. There will be nothing left there. They cannot be expected to deal with those issues without assistance from our state government, our local governments and the Water Corporation.

I want to talk a little about landlords. I have been talking to Sandra Brewer from the Property Council of Australia, and she raised some good points. One is that we need to consider the mum-and-dad landlords for whom this income is quite often the only way to cover their living expenses. That is a really important point. I think the code should be tailored to WA and look at corporate landlords with turnovers of up to $50 million. She pointed out that many landlords are dealing with properties with turnovers of well under $5 million. I think the member for Hillarys was talking about smaller leases and the definition. We are still trying to come to grips with what is a smaller corporate lease and what is the definition of a smaller business. Hopefully, the minister will clarify that for us. As Sandra Brewer pointed out, quite often we are dealing with a tenant with a turnover of $49 million versus potentially a landlord with a property worth $2 million. Landlords have to be thought about in a different context from likes of those in Sydney and Melbourne, which have been in a better state of affairs over the last four or five years. That is an important point.

Another point that was raised is that there is potential to look at the shopping strip model. A shopping strip may have one landholder and a large supermarket that is doing well, while at the same time the fashion outlet and hairdressing salon have had to close. This is where land tax relief from the state government could be passed on to those smaller businesses rather than the supermarket.

[Member's time extended.]

Mr P.J. RUNDLE: The Property Council of Australia raised good points. As far as dispute resolution and forms of mediation are concerned, if the Small Business Commissioner cannot sort out an issue, he will pass it on to the State Administrative Tribunal with a certificate. My question to the minister is: how long will that process take? We do not want disputes between tenants and landlords to be drawn out for years on end sorting out the issues. What is the minister's interpretation of the time frame for these processes? How many extra resources is the minister putting into the Small Business Commissioner and the State Administrative Tribunal? Will we have a separate tribunal to deal with what I imagine will be a lot of disputes coming forth? What are the minister's plans about extra resourcing? He spoke earlier on a previous bill about the Department of Sport and Recreation and the arts community —

Mr J.R. Quigley: They were mediators.

Mr P.J. RUNDLE: That is right. What is the minister doing to bring in extra resources for this circumstance? Obviously, we need people with the right qualities and abilities to mediate and take it to the next level. On behalf of some of our other regional members, I will ask a couple of questions they had. What will the arrangement be when the state of emergency is lifted, hopefully in six months?

Mr J.R. Quigley: We all hope the market goes zoom zoom.

Mr P.J. RUNDLE: That is what we hope, but my question is about what the arrangement will be if that does not take place. Will it continue as is? What is the minister's interpretation of that?

Mr J.R. Quigley: The Prime Minister said that he has only six months' funding. What happens if this is not somehow cleared in six months? We will all move into a black hole.

Mr P.J. RUNDLE: Let us hope not. What about rent that has been paid in advance for a business that requires the business owner to cross regions but they may not be able to cross regions due to medical reasons or the like and they are concerned about their health? Will they be able to negotiate with their landlord on that? Will the minister give an assurance that the state government —

Mr J.R. Quigley: As tenants or landlords?

Mr P.J. RUNDLE: As a tenant. Will the minister give us an assurance that the state government will not try to take advantage of the system?

Mr J.R. Quigley: The state government will be a model landlord and model tenant. We have an obligation to set an example to the community.

Mr P.J. RUNDLE: I look forward to the minister's leadership on that.

I would like to raise a couple of points that some of our other members have made. One concerns our metropolitan tenants who are getting charged $1 200 per calendar month for commercial parking in the CBD. That money is being channelled into a bank account that is supposedly for the free CAT buses around the CBD. In that account at the moment is $129 million, according to my sources. That sort of money from the Perth parking levy, combined with land tax relief from the state government, could make a real difference to our tenants in the central business district and areas close to the CBD. Land tax applies to the likes of our many businesses in Kalgoorlie, Bunbury, Albany, Geraldton and so on. Land tax is a real issue for our regional members and constituents, and the state government can do something about that in this time of COVID-19.

In closing, I am very much worried about our tourism businesses up and down and throughout the state and in regions such as Exmouth, Broome, Carnarvon, Jurien Bay, Margaret River, Denmark and Albany, and many other places. I worry for our cafes and hospitality businesses in the metropolitan area and in the regions in particular throughout the state. We have enough empty shopfronts in our regional towns and we do not need any more.

DR M.D. NAHAN (Riverton) [8.15 pm]: I will be very quick. I will reiterate what everyone has said and provide feedback from constituents. I have seen this coming for some time. There has been a tendency over the past 20 years for large businesses to get out of owning bricks and mortar by selling outlets to small-time or medium-sized investors. Therefore, the in-built assumption is that the landlord is the big one and the tenant is the weaker. It is not always accurate to say that that is the imbalance. A constituent has been calling me all day. She had a childcare business that she understands fully because she ran the centres but she sold them to a large consortium that demanded in the last week a large 50 per cent reduction in rent. She still owns two of them. I am not sure whether it is a listed firm. She told me that it is owned by overseas interests, but that is neither here nor there. It is a large operation. She fitted out the buildings specifically to meet the needs of the franchisee. Therefore, there is very little alternative use for the buildings. She is retired but ran a childcare business for 30 years. She is wondering what she should do and has asked me for advice on what will be in the code of conduct. Without criticising the government—we are trying to work that out for ourselves—as the minister said, this is a moving feast and it is not going in just one direction; it is meandering. This highlights two things: first, we need clarity in the Western Australian code of conduct, and, second, the imbalance in the landlord–tenant relationship is not always that which is imagined.

Mr J.R. Quigley: Are you talking about the balance between the two?

Dr M.D. NAHAN: Yes. The balance of power does not always rest with the landlord. The member for Hillarys raised very articulately that the way to deal with it is through the adjudication and mediation process. I am not a lawyer but perhaps various clauses are needed that a mediator and Small Business Commissioner can look at and make a judgement about the balance of power. It will be complex because sometimes these are very large operations, such as Hungry Jack's, and sometimes the lease for the small landowner is with a large corporation and sometimes it is not. It is a complex arrangement that the Small Business Commissioner has the power and capabilities to go through. We need the mediation process to look at it and the code of conduct has to be fleshed out more than the one that exists. In our briefing, the adviser told us that the government is not totally satisfied with the code of conduct it has received and will work on it. I look forward to that and I understand the difficulty the government has in coming up with something in a timely manner because it has to get this bill through.

There was an understanding, in my view, as enunciated by the Prime Minister, among the national cabinet that a number of things will come together simultaneously. The first is the code of conduct to back up the laws that we are dealing with here, and the government has been working on it. There was also an understanding that states and territories would give assistance with charges to facilitate the implementation of the code of conduct and these laws. Indeed, quotes can be found from the Prime Minister who, when enunciating the code of conduct, stated that

he expected that the states would be working on help, specifically through land tax, to facilitate these changes. In fact, he indicated that New South Wales and Western Australia would be leading the process. The minister indicated that they were, but New South Wales changed direction completely. That is how these things work sometimes. Maybe the national cabinet is no different from the Council of Australian Governments, but that is a different issue. I would like to point out what other states have done. This is important because the glaring missing thing in this is a reaction from the state government. It is doing the right thing in terms of getting this legislation together in as sensible and clear a manner as possible, but it is missing out on carrying some of the can.

Land tax is as onerous for businesses as rent. I might add that local government rates can be very onerous, too. There is a large amount of variability in the way that landlords charge. Some landlords charge just rent, and some charge rent, land tax and local government rates to pass those costs down. It varies quite a bit, but these costs are significant. Land tax is based on the assessment of the rental value of the property. We are dealing with situations in which the rental value of the property has been severely impacted by the worldwide COVID-19 pandemic, which is leading to a reduction in rental values. Should that not change? If the rental values of the properties were instantaneously adjusted by the land tax office, it would flow through, but they are not. They are based on assessments from last year or, in some cases, 2018. Therefore, the capacity of those properties to pay land tax will be severely overestimated. In fact, that has been the case for some time.

Yesterday, Victoria implemented an immediate 25 per cent discount on land tax and said that any land tax owed would be deferred to 21 March. It discounted all land tax payments due during this six-month period and deferred land tax for the remainder of the year to March 2021 under the proviso that the landlord receiving the discount will pass on in full those discounts to the tenant. It also gave some rent assistance. Next Thursday, it is going to put to Parliament that land tax reduction bill, together with bills that are similar to those we are dealing with conjointly. It is informing the parties—landlords and tenants—who will have to deal with our legislation and Victoria's mirror legislation that there is also grease in the game in the form of reduced land tax.

