RESIDENTIAL TENANCIES (COVID-19 RESPONSE) BILL 2020

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Alannah MacTiernan (Minister for Regional Development)**, read a first time.

Second Reading

HON ALANNAH MacTIERNAN (North Metropolitan — Minister for Regional Development) [9.12 am]: I move —

That the bill be now read a second time.

The bill I am introducing today is essential to support the continued safe and efficient functioning of the residential tenancies market during what is likely to be a period of significant social and economic upheaval for all Western Australians. It also promotes general community safety by modifying existing laws and practices in residential tenancies so that they are in line with orders made under the Emergency Management Act 2005 of Western Australia and the Public Health Act 2016 of Western Australia.

The 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, or coronavirus. At the meeting of the national cabinet on Sunday, 29 March, actions were agreed to support tenants in both commercial and residential settings in our community. Protection for commercial tenants is being addressed in a separate bill. This bill is implementing the specific measures needed to support tenants in a broad range of residential settings. The primary legislative response of the national cabinet is to impose a short-term moratorium on evictions to be applied across residential tenancies impacted by severe rental distress due to COVID-19.

For the purposes of this bill, residential tenancies include residential tenancy agreements, long-stay agreements in residential parks, and boarders and lodgers. This bill introduces a moratorium on all evictions for these forms of agreements except in limited circumstances. Those limited circumstances include if a tenant is causing serious harm to the premises or injury to a landlord, their representative or a person on adjacent premises. For example, if a tenant decided to use this period to convert the premises into a drug lab, or to threaten and harm their neighbours, this sort of behaviour would allow for termination of a tenancy agreement.

Landlords or tenants experiencing undue hardship will also be able to apply to have the tenancy agreement terminated. For example, if a landlord who had moved interstate for work and rented out their primary residence lost that interstate job, they could apply to the court to terminate the tenancy agreement if they needed to move back into their home. Tenants who are being subjected to family violence will still be able to terminate either their own interest in the tenancy agreement or apply to the court to terminate the perpetrator's interest in the tenancy agreement. If a tenant abandons the premises, or the landlord and tenant agree to terminate the tenancy agreement, the agreement will be terminated and the landlord will be allowed to re-let the premises.

There will be a freeze on rents increasing during this period. This is to ensure that no landlord will seek to force a tenant out of the premises by unreasonably increasing the rent. It is also proposed to require that any fixed-term tenancy agreement that is due to expire during the period will continue as a periodic agreement. All these measures are intended to allow tenants, to the greatest extent possible, to remain where they are during the pandemic to reduce the risk of spread of the disease. However, not everyone will be able to afford to stay where they are.

The bill proposes to allow a tenant to terminate a fixed-term tenancy without break lease costs. The reason for extending this right to tenants is that some tenants, faced with job loss and despite receiving income support from the commonwealth government, may perceive that it will be a long time before they financially recover and are able to afford the level of rent they are currently paying. Some landlords will respond in a positive way to their tenant's circumstances by reducing the rent for the premises. However, if a landlord does not do this, the tenant may not want to accrue the significant debt of unpaid rent over a period and may want to leave the tenancy early. It is acknowledged that this amendment will result in some landlords not receiving compensation for loss they would otherwise have received. However, it is proposed that a tenant will have to give 21 days' notice to terminate the tenancy, during which time the landlord will be able to advertise the property and seek out tenants who can afford to pay the rent.

A moratorium on evictions is not a moratorium on rent. Tenants will continue to have to pay their rent during the period. If they cannot afford to pay all of their rent, they should communicate this to their landlord or property manager and pay what they can. Whatever rent is not paid during the period will be a debt owing to the landlord at the end of the period. If a tenant does not make any effort to enter into negotiations to repay this debt in a timely manner, the landlord will have the full suite of termination powers under the Residential Tenancies Act or the Residential Parks (Long-stay Tenants) Act to terminate an agreement at that time. Furthermore, even if a tenancy agreement is terminated at the end of this emergency period, the debt is not expunged. A landlord will be able to

recover any outstanding rent from the bond or, in the event the amount exceeds the bond, through civil proceedings, just as they are able to do now.