Queensland has done something similar, but a little different. All the states are doing something similar. It has a $400 million package for a three-month rebate of land tax paid in the last quarter of 2019–20—from March to June. Those land tax payments were rebated to the owner of the property. Payments for the next three months—that is, I assume, July through September—have been deferred to next year. That was under the proviso that it would all be passed on in full to the tenants. What was done in New South Wales was almost identical to what was done in Victoria—that is, a 25 per cent reduction in land tax for both residential and commercial. It was limited, and I think this was an important factor, to businesses with a turnover smaller than $50 million. It was embedded in the code of conduct. It took the principles from the code of conduct and cut-offs and embedded land tax reductions into them.

South Australia did something significantly different. It basically deferred the last three-quarters of land tax payments for 2019–20 for landowners. It also did something unique. In land tax there is an accumulation cost; that is, if a landowner owns multiple pieces of land, they are aggregated for tax purposes. For landowners, that more than triples the total cost of land tax. South Australia has done away with the accumulation tax part of land tax. The Australian Capital Territory has given a reduction in both its rates, as it is also a city, and land tax, which, as a territory it also levies. Admittedly, the largest landowner is the commonwealth government, which does not pay anything. That is a problem for it. It also gave a substantial $1 300 per quarter reduction in land tax for firms that passed it on in full to tenants.

I think the missing link here is action from the government. The McGowan government has repeatedly indicated, without any detail, that it is considering something. The Premier was quite careful today. I suspect that he is considering something. My criticism is that this is the time to have announced it—that is, when we are passing this legislation through this Parliament. It is an absolutely essential part of the reform package so that land tax dispensation can be considered in the negotiation process between tenants and landlords. It is absolutely essential that that is done. When we were debating the Residential Tenancies (COVID-19 Response) Bill 2020, I mentioned that local governments should come to the party, but that is for them. The state could take a leadership role in that, but I understand why it is up to the local governments. I believe strongly in local government action and being more responsible for their own fiscal actions than they are now. Nonetheless, the McGowan government has done a good job, but it needs to come to the party on land tax soon and communicate the details, the magnitude and when it will be paid. All the other states have done this, although they have done it slightly differently. But this is what was required. When the national cabinet agreed to a code of conduct to give rent assistance to tenants suffering under COVID-19, it assumed that there would be a reduction to land tax, but it has not come, and it needs to.

I am sure its financial position has deteriorated since we last saw details of it, although iron ore prices are holding up. The government has made clear that it had a budget surplus. The Premier has repeatedly indicated that he has put the finances back in order. He can afford this because he needs it. I might add that land tax will be paid not on

the value of today's evaluations of property, but on those of 2018, which are hugely different. I raise these points to encourage, and, indeed, to plead for, the government to bring forward as soon as possible a package of land tax relief built in tandem with the bills that we are dealing with now to facilitate negotiations between landlords and tenants to respond to COVID-19 in a coherent manner. It is essential that we do that. Otherwise, I wish the government well with this bill. Most of the other issues I wanted to deal with have been dealt with by somebody else. Therefore, I will not waste the Parliament's time.

MS L. METTAM (Vasse) [8.29 pm]: I also rise to speak in support of the Commercial Tenancies (COVID-19 Response) Bill 2020. I join with others in the opposition who support this bill in good faith because the bill relies on a code of conduct of that, at this point in time, we have very limited understanding of and there is yet to be some detail of what that code of conduct will include.

From a local perspective, and like many other electorates across the state, our small businesses are struggling at this point in particular, but they have an understanding of what is being achieved by both the state and federal governments. We have seen, across the board, a great amount of very positive, bipartisan support between the government and the opposition, and at a federal level. The way in which small businesses have accepted the situation has been commendable. This is an extraordinary circumstance in which they have been required to, effectively, shut down their business operations. No more has that been extraordinary than in the electorate of Vasse where there was a lot of community support for an interstate travel ban during what would have been one of the more lucrative periods for business in the region. Even at a time when we are facing a health crisis, there was great opportunity for small businesses in the Vasse region to effectively benefit through accommodation, retail and trade, but there was an overwhelming understanding of the COVID-19 pandemic measures required for the best interests of public health in the state. We in opposition stood with the government in supporting the important measures that have been put in place, and small businesses certainly jumped on board in support of that.

As I have stated, small businesses have taken a significant hit. I have spoken to many small businesses in the region and have liaised with some of the many organisations that provide valuable support to our small businesses, such as the Chamber of Commerce and Industry and the Small Business Advisory Group of the south west, which, as I understand, also provides a service in Peel. One of the many issues that has come up, and that it has been advising on, is the issue facing commercial tenants. There has been a lot of appetite for and a lot of interest in what this bill will represent. There is a lot of interest in the extent to which it will mimic the national code of conduct and, in particular, whether there will be something similar to the JobKeeper requirement. There is certainly a great appetite to see the code of conduct, which will be put into the regulations, and that is something we will support in good faith.

There is an obvious interest in ensuring that some sort of means-testing is attached to the code of conduct and the eligibility for engagement through a mediation process between a landlord and tenant. But, in relation to that, an issue that has been raised with me—what has been asked of me to ask—is the timeliness of a tenant being able to negotiate with a landlord, depending on the way businesses are structured. Assuming that the code of conduct will reflect the national code of conduct and that there will be a JobKeeper requirement, the timing of the eligibility may be an issue for businesses that provide only quarterly business activity statements and are not yet eligible for JobKeeper. For a business that has been hit with a significant loss to its turnover, but that turnover loss has not yet been realised simply because of the way it does it statements and the fact that its statements are quarterly, will that delay a process of negotiation and eligibility for this scheme?

The timing of being able to engage in a mediation process is very important. We know that that is why the bill being proposed is important; it is so much more important for businesses to stay afloat than fold because it is so difficult to get back up and start again. We all recognise that businesses are important employers and trainers, and are the lifeblood of our communities. We have seen a significant upset to cash flows across businesses all around the state. I pointed to whether there will be that JobKeeper requirement. In the Vasse electorate, a lot of the businesses are related to tourism, but some of those tourism businesses and those in the hospitality sector are not actually eligible for the JobKeeper payment because of their business structure and the seasonal nature of the businesses. Therefore, I am very keen to understand the thoughts around the eligibility criteria and what the state code of conduct will entail.

The feedback from the advisory group and overwhelmingly from tenants who have spoken to me is that the tenants are hopeful that the code will be very easy to understand, that they will not require legal advice and that it will be digestible. I have spoken to many tenants in my electorate who are very hopeful that the information will be digestible, and not overly complex, so that they are in a good position to undertake a dispute resolution process.

I have spoken about tenants, but, as the member for Riverton pointed out, landlords are doing it tough as well, and we do appreciate that that is across the board. Landlords, very much in good faith, need this support, and the more the code of conduct can provide some guidelines, the greater the level of guidance will be of assistance to landlords and tenants.

Some feedback that I had from one landlord—she looked at the national code—stated that the proposed code at a national level requires that negotiations must be carried out in good faith by both parties, and the request was then that it needs to be finalised with guidelines for proof to be provided of the financial impact on the tenant's business.

The member for Roe and others talked about utilising the proportionality principle, ensuring that there are discussions in good faith and some understanding that proportionality is attached to the comparison between the loss of revenue a tenant is facing and the proposed rent relief. At the end of the day, we want to ensure that our businesses and the people who invest in property are able to see this extraordinary period through and come out the other side able to grow their businesses. There is so much importance and reliance put on the adjudication and remediation process. We are relying a lot on the good faith of tenants, but it is important that there is fair investment at a state level in how that adjudication process is shaped and what resources are put into it.

I will take the opportunity to highlight the fact that small businesses across the state, including in my region, have already accepted a significant hit in the interests of public health. They have also done some extraordinary things in diversifying their businesses. I understand that about 82 per cent of businesses in the state have changed the way they operate—those that are still in business. I certainly commend our small businesses for the work that they have done.

I commend this bill to the house and look forward to seeing what the state code of conduct entails. Hopefully, we will see the objectives of this bill met and delivered through those regulations that will be put in place shortly.

MR D.C. NALDER (Bateman) [8.41 pm]: I rise to make my contribution to the Commercial Tenancies (COVID-19 Response) Bill 2020. I must say at this hour that I am under a little pressure from the Whip to be brief, and I have promised brevity. I will not repeat points; rather, I will focus on some points that have been raised with me through my constituency.

Mr D.A. Templeman: You have a very sensible Whip!

Mr D.C. NALDER: He is certainly a very sensible Whip.

In fact, out of all the urgent legislation, most calls I have received in my electorate have related to this bill.

Mr J.R. Quigley: From landlords or tenants?

Mr D.C. NALDER: Primarily landlords, but not all lease landlords; in fact, the majority that I have received are from mum-and-dad landlords, not —

Mr J.R. Quigley: Westfield.

Mr D.C. NALDER: Definitely not the Westfields!

There are some concerns. I understand the intent of what is trying to be achieved by the national cabinet and the federal and state governments, but it is really incumbent upon this Parliament to ensure that we strike the right balance. The fear I have is that it is being heavily weighted towards the tenant at the expense of the landlord. I do not think we should start out looking as though we are trying to demonise landlords. I am sure that is not the intent, but we have to ensure that the right balance is in there. There are a lot of good landlords out there. As we know, there are a lot of good tenants, but not necessarily every tenant is an angel. I want to share with members some of the exploitation that is occurring.

I have a question for the Minister for Commerce that can be answered either in his response to the second reading or during consideration in detail. The feedback from my community is that this is really a retail-flavoured code that cannot necessarily be effectively applied to all types of commercial or industrial arrangements. I want to confirm whether this applies only to commercial tenancies such as retail shops or whether this also applies to large industrial tenancies. I have been provided with a few examples.

Mr J.R. Quigley: Can I just say, because it might help you, that it will apply to small businesses under $50 million.

Mr D.C. NALDER: Okay. I will use that and just take it a little further. A few examples of concerns have been provided to me. The eligibility threshold is $50 million. It is commonplace in the industry that the lessee is the subsidiary of a parent company. The parent company may be a massive conglomerate with the capacity, and the subsidiaries may fall under the $50 million threshold. There are concerns that the parent entity may be able to muscle in on some of these arrangements when they are not necessarily deep-pocketed landlords. I will come back to that. That is one of the major concerns that has been put to me with regard to whether this applies.

Another concern is the extension of existing leases. Clause 12 will require landlords to offer tenants extensions on their leases. In the industrial world, some landlords have already committed properties to new tenants. Those are well in advance of the existing lease expiry date, but now there will be an obligation on the landlord to provide an extension to that lease. We are trying to understand how this will apply in those circumstances. Commercial

arrangements have been established and it looks as though they need to be broken by virtue of this code. We want to understand who bears the cost if these agreements are broken by virtue of this code.

Some tenants were in default of their lease agreement due to financial trouble prior to COVID-19. Landlords were working with those tenants, granting them leeway rather than taking the step of terminating the lease. The code looks as though it may prejudice these prior arrangements in favour of the default tenant. How will that apply? If there was already financial trouble that had nothing to do with the coronavirus and steps were put in place and agreements were reached between the parties, would this bill supersede any arrangements that may have been put in place with tenants who were struggling financially before coronavirus came about?

Another concern is to do with lease security. Industrial leases are typically secured by a bank guarantee. The guarantee is capital that has already been allocated by a tenant for this purpose. It is incongruous for government to dictate that this security held by landlords cannot be applied for the purpose it was issued. They are technicalities that some landlords are concerned about—that is, how this may apply particularly when it relates to existing industrial tenancy arrangements.

I worry that some exploitation may be occurring. The rhetoric has changed at both federal and state levels. I have heard the Premier say a couple of times that tenants are still obligated to pay the rent, and that does not go away. It is pretty difficult at this stage to understand exactly how this bill will be applied. Because it is being rushed through, it makes it very difficult from an opposition perspective to adequately scrutinise it. I want to share a couple of examples of organisations that potentially have the capacity to pay rent, and should be paying it, but are flexing some muscle. In some circumstances, the tenants have deeper pockets than the landlords. I have been asked not to mention the name of a particular landlord. A pharmacy franchise is now forcing negotiations around a rent review based on comments that have come out of the national cabinet, yet we understand that pharmacies have been trading very well during this period. It worries me that there can be exploitation. I want to understand how the rhetoric of the Premier will be applied under this legislation on the basis that he said that if people still owe rent, they have got to pay it. There have been instances of companies that may be capable of paying that rent having the capacity. It is not necessarily the case that all the cost should purely be borne by the landlord. I will not mention the name of the pharmacy franchise in this house. I have a copy of a couple of other letters. I will read some excerpts from those letters to demonstrate what is going on. The first one is a letter to a landlord from a company that paid over $400 million for a sub-brand, which is now dictating the new rental arrangements to the landlord for the next six months. It states —

> After extensive and careful consideration, we advise the following arrangements in relation to rents payable from 1 April 2020 to 30 September 2020.
>
> - For the month of April, we will pay rent, including, outgoings and marketing levy, equal to 8% of store turnover.
> - This payment will be made in two stages:
>   - On the 6th working day of April, a small advance will be paid. This advance will be determined by … —

The sub-brand —

> based upon recent trading, the outlook for the month and any government regulations in force. This small payment is intended to recognise your costs and your need for cash flow. It is also intended to provide you with confidence in us and our franchisees.

I am not seeing any negotiation taking place here. I am seeing a company dictating to a landlord that may not have the capacity to demand that the brand fulfil its obligations, which concerns me. I have another letter from another major company that owns two well-known brands. It states —

> With this uncertainty regarding future cash-flow we are proposing the following approach …
>
> - Whilst the stores continue to trade, we will pay the monthly occupancy costs at the rate applicable as at 1 March 2020 … via two payments in arrears; 50% mid-month and 50% at the end of the month.

This is a brand that was considered essential. Another brand was considered not essential. It continues —

> Given the lack of any revenue for these brands from 31st March onwards we are proposing the following approach be implemented;
>
> - 100% rebate of all occupancy costs (including; rent, variable outgoings, rates & taxes, marketing levy) for six (6) months commencing from 1st April 2020. Utility costs incurred will continue to be due.

- If any stores are in a position to open during this period then a percentage rent of 10% will be paid monthly in arears. This payment will cover all occupancy costs excluding utility costs.

These are major brands with sub-brands that are renting off landlords. Again, I am worried about the exploitation of these landlords. The Premier can use all the rhetoric in the world about the intent of the legislation that is before the house, but the devil is in its detail. At this point, it is very difficult for the opposition to scrutinise it. However, the government still remains responsible and accountable for the quality of the legislation and the protections that are put in place for not only the tenants, but equally for the landlords. That is what we are chasing here. We are not opposed to the big measures for tenants. We agree with that principle. Equally, we agree that it is important that appropriate protections for landlords are put in place. I am really worried about mum-and-dad landlords and even larger wealthier landlords that can be exploited by large companies that I believe have the capacity to bear some of the pain but do not appear to be taking it. On the surface, I would say that they are exploiting the opportunity that has been afforded by the commentary that has come from both the federal and state governments. That was another point that I wanted to raise.

In the absence of confirmation from the person who supplied those letters, I will not name the companies. I am pretty sure that the intention of the person who provided the letters to me was to name the companies in the letters. In the absence of a correct response, I will not be naming them this evening.

I turn to the final point that I would like to make about this legislation. We have acknowledged that tenants and other people out there are struggling. They have an inability to meet their rental obligations. We are saying that landlords cannot evict them and they will have to accept the fact that their tenants cannot pay rent. At the same time, the state government still has an expectation that those landlords, who now have to bear that financial pain, will fulfil their land tax obligations. This is the thing that is really missing. We have seen what has occurred in other jurisdictions, where announcements have been made at the same time. How can the government say that a business cannot operate and a landlord cannot receive rental income, but they are still obligated to pay the state government the respective land tax? I think that is a flaw from this government; it is a real deficiency. We call on the government to hurry up and deal with this outstanding land tax issue. These companies, these businesses and these landlords now have businesses that are bringing in zero rent. How can they pay land tax when they cannot even rent out their premises? They cannot find a tenant to pay the rent, yet they are still obligated to pay the state land tax. I think it is embarrassing that the government has not dealt with this. This is a matter of urgency for these landlords. A large amount of stress has been created. The shock of COVID-19 has been borne by all in the community. Through this very legislation, we are putting a greater emphasis and pain on landlords, yet we are not supporting them at the same time. We need to make sure that we are supporting them and ensuring that tenants are not exploiting the opportunity when they should be paying their rent. We should support them on the basis that they are not receiving rent. They should have a holiday on land tax. It has been remiss of the government not to bring this in at this point. We will continue to make this point on behalf of landlords in Western Australia. It is something that the government needs to do and needs to do quickly.