Since its introduction into the other place, discussions and negotiations have taken place in relation to tenants who may abuse this moratorium. As a result, substantive amendments have been prepared and will be proposed during Committee of the Whole House. Likewise, a moratorium on evictions is not permission for a tenant to damage premises. A tenant will continue to be liable for any damage caused to premises, whether it is caused before, during or after this period. The government recognises that it is not only tenants who will be financially impacted by the COVID-19 crisis; many landlords will also be experiencing financial hardship. For this reason, landlords will be exempt from having to perform ordinary repairs during this period. It is important to note that landlords will still be obliged to perform urgent repairs and the restoration of essential services, because it is important that tenants live in safe premises.

Although we are asking landlords and tenants to work together and reach agreement, and we are confident that the majority will be able to do so, it is anticipated that a substantial number of disputes may arise between parties throughout this period. There is concern that the volume of disputes may cause extensive delays if the ordinary dispute resolution processes are relied upon. For this reason, the bill seeks to strengthen the existing conciliation process offered by the Commissioner for Consumer Protection in accordance with the Western Australian Fair Trading Act 2010 to provide a mandatory conciliation step in the dispute resolution process, with the potential to provide binding resolution of a significant percentage of disputes. This conciliation process will act as a buffer and filter between complainants and the Magistrates Court and the State Administrative Tribunal, protecting them from being flooded by residential tenancy dispute applications. Conciliation has the benefit of ensuring that disputes can be responded to quickly in the first instance with the aim of preserving relationships between landlords and tenants and avoiding the intransigence of disputes that can be caused by lengthy delays.

Lastly, this bill will apply for a defined emergency period. The emergency period will be taken to have commenced on 30 March 2020, the day after national cabinet made its decision to grant tenants a moratorium on evictions, and it will continue for an initial period of six months. This period can be extended by way of regulation if it becomes necessary to do so in the future. We all hope that this will not be the case.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

The government has not entered into an intergovernmental agreement to give effect to this bill. Through national cabinet, the government discussed with the other states, the territories and the commonwealth the need to act to address the impact of the COVID-19 pandemic on, amongst other things, residential tenancy. The outcome of these discussions was a principal agreement to high-level policies. It did not involve intergovernmental agreement committing to a uniform legislation scheme or the implementation of specific measures. In fact, the approaches for implementing the policies discussed at national cabinet differ across jurisdictions.

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

I commend the bill to the house and I table the explanatory memorandum.

[See paper 3808.]

HON NICK GOIRAN (South Metropolitan) [9.23 am]: I rise to speak on the Residential Tenancies (COVID-19 Response) Bill 2020, and I do so as the shadow Minister for Commerce. I indicate at the outset that the position of the opposition is to not oppose the bill before the house. By way of explanation, as shadow Minister for Commerce, the first contact that I received from the government about this bill was at 5.27 pm on Tuesday, 14 April, when I received an email offering me briefings. At that time, on Tuesday afternoon at 5.27, when public servants decided to send me an email offering briefings before scurrying home and not being able to respond to my email, no bill was provided. I was asked whether I would like a briefing on a ghost bill. At 9.45 the following morning, on Wednesday, 15 April, which is almost exactly two days ago, I was given a draft copy of the bill. However, the email that accompanied the draft bill indicated that further drafting was occurring. At 2.00 pm that same day, on Wednesday this week, I received a briefing via Zoom. I hasten to add that I thank those involved in that briefing, which covered both this bill and the other bill that we intend to deal with later today. The courtesy, respect and professionalism that were shown were as one would always hope for with briefings, and I thank those involved. The final bill that the government proposed to table was provided to me as shadow Minister for Commerce only at 10.47 am yesterday, less than 24 hours ago.