MR Z.R.F. KIRKUP (Dawesville) [8.56 pm]: I, too, rise to speak on the Commercial Tenancies (COVID-19 Response) Bill 2020. In doing so, I would like to continue to commend the member for Hillarys for his exceptional work as we find ourselves once again in an exceptional sitting related to COVID-19. It feels like quite a late sitting, but it is just after nine o'clock. The member for Hillarys continues to do an outstanding job on behalf of the opposition in responding to bills predominantly introduced by the Attorney General, in this case in his capacity as the Minister for Commerce. I found the contribution of the member for Bateman particularly enlightening when he spoke about the opposition's concerns. I think he made a great comment when he said that tenants have issues with landlords in many cases. There are obvious examples in the cases he cited. Those landlords are in a very difficult position as they want to keep their tenants. Everyone wants to make sure that the economy gets through this situation as best as possible. There is clearly some advantageous behaviour going on by tenants who are perhaps seeking to exploit the situation. It is enlightening. For what it is worth, I have had very little response from members of my community about this legislation—some about residential tenancies but not so much commercial tenancies. I suppose it is probably a reflection of my community more broadly compared with the electorate of the member for Bateman.

I will not speak for very long. The reason we are sitting today is the profound impact that COVID-19 has had. We have seen over 136 000 deaths worldwide and more than two million cases have been diagnosed globally. We have seen examples more recently in the United States since the hotspot has moved from Asia and Europe to North America. Today there were more than 4 000 deaths in the United States—a significant death toll. In Australia, whilst we have had 63 deaths, which is very sad, we are very lucky that it is a much smaller number compared with what has occurred internationally. Western Australia has fared very well, due to the leadership of government across the board, which has done a good job of responding. In particular, the very tough measures that have been taken to isolate Australia very early on have been an important part of the contribution. We are very lucky to be in an isolated environment in Western Australia, and leveraging our isolation as best as we possibly can is a good measure.

Virologists remind me that I should not compare COVID-19 to the flu, but during the outbreak of the Spanish flu, Australia had 12 000 deaths, and there were about 50 million deaths globally. Western Australia had 638 deaths. We had a much smaller number because the government decided to isolate Western Australia as much as possible. It is a very real risk though, and COVID-19 presents a very real challenge for government, as we look towards what is next.

This legislation calls on some of the economic concerns we all have and the way that companies are diversifying. The member for Vasse and a number of members in this place mentioned how companies are seeking to diversify themselves in light of COVID-19. The reality is that this will take some time. That is a concern for all of us in this place. The longer that we have to deal with this, the more it will hurt our economy. We know that. We know that it is important to protect people who are in positions in which they could be exploited. Measures have been introduced at national cabinet to make sure that there has been some work on residential tenancies and commercial tenancies. Parliament is of course dealing with that now, as decisions were made at the national cabinet. The longer this goes on, the longer the toll will take on all of us. Personally, at this point in time, I reflect that we are very lucky to have such a committed and outstanding healthcare workforce in Western Australia. They have done an outstanding job in protecting us. That is not only the experts who operate out of public health and in the Department of Health, but also the healthcare workers on the frontline and their families as well, who continue to bear a huge risk. We are very lucky in Western Australia, but it is the nurses, doctors, paramedics, mental health workers and everybody else who make our hospitals run and operate who continue to bear a huge risk in our community. These are risks that they take on a daily basis. I have felt the impact here. Members of Parliament have very social jobs, but the risk that we have is not frontline and day-to-day like it is in hospitals. We are very lucky to have a world-class health system with world-class people in it who have done the very best that they can and will continue to do so, I suspect, for a number of months now, as we come up with an approach to tackle COVID-19. To those men and women, Parliament expresses our thanks for the outstanding contribution that they have made thus far and will continue to do for some time.

The concern I have with the profound impact that COVID has had is on the way it has changed our society already, and the impact it is having on people across our community. People who own small businesses have reached out to me, and they run businesses that we would not usually consider. Owners of service-based businesses, which are very compromised, are in very difficult circumstances. They may not have had a lot of asset or income, but they were operating almost cottage industries, very small operations, and they are significantly affected. A lot of small businesses have been heavily hit by the toll of COVID-19. The shadow Minister for Small Business, the member for Darling Range, prosecuted that case very well, together with the Liberal team, but these are not people who we classically think of day to day. We might consider the restaurant or the coffee shop that might be affected, but these are people who often call into people's homes, or have to have a close relationship with somebody in order to provide a service. House maintenance is a really good example of that. Older people who are worried about having plumbers and people like that come to their house have called our office because they are worried about the impact that might have. It is a very real impact. This is beyond the tenancy approach, but this is the reality and the reverberation that COVID-19 is having right across our community.

I am very lucky and proud of Western Australia and I am very proud that Mandurah has done such a great job in playing our part to suppress COVID-19 and the pandemic, but it has come at a significant cost. We should not sugar-coat this. No doubt this will go on for some time. Mandurah has already been facing difficult times. We have always had a higher than usual unemployment rate. When times are good in Western Australia, it has gone very well in Mandurah, but when times are tough, it tends to be worse. That is exactly what we are experiencing. We already had that circumstance with the closure of the Mandurah Crab Fest. That was cancelled because of COVID-19. It seems as though that was months ago now, but it was on 13 or 14 March, only four weeks ago. It seems as though it was forever since the decision to cancel Crab Fest was made by the City of Mandurah on advice from the Department of Health. It was the right call, but it has had a profound impact on our community already. Many businesses rely on Crab Fest to get them through the winter, given Mandurah relies largely on tourism. Some businesses rely largely on international tourism and intrastate tourism. That means that we are very vulnerable in that respect. The difficulty started with the cancellation of Crab Fest, and it has gone on since then.

My office has written to every household in my district with someone who is aged over 70 years old. We have also written to every person who is aged 65 and above who we did not have a telephone number for, to ask whether they need any help. Together, with the effort of nearly 800 volunteers or thereabouts who we have mustered across Mandurah, the team in my office is helping coordinate regular grocery supply deliveries for more than 100 households. That is on a very regular basis, mostly for people who are quite vulnerable, and mostly people who are elderly and some who are disabled. We are assisting 12 Aboriginal families out of my office, helping provide groceries, supplies and pharmaceuticals, if and when we can, and helping deliver it to them. People in the community are very worried. They do not want to go out, and that has had an impact on our local economy and of course right across the state, the country and the globe. I am incredibly proud of Mandurah and how we have responded, and I would like to place on the record

my thanks again to Farmer Jack's Supermarkets Halls Head for the work it is doing. Grocery shops are a good example of those that are stepping up to the mark and bearing the brunt of a lot of the impact of COVID-19. We have seen the run on things such as toilet paper, paper towel and hand sanitiser. Cashiers, and the people who work on the floors of those grocery shops, have seen a significant level of demand and people going through their doors, sometimes trying to panic buy. Thankfully, that has eased off. As part of this, I think grocery shops have a moral obligation to step up when they can, and Farmer Jack's in Halls Head has done an outstanding job. We are very proud to partner with it locally.

Of course, the issue and the impact goes beyond places such as supermarkets and grocery stores. I think about how our community may have been five years ago and its resilience now. We are very lucky in many respects. No-one would wish for this pandemic at all. The reality is that we are much more technologically connected than ever before. That has enabled the diversification that the member for Vasse spoke about, in which businesses can adjust and survive. Technology is an important part of that. Imagine if we did not have food apps that deliver food, such as Uber Eats, and how restaurants might be without them. Takeaway has always existed, but those apps now help connect people. The nature of technology means that we can hopefully build a sense of resilience in our community. Some local stores in my district are adjusting really well. Lazy Janes Cafe in Falcon has done a great job in transitioning. A lot of elderly and seniors in my community would go there from time to time as part of their daily routine. They can no longer even drink there, so it is doing takeaways. It is doing that really well, and providing lunches and such things. Mataya Eatery in Mandurah is providing packs of food and supplies and has almost turned into a general store. It was making Easter packs, and people could pick up an Easter breakfast and take it home.

Mr J.R. Quigley: And Miami pie shop?

Mr Z.R.F. KIRKUP: The Miami Bakehouse is still continuing, minister. They all have to work hard to make sure they can keep afloat. It is important that as part of any legislative undertaking we do here, we ensure that we protect those small to medium-sized enterprises such as Lazy Janes, Mataya and the Miami Bakehouse. Another example is Flics Kitchen on Mandurah Terrace. I am really happy to have been able to organise a partnership between Flics Kitchen and Peel Health Campus so Flics could deliver 200 lunches to the hospital. I am very proud that I was able to play a part in helping get those two entities together to provide some really good food for our healthcare workers and to help inject and sustain the life of a landmark restaurant like Flics in Mandurah.

Of course, there are not always good stories and we cannot sugar-coat this. A lot of pain is being felt across Mandurah and the community more broadly speaking. A lot of cafes and restaurants are closing down, but hopefully that will be for only a short time. In that respect, Mandurah is not unique. It is happening all across Perth and the rest of Western Australia. Hopefully, it will be for only a short time. The member for Mandurah knows it. We have spoken with our community leaders and know that Mandurah will take some years to come back from this. Perhaps we will be hit harder than other places in Perth.

When I talk about Perth, I am also really impressed to see the work being done by the brands that I follow. I have spoken in this place a number of times about Mettle Women Inc, which is a fantastic group of women that provides employment in Mettle's factory for other women who are victims of family and domestic violence and who end up homeless, so they can get a job and a skill set. Mettle has now transitioned to making penpal sets. People can buy penpal sets for their children or grandchildren, which have prompts and things like that to try to keep people in regular correspondence, in these days of email, by using regular snail mail correspondence with people whom they love. That is a good example of a company that is reorientating.

There is also something else more locally to where we are now. We know that bottle shops are doing quite well, but restaurants are doing very poorly. There is a very good bottle shop and restaurant called Besk in West Leederville that has a very good Instagram page and is doing a great job in diversifying and doing takeaway meals. I think the reality is that in order for businesses to survive, they will need to adapt as best they can, and government should also be providing as much support to them as it can. That is why the Liberal opposition has been calling on the government for some time to help with land tax and to make sure that there is support for small and medium-sized businesses.

I echo the concerns of the member for Hillarys, particularly his concerns about some of the limitations that have already been identified in the residential tenancies legislation and this legislation. Although, of course, the Attorney General knows that we expect the government to do what it can in good faith to honour the national cabinet decisions, we remain very concerned about the short time that we have had to scrutinise the legislation and to deal with it accordingly. But, of course, we have done our very best as an opposition, once again, to stand ready to assist the government to pass important COVID-19-related legislation whenever we can. I am encouraged that there has been bipartisan agreement on all COVID-19-related legislation. I think that the Liberal Party, albeit with reduced numbers, has done an outstanding job to make sure that it stands ready whenever it is called upon to support Western Australia in this time of crisis. I commend the bill to the house.

The SPEAKER: The question is that the bill be read a second time. All those in favour say aye. Against? I think the ayes have it.

Mr J.R. QUIGLEY: Mr Speaker.

The SPEAKER: Sorry, I forgot about you!

MR J.R. QUIGLEY (Butler — Minister for Commerce) [9.12 pm] — in reply: I knew that if I worked remotely from home, you would do that, Mr Speaker.

The SPEAKER: Sorry, minister.

Mr J.R. QUIGLEY: I will briefly touch on a couple of points to wrap up the second reading stage of the Commercial Tenancies (COVID-19 Response) Bill 2020. Members have mentioned the code of conduct. It will be a Western Australian code because we do not want to fall foul of standing order 126 of the upper house and have this bill delayed for months and months while it goes through the Standing Committee on Uniform Legislation and Statutes Review. The commonwealth has expressed what should be in the code, and the formulation of the Western Australian code of conduct will closely follow what the Prime Minister has announced.

I take the point that there will be differentials between the profitability of businesses that operate in commercial premises; for example, if two shops, one a restaurant and one specialising in selling cans of baked beans, operate in a mall side by side, it does not take Einstein to work out which will be running at a profit and which will be broke. The baked beans seller is going to be out there in front, so we have to have a way of differentiating between the two in terms of relief under this bill. That is why we have included the mediation process at the Small Business Development Corporation. The Small Business Development Corporation does not pass judgements. It is not a tribunal, but it is very experienced in mediation, and there is a little stick attached. That is the thing that will encourage mediation before the Small Business Development Corporation. The Small Business Development Corporation has very experienced mediators who have achieved, at the last count, I am told by Minister Papalia, about a 94 per cent success rate in getting parties to mediate. That is not on this bill, of course; that is on other commercial issues. It is very good at getting commercially bargained outcomes. The stick here is to either party, although the commission cannot under its jurisdiction pass a determination, a binding finding, because it is not a tribunal. If mediation is not successful, there must be a certificate from the Small Business Development Corporation before anyone can file in the State Administrative Tribunal. Under this bill, people must have that certificate or they will not be able to file in SAT. On that certificate, the mediator at the Small Business Development Corporation will note any difficulties in the mediation—for example, the tenant did not turn up or the tenant did not produce bank records to show a diminution in income. They are the things that will weigh heavily against an offending party when a matter ultimately gets to a determination before the tribunal.

That is why we think that a lot of these things will settle in the Small Business Development Corporation, because if people hold out unreasonably, they know that their unreasonable conduct will be noted and passed on to the State Administrative Tribunal. These are the things we intend to encourage. We must remember and keep at the front of our minds all the time what Prime Minister Morrison, as the leader of the national cabinet, said when he announced relief for commercial tenants: we want commercial tenants and commercial landlords to negotiate in good faith. That is why we have structured a bill to encourage that.

The next bill on the notice paper, of course, is the hammer for those parties that do not act in good faith. That bill will be read in and left to lie on the table of the house and not taken through to the consideration in detail stage or further advanced. That will just be the reserved position. We trust that that will not be required; that landlords and tenants will, as Prime Minister Morrison invokes, all be in this together. We Australians are all in this together. As Australians, we have achieved the biggest, perhaps even better than South Korea, bending of the curve, the biggest flattening of the curve, in the world.

Mr Z.R.F. Kirkup interjected.

Mr J.R. QUIGLEY: I think so.

Mr Z.R.F. Kirkup: Close.

Mr J.R. QUIGLEY: I think that Singapore has taken off again.

Mr Z.R.F. Kirkup: South Korea, I think.

Mr J.R. QUIGLEY: I think South Korea and Singapore are getting a second wave.

The SPEAKER: It is too late in the night to have arguments and chitchats.

Mr J.R. QUIGLEY: Just as we Australians were invoked to all get together and turn the curve down, so we are invoked by both the Prime Minister and the Premier to ensure that businesses, landlords and business tenants work together in good faith to keep the economy going. There is a reserve position if that does not happen. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clause 1 put and passed.

Clause 2: Commencement —

Mr P.A. KATSAMBANIS: Clause 2 is the commencement clause and it operates in three parts. It states —

(a) Part 1 comes into operation on the day on which this Act receives the Royal Assent …

That makes sense —

(b) Parts 2 and 3 are deemed to have come into operation on 30 March 2020;

They are the parts that deal with the terms used in the application and the prohibited actions in small commercial leases and related matters. They are deemed to operate from 30 March. I believe that is the date that the announcement was made by the Prime Minister about the decision of the national cabinet in relation to these sorts of protections, so that makes sense. Clause 2 states further —

(c) the rest of the Act comes into operation on the day after assent day.

Part 4 of the bill indicates the adoption of a code of conduct, and the minister has by interjection and in his second reading summing up indicated that there will be a code of conduct adopted. A lot of the practical operation of the legislation really hangs off the adoption of the code of conduct, which will be adopted by regulation. When are we likely to see that code of conduct so that the actual operative impacts of this bill can come to pass?

Mr J.R. QUIGLEY: It will probably be one month before the code of conduct is settled; however, that is for negotiations to promote, as the Prime Minister wants, conciliation between the parties. The prohibited action, that which the landlords are prohibited from doing, will be operative the day after assent, because they are contained in clause 8 in part 3 of the bill. Parts 2 and 3 come into operation after 30 March and the prohibited actions are set out in clause 8, and having regard to the time, I do not want to go through them. Those prohibitions will be operative from 30 March, even though the code of conduct that promotes the conciliation does not come into play for a month.

Mr P.A. KATSAMBANIS: That is why I asked the question. Obviously, landlords will be prohibited from doing certain things, and that is part of the national agreement. We understand why, and in the main everyone agrees with that, but the flip side, if you like, to the prohibition is this desire to get landlords and tenants talking and coming to agreement so we can avoid going to the Small Business Commissioner or the State Administrative Tribunal and having all the deleterious consequences. I would have thought that in that context we would want all the operative parts, including the code of conduct, ready as soon as possible. Landlords will be precluded from doing things from 30 March, but then it is going to be a month from today or next week before they will even know what the code of conduct is going to be to start those negotiations. How is it fair for people who are expected to deliver on one side but then also are expected to participate in good faith negotiations predicated on the code of conduct that is yet to be proclaimed?

Mr J.R. QUIGLEY: There are a couple of issues tied up in that, which we wrestled with on the weekend; that is, do we hold off the whole legislation, do we hold off the prohibitions, until we have finished polishing the code of conduct in a month's time so that landlords in the interim can do what they want, or do we bring in the bill now and then the code of conduct? Clearly, if we bring in the bill now, the landlords know what they are not allowed to do, tenants know what the landlords are not allowed to do and there is nothing in the world to stop or prohibit parties from negotiating on a voluntary basis now. They can start negotiating tomorrow morning. I know that a lot of tenants have been negotiating with their landlords already. If they want some guidance, they can look at the code of conduct that has been suggested by the Prime Minister. That will not be adopted for another month until we have settled our own code, but there is nothing stopping negotiating tomorrow—nothing at all. While we have the bill ahead of the code of conduct, we want to drop the gate on everyone so they know where they stand today.

Clause put and passed.

The SPEAKER: Further clauses?

Mr D.A. Templeman: Clause 24!

Clause 3: Terms used —

Mr P.A. KATSAMBANIS: Clause 3 is the definition clause. The member for Mandurah will be happy to know that I do not have a question at the moment on clause 24, but if he wishes me to ask one, I will probably be able to come up with one!

There are a couple of issues I want to raise. The first one is in relation to the definition of landlord. I will skip over "emergency period", and I will say that a number of the concepts we teased out in the residential tenancies bill

apply to this commercial tenancies bill as well. We discussed the interoperation between the emergency period and the sunset provision in clause 24. We did that in the residential tenancies bill and it really applies here, so if people are looking to this for interpretation, I think the same concepts ought to apply equally and there is no point in us traversing the same ground. I will skip over to the definition of landlord. The issue I want to raise at this late stage of proceedings is whether the minister gave consideration to some form of carve-out for small landlords, as I believe has been requested by a number of the stakeholders, including the Property Council of Australia, to ensure that, particularly when small landlords are at a disadvantage with big retail conglomerates that are their tenants, landlords are not fettered and not in the position of having to accept an unfair bargain.

Mr J.R. QUIGLEY: I think the marketplace helps here. There are two things. I probably misspoke; I will re-categorise it. The protection for landlords is that unlike in the Residential Tenancies (COVID-19 Response) Bill that came before us earlier, which the member will recall had clause 19, the break clause, whereby the lessee could break, this bill does not have a break clause. If there is a tenant in a shopping centre and next door there is another shopping centre with vacant shops, they cannot just give 21 days' notice and move next door because someone has offered a year's free rent if they will sign up to a five-year lease. We have specifically steered. Even though it was urged by the national cabinet to have break clauses, we have not gone to a break clause, because we feel that if we had a break clause, too many tenants would just walk out of commercial centres and into another commercial centre, and soon we would have bankruptcies all over the place. People could flee from shopping centres, and we have to avoid that. I do not know whether "hibernate" is the right word, but we are trying to put it to sleep or calm it all down and preserve relationships as far as possible. That is why in the first instance a tenant cannot go to the State Administrative Tribunal for relief unless they have a certificate from the Small Business Development Corporation; and, if they do not behave there, they run the risk of having their misbehaviour noted on the certificate, which would put them behind the eight ball by the time they get to SAT.

Mr P.A. KATSAMBANIS: I pick up on the minister's indication that there is no break clause in this legislation that we are considering, and that is true. I note that the minister said that the national cabinet urged us to consider it. I think that the national cabinet had on the table break clauses or termination clauses and turned its mind to it and in the end decided not to go down that pathway. It is certainly not included in the national code in any way and I have not heard anything that has emanated from the public dissemination of national cabinet decisions to indicate anything around break clauses. I agree with the principle that the minister enunciated that that could end up having extraordinarily negative effects on our commercial property market.

Mr J.R. Quigley: It didn't come out in the negotiations between Treasurers and AGs.

Mr P.A. KATSAMBANIS: Yes; they turned their minds to it, but they basically said that they were not going to go down that path. However, in the minister's summing up, he indicated that the Commercial Tenancies (COVID-19 Response (Early Termination)) Bill 2020 is listed on the business program for him to introduce later tonight, I believe.

Mr J.R. Quigley: Yes.

Mr P.A. KATSAMBANIS: He called that the big sledgehammer. I have not seen the bill. We have not been briefed on the bill. Until I saw it listed on the business program, I had no idea it was coming up.

Mr J.R. Quigley: I did not call it a sledgehammer; I called it the hammer.

Mr P.A. KATSAMBANIS: Okay—the big hammer. The minister uses lots of good terms like that. That is fine; that is all good banter. That bill has extraordinarily important implications for people. As I said, I have not seen the legislation, but it sounds like some form of break clause legislation.

Mr J.R. Quigley: Totally.

Mr P.A. KATSAMBANIS: Totally; so the minister accepts that. In his summing up, he indicated—correct me if I am wrong—that he has put it on the business program without any current intention of moving beyond putting it on the business program.

Mr J.R. Quigley: No.

Mr P.A. KATSAMBANIS: Is that correct or not, or does the minister expect us at some point in the future, irrespective of behaviour in the community, to consider that legislation?

Mr J.R. QUIGLEY: No and no. I have not just put it on the business program; I will second read it and it can lie on the table. Then it will have its 21 days under the standing orders. We are hoping and hoping that that bill will never progress. We all know that there are parties out there who could become oppressive; and, if there is widespread evidence across the industry, not an isolated case, of abuse of the mechanisms in this bill before Parliament this evening, we would like all shopping centre owners to know that there is a break clause in the background. We would come to Parliament and there would be an argument both ways and it would be highly scrutinised: "Where is your evidence of this abuse, Attorney General?" We would not bring this on capriciously. We would not bring this on

without widespread evidence. But the shopping centre industry has to know about this if there is an imbalance of power. I realise that the member for Riverton said that the balance of power can be the other way with tenants sometimes, but, generally speaking, the balance of power is with the shopping centre.

Mr P.A. Katsambanis: Not unless you're Solomon Lew.

Mr J.R. QUIGLEY: Unless you are Solomon Lew. Of course, his business does not fall within this because it is not a business with a $50 million turnover.

Mr P.A. Katsambanis: But it is a retail business, so it does if it meets the eligibility criteria.

Mr J.R. QUIGLEY: But his can go to SAT anyway.

Mr P.A. Katsambanis: We're not going to quibble on that one.

The SPEAKER: Members, do not have a conversation. The minister is on his feet.

Mr J.R. QUIGLEY: The definition of a retail shop is one that is not a public company.

Getting away from that for a moment, the government wants to send a message to all parties in commercial leasing arrangements that if they fail to negotiate in good faith and there is widespread evidence across the sector of failure to negotiate in good faith, and people just throw the code in the bin and fail to do what the Prime Minister is pleading with everyone to do, we have another bill. They ought to read the other bill, which will be available on the website of this Parliament, and take a breath and then go back and negotiate.

Mr P.A. KATSAMBANIS: Just to finish off on this, that is interesting. I thank the minister for clarifying that. I think he indicated that an open-ended break clause would —

Mr J.R. Quigley: Cause chaos.

Mr P.A. KATSAMBANIS: — cause chaos.

Mr J.R. Quigley: Or would have the capacity to cause chaos.

Mr P.A. KATSAMBANIS: Some people have described it as causing financial Armageddon, particularly in relation to the commercial property market in Australia. Knowing what some of our retail strips and commercial centres looked like in early March or at the end of February, I would be extraordinarily concerned if that sort of legislation was brought into being. I understand that the minister is offering a carrot and a stick here. I am glad we have that on the record tonight, because I know that since the business program went out this morning, there has been significant consternation in the property market. I am glad that the minister has clarified that he has no current intention of moving beyond the second reading stage of that bill and that he will monitor what is happening out there. I guess there is no point in asking him what will trigger it. He has tried to give as good an explanation as he could. It is not going to be isolated behaviour, but if we see pattern behaviour, he will probably act on that, so we will leave it until that time. I hope to goodness that we do not ever have to debate that legislation, because even the threat of having financial Armageddon in such an important part of our economy in Western Australia would be absolutely disastrous.

Mr J.R. QUIGLEY: I agree that there is that risk, but already there is financial Armageddon among a lot of small businesses around the state. All I will say is that we are trying to do what Prime Minister Morrison is invoking us to do. He does not have the legislative warrant to bring this into effect. He says that this is what he wants to happen so we have done it. We will use the stick of encouragement to do what Mr Morrison wants, which is good faith negotiation. We are all in this together.

Mr D.C. NALDER: I want to come back to the comments we exchanged during the second reading debate. One of those matters was the definition of "eligibility". I am using the terms used at clause 3 of the Residential Tenancies (COVID-19 Response) Bill 2020. The word "eligibility" is not defined there but I assume that it will be in the code of conduct. I am talking about the code of conduct to get clarity about the conversation we had during the second reading debate. I note that under the national code of conduct the eligibility talks about a threshold of a $50 million annual turnover. I know that our code of conduct has not been finalised but I want to get a sense of where this is going for my constituents who have concerns about this aspect of the code. The $50 million annual turnover threshold will be applied to franchisees at the franchisee level and to retail corporate groups at the retail corporate group level rather than at an individual retail outlet level. I want to explore that for a tick to get a sense that that will apply here under the Western Australian code. The reason I raise this is that a couple of people have raised concerns with me. An example is Oporto, Red Rooster and Chicken Treat, which are all owned by the same company—Craveable Brands. Oporto might have a franchisee and a store-owned entity. I understand that would therefore be looked at at the brand level but the reality is that the parent company, Craveable Brands, sits above it and owns Oporto, Red Rooster and Chicken Treat. I want to see how far the code of conduct will extend because my sense is that it is Craveable Brands that dictates the terms and conditions of the tenancy leases and I want to ensure that our

code will go deep enough to capture the parent entity. That is a real concern that has been expressed to me by more than one landlord when dealing with some tenants who have very deep pockets when we look at the parent company. I want some sense on that issue at this point.

Mr J.R. QUIGLEY: I will go back to the national code of conduct, if I can. The first overarching principle of that code is that landlords and tenants share a common interest in working together to ensure business continuity and to facilitate the resumption of normal trading activity at the end of COVID-19. The fourth principle is that landlords and tenants will negotiate in good faith. I will not read out all the principles because it is not our code, but our code will look very much like that code. I have to be careful because I do not want it to be an adopted code and run into problems in the other place, but our code will be drawn from the national code. In drawing up the code, we will be very mindful of corporate structures. The other day, I was talking to a motor vehicle dealer who sells about four or five brands. As it happens, they are all under one corporation. This is not to do with retail tenancies but with the JobKeeper scheme. If the company sells two luxury vehicles, the business goes way over the total threshold for small business and therefore all its other businesses would be ineligible for JobKeeper payments. In building the code, the department will have to look at the franchise and corporate structure so that we do not run into a reverse balance of power that I think the member for Riverton was referring to in his helpful speech this evening.

Mr P.J. RUNDLE: I also want to refer to the code of conduct. The minister said that he wants to send a message. I want to know why it will take a month to put the code together. The minister has the Prime Minister's guidelines and just said a minute ago that that will be the basis for the code. The bill has been put together, as the minister told us several times during the evening, in a very short space of time. The bill is complex. It has been put together in a week, or something along those lines, and there is a guideline for the code—the Prime Minister's national code. Some landlords and tenants want to get on with their negotiations, so why will it take a month to put the code together?

Mr J.R. QUIGLEY: There is no reason why tenants cannot get on with the negotiations now, but as evidenced this evening, issues have arisen in the course of this debate. Those issues are all being noted by the department. This is being done at express speed. As the member for Riverton noted, when the Residential Parks (Long-stay Tenants) Act was dealt with, it took a decade, and we can see that some other bills are ages in the making. The public, the tenants and everyone wants us to do this quickly, and we have a duty to do it quickly. The prohibitions are coming in now. After this evening, everyone will pretty much know the structure. Although they might get tripped up or butchered down the other end, basically, they will know the structure. We are hearing about members' concerns this evening, and they will be taken on board. We will send out messages and invite stakeholders to respond to the code of conduct. We want this to be fair for everyone. We will not do this behind closed doors; we will consult. If any member wants to write to me, I will make sure that the policy people get that. I will say the same thing to the stakeholders as well. All those things will be taken on board, including what has been said this evening by members about franchising and corporate structures. We will take that on board as we develop the code of conduct over the next four weeks.

Mr P.A. KATSAMBANIS: I want to discuss how the definition of "small commercial lease" plays out with the concept of the $50 million threshold that is included in the mandatory code of conduct released by the national cabinet and as discussed by the member for Bateman. The definition of "small commercial lease" has four limbs to it. None of them in any way is based around a $50 million turnover figure of any kind. The definition of "retail shop lease" is as defined in the Commercial Tenancy (Retail Shops) Agreement Act. The other leases in paragraph (b) under the definition of "retail shop lease" in that act are references to small business, and small business is given the specific meaning that it has in section 3(1) of the Small Business Development Corporation Act 1983. That definition in the Small Business Development Corporation Act does not have a $50 million limit. We have a lease arrangement whereby the tenant is an incorporated association or any other lease that is of a class prescribed. In the primary legislation, there is no reference whatsoever to $50 million. It is in the national code. The closest we are going to get to any reference to $50 million is in the code that will be prescribed by regulations; that is, the Western Australian version of the national code, for the reasons that the Minister for Commerce has outlined and that I accept and agree with. My question is: can regulations read down this legislative definition of "small commercial lease" to incorporate the $50 million turnover limit outlined in the mandatory code of conduct, or will we have a conflict? Will the Western Australian legislation, through this definition clause, apply to retail businesses with a turnover over $50 million, however described, simply because of the construction of our act?

Mr J.R. QUIGLEY: The definition of "small commercial lease" is defined here. The prohibitions contained in clause 8 relate to a small commercial lease. It states —

> ***prohibited action*** means action under, or in respect of, a small commercial lease …

That is not a business under $50 million. The code is not limited to small commercial leases. The code is general. The Prime Minister is proposing that when tenants and landlords of any descriptive size meet, up to $50 million, this will be their guidance. We want to give a bit more thought to that cut-off point of $50 million in the development of the code and how it might be best applied to this economy. There might be a bit of upward lift in that. We do not

know yet. The code sets out a minimum standard of $50 million. We will examine that, but the code is not limited to small commercial leases. The reference to small commercial leases in the definition is very relevant to the words contained in proposed section 8, which contains the prohibitions.

Mr P.A. KATSAMBANIS: I am not going to labour this point, but I think it is really important. The problem is in the minister's explanation, which has confirmed my concern that the definition of small commercial lease extends beyond tenancies in which the tenant has a turnover of over $50 million. It will incorporate tenancies in which turnover is more than $50 million—or it could. That is the concern. Why was that $50 million figure not used as a limiting factor in the definition of small commercial lease? Why is it possible that the definition of small commercial lease the government has included can extend to leases in which the turnover of the tenant is beyond $50 million? And it can!

Mr J.R. QUIGLEY: Looking at the databases, we see that most small businesses are covered by the definition of small commercial lease. Nearly every small business is covered by that definition. We will go back to the definition in clause 3, but this encapsulates most businesses. It includes a retail shop, when a tenant owns or operates a small business, a lease in which the tenant is an incorporated association as defined, and any other lease that is of a class prescribed by regulations for the purposes of that paragraph. A small business has to be owned or operated. This definition covers nearly every small business. Some corporate structures might fall outside of this, but if they are not small businesses and are over that sum, they can get to the State Administrative Tribunal anyway. They need the certificate to get to the State Administrative Tribunal only if they are a small business, because they have to go into mediation. The Solomon Lews of the world—Premier Investments—do not have to go into mediation. They are big enough and ugly enough to say to Scentre Group and Westfield that they will close their doors and not pay their rent and say, "Come and get us if you want." The company was pretty sharp, was it not? The pretext it used for closing its shop was a lack of duty of care because one employee in a Premier shop in a shopping centre got notified by text message, because of the phone tracking, that she had come into contact with a COVID-19 patient in the shop. Solomon Lew immediately seized upon that and said the centre was not discharging its duty of care to his staff by making sure that no-one comes into the mall who has COVID-19. It was a very sharp move. I think it was Mr Lew or his CEO, Mr McInnes. I heard Mr McInnes explaining it. He hooked onto the duty of care and said the company was shutting its shops everywhere. I think the member for Riverton was talking about economic muscle, but not in that particular instance. It is like what they used to say about Alan Bond—the banks needed him more than he needed the banks, they were so far in debt to him! They had to keep him going at one stage. We think we have the situation pretty well covered, but the department has to look at the development of the code of conduct to make sure that nothing slips through the cracks.

Mr P.J. RUNDLE: Further to this, I think the JobKeeper scheme is a big part of the scenario here.

Mr J.R. Quigley: It is, if you qualify.

Mr P.J. RUNDLE: That is right. That is important to remember. I want to go back to the code and the simple fact that the government has emphasised that the bill was put together in a week, so it did not consult with a lot of industry and the like. But now, in preparation for the code, the government will spend a month consulting with everyone and taking notice of everyone's opinion. In putting the bill together, it did not really do that. I want to know whether a landlord and tenant who are putting together their package at the moment and talking to each other in good faith and sort out their scenario will have to go back and start again when the government comes in in a month's time with its code.

Mr J.R. QUIGLEY: No. They will have come to an agreement. We are giving a code that will be a guidance to negotiations. They will have voluntarily done what Prime Minister Morrison is invoking all landlords and tenants to do—that is, come together and negotiate in good faith. If they have done that, they have done it without the help of this Parliament. We are trying as a Parliament, all of us, to give effect to the Prime Minister's aspirations—because he does not have the power—that the states will bring in a structure that will facilitate and encourage good faith negotiations such as the member was referring to. That is the end of it. If they have entered good faith negotiations and come to an agreement, they will not be displaced by anything in this. The tenant will not have anything to complain about because he will have already shaken hands with his landlord.

Clause put and passed.

Clauses 4 to 7 put and passed.

Clause 8: Term used: prohibited action —

Mr P.A. KATSAMBANIS: Clause 8 has the comprehensive list of prohibited actions. I am not debating the list or why particular things have been included or excluded. I simply want an explanation of how this list was derived. Is this a series of prohibited actions that was derived from agreements and decisions of the national cabinet? Is this

something that the Western Australian government has come up with? If it is the latter, on what basis has it come up with them?

Mr J.R. QUIGLEY: Our bill has drawn largely on the framework of the code of conduct. It has also drawn on legislation from South Australia. I do not know what more I can say. Obviously, if we attempted to do what the member for Hillarys and I would aspire to do with the Evidence Act, to have a uniform Evidence Act and a uniform legal profession, this would take a long while if we were going down to get uniformity. We are trying to get as close as we can, but each time we get to a position some Treasury in another state breaks and we have to go back to the drawing board because we do not have unanimity.

Clause put and passed.

Clauses 9 to 12 put and passed.

Clause 13: Regulations may adopt code of conduct —

Mr P.A. KATSAMBANIS: Clause 13 is the entirety of part 4. It refers to adopting the code, and we have spoken a lot about the code. Clearly, it is going to be devised in the coming weeks. What I seek tonight from the minister is that he will consult widely with stakeholders. I have already had a number of concerns about the applicability of the code to the commercial property market in Western Australia in relation to both tenants and landlords. Some of the issues around the turnover figure are that it may be appropriate or it may not. I think the minister has already alluded to looking at that to see how it works in practice. I have also been made aware of some concerns of the WA division of the Property Council of Australia, particularly around another principle; that in making findings, the Small Business Commissioner could perhaps incorporate a principle about the relative financial position of a landlord and a tenant. That would make eminent sense. It would give one more guiding principle for parties to look at when they are sitting down and bargaining in good faith. Who is really struggling? If the tenant is struggling more than the landlord, perhaps they deserve a bit more of a break, or if it is the other way, perhaps the facilitation needs to go the other way. At this stage, all I am seeking is a good faith commitment from the minister that prior to parading out the code and prescribing it, he will conduct wide consultation, even if it is quick consultation, with all the impacted stakeholders to make sure that the code is as fit for purpose for Western Australia as possible.

Mr J.R. QUIGLEY: No and yes. We are not writing to every stakeholder because that would be every tenant in Western Australia.

Mr P.A. Katsambanis: I didn't ask you to write to every stakeholder.

Mr J.R. QUIGLEY: I thought the member said "consult with every stakeholder", but let us get on with this.

We will obviously be consulting with the major stakeholders, the representative bodies, of these people—so there is the no and the yes.

In relation to financial capacity, may I draw the member's attention to clause 16(4)(b), which is to do with the tribunal's determination, and if it is in the tribunal's determination, it has to be in the mind of the mediator. Clause 16(4) states —

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

That is what the member was talking about, and that will come into play. There is no doubt that it is in this bill; that is what has to happen.

Mr P.A. KATSAMBANIS: Since the minister raised it: the tribunal has to consider it and the commissioner would have to look at it. Perhaps between the houses it might be deemed better to incorporate a similar provision in the issues the commission might take into account, but I will leave it at that at this late hour of the night. But, also, perhaps incorporating it into the code would work.

Clause put and passed.

Clauses 14 to 16 put and passed.

Clause 17: Requests for resolution of disputes using *Small Business Development Corporation Act 1983* s. 15C or 15E —

Mr P.A. KATSAMBANIS: In clause 17, parties can request that the commissioner resolve a dispute. It is essentially mandatory before people can seek relief at the State Administrative Tribunal. Again, as I said in the Residential Tenancies (COVID-19 Response) Bill debate, if this works, perhaps we can look at the mediation process becoming mandatory before actions are brought to the SAT. It might be worthwhile; we can consider it later. But

for the purposes of what we are debating tonight, what additional resources will the Small Business Development Corporation need to deal with for what could be a significant volume of work coming its way? A lot of tenants are struggling out there and a lot of landlords are struggling out there. They might have goodwill, but they might be poles apart from what they think is the right thing to do. Obviously, I am not asking the minister to guess how many applications there will be, but what action is the minister taking, or is willing to take, to make sure the necessary resources are there for the commissioner to resolve these disputes in a timely and efficient manner?

Mr J.R. QUIGLEY: Trying to estimate the workload is like a pig in a poke; we do not know.

Mr P.A. Katsambanis: But you know there's going to be more.

Mr J.R. QUIGLEY: We know there is going to be more, but we will react at the appropriate time. A number of avenues are available to the Small Business Development Corporation. It has in-house mediators. If it is swamped, we can bring in sessional mediators, which can be a barrister from bar chambers. I do not mean a Queen's Counsel from bar chambers, but a commercial junior who can be taken on on a sessional basis. These needs have to be met.

Mr P.A. Katsambanis: There will be some people rubbing their hands with glee, thinking about that right now.

Mr J.R. QUIGLEY: I do not know whether they are suitable, but at the moment, there are a lot of jury trial lawyers down there looking for work because there are no jury trials. I wish to assure the Parliament that we can deal with this. We have discussed with the Small Business Commissioner that we can deal with this. We do not want these people going off to SAT as the first stop and swamping it. The president of SAT is horrified at the thought of that happening. As I have said, Minister Papalia said the Small Business Development Corporation has a strike rate of over 90 per cent success in getting the parties to mediate. The stick there is that the parties know that if they do not successfully mediate, one of them might get a bad note passed to the SAT, which puts them in a worse position. We will give the Small Business Development Corporation such resources as are required.

Clause put and passed.

Clauses 18 to 24 put and passed.

Title put and passed.

Third Reading

MR J.R. QUIGLEY (Butler — Minister for Commerce) [10.09 pm]: I move —

That the bill be now read a third time.

MR P.A. KATSAMBANIS (Hillarys) [10.09 pm]: I think that was a valuable consideration in detail.

The ACTING SPEAKER: Member for Hillarys, you need to move down to the centre table. Minister, you need to depart the centre table.

Mr P.A. KATSAMBANIS: I do not want to be long. I think it was a valuable consideration in detail. I thank the minister for going through that. The really concerning part that came out of that is the thing we all want to avoid: the prospect of this other bill that the minister has foreshadowed he will introduce and read for a second time tonight so it can lay on the table for 21 days. It has been made very, very clear. I have had correspondence from many people in the commercial property sector that the opportunity for tenants to unilaterally terminate leases in this period will lead to financial Armageddon in the commercial property sector. That will disadvantage many people, including landlords and other tenants. It will disadvantage all of our community. It could cause even more disputation, financial hardship and general malaise than what we will experience simply from the shutdown. It is to be avoided at all costs. That has come out loud and clear today. It is clearly something the national cabinet considered and thought was a bridge too far; a hammer they did not want to incorporate in the principles of the national cabinet's code of conduct. I am extraordinarily concerned even at the threat that it could be used. There will be shockwaves out there. Obviously, from what the minister has said, this will depend on the behaviour of all parties from now until the unforeseeable future. If we need to consider that bill, I think that we will be in a lot of trouble as a society. We want to make sure we avoid having to move that bill anywhere beyond the simple second reading that we will hear in a minute.

MR P.J. RUNDLE (Roe) [10.12 pm]: I would like to reiterate my comments about the code. I am not really satisfied with the explanation that it will just take a month and that will be that. There needs to be a much greater sense of urgency for our landlords and tenants who are going to negotiate from now onwards. Potentially, if one of them feels that they are on the wrong side of the negotiation, they may look back when the code comes in in a month's time and take the opportunity to say, "Now the code has come in, I think we need to renegotiate." I want to reiterate the urgency for the code to come in. I agree with the member for Hillarys' concerns with this other bill in the background sitting on the table. We really need to get some more clarity on that. I worry about that also in the background. The National Party's main concern is the mandatory code that will be brought in to WA. We do not

know much about it. We do not know when it will appear—a month, apparently. We would like some clarity on that, and the opportunity to bring it in faster would be great.

MR J.R. QUIGLEY (Butler — Minister for Commerce) [10.14 pm] — in reply: I thank all members at this late hour for their contributions, and the vote should be put.

Question put and passed.

Bill read a third time and transmitted to the Council.