The reason I have taken a few moments to explain that chronology is that a significant number of stakeholders in Western Australia have been tracking the progress of this matter; indeed, over the last 24 hours, I have received

multiple solicitations by stakeholders urging myself and the opposition to support this bill in full. I hope that those stakeholders understand that it is highly irregular for an opposition party to have less than 24 hours in which to digest a bill—a bill that has been through the other place in that time. I note that those same stakeholders have asked the opposition to support the bill in full, yet moments before we commenced today, I was advised that the government intends to move amendments to this bill. I have not been provided with a copy of those amendments, although I have been provided with a brief oral explanation. With all these criticisms that I have about the handling of this matter, I indicate that none of those criticisms is directed at the minister with carriage of the bill in this place, who is representing the Minister for Commerce. On the contrary, my exchanges with the minister in this place over the last 24 hours have been nothing but cordial and professional.

In lieu of a second reading speech, which I as a member would normally examine and consider—of course, the second reading speech was delivered only in the last 15 minutes—I have taken the opportunity in preparing for today to rely on the media release provided by the government on Tuesday this week, which gives us some indication about what the government hopes to achieve with this urgent bill. I say "urgent" because, of course, for those stakeholders observing this debate today, it is worth them noting that the ordinary processes of the Parliament of Western Australia require that a bill remain in the other place for three weeks so that the opposition of the day has time to digest it. Once the other place has dealt with the bill, it would come into this place and sit on the table for one calendar week. It has sat on the table here for a matter of moments—nothing like a calendar week. That is exacerbating the problem of the bill going through the other place in less than 24 hours, when it would normally sit on the table for three weeks.

It is fair to say that, as I have observed over the journey, the other place has a mechanism by which it can declare bills urgent, and it does that from time to time. On those occasions on which bills are declared urgent in the other place, I have observed that it is not intended to be, and I am not aware of it having been, introduced, debated and concluded on the same day. The purpose of a bill being declared urgent is to enable it to be dealt with within the three-week window when it would normally sit on the table. It is one thing to bring it forward within the three-week window; it is another thing to ram it through Parliament in the space of 24 hours.

I turn to a media release by the Premier and the Minister for Commerce on Tuesday of this week and highlight a couple of matters pertaining to the Residential Tenancies (COVID-19 Response) Bill 2020. The media release states —

> … the State Government has acted swiftly to prepare further measures that are necessary to alleviate the impact of the pandemic on residential tenants and landlords.

My first question for the minister with the carriage of this bill today is to what extent does the bill give effect to that commitment in the media release? This media release, authored by the Premier, states that the government is acting swiftly to prepare further measures that are necessary to alleviate the impact of the pandemic on residential tenants. Certainly, that is the case; this bill certainly does that. But the Premier also refers to "and landlords". My question is: To what extent does this 53-page bill provide measures that are necessary to alleviate the impact of the pandemic on residential landlords? Does it do anything to assist landlords?

No doubt, the government will quickly remind me that I need only look at the fourth dot point in the media release from Tuesday of this week, which states that it is —

> relieving lessors of the obligation to conduct ordinary repairs if the reason they cannot do so is COVID-19 related financial hardship or a lawful restriction on movement;

I guess then the question is: Is that it? Is that the only thing we are doing for landlords during this pandemic? We are saying to them that they do not need to undertake the ordinary repairs that they would normally do. That is it. That is the extent to which we are providing any relief to lessors. It would be useful to have that clarified during the reply, if possible.

The media release continues in the next dot point —

> enabling a tenant to end a fixed term tenancy prior to its end date without incurring break lease fees …

The Minister for Regional Development made that point in her second reading speech. My question is: how does this sit against the boast in the explanatory memorandum? Members will hopefully forgive me, because the version of the explanatory memorandum I would like to refer to, at least on a temporary basis, is the draft that I was provided a few days ago. The first paragraph of the draft states —

> Most importantly, the Bill is seeking to stabilise the rental market during this extraordinary time.

I note that those are the exact words used in the final version of the explanatory memorandum that has been tabled today. The question is: how does enabling a tenant who is in a fixed-term tenancy to simply end and break the fixed-term tenancy without incurring any break-lease fees sit with the boast in the explanatory memorandum that we

are trying to stabilise the rental market during this extraordinary time? I would have thought that if landlords and tenants have a fixed-term tenancy, that is a fairly stable agreement. But if we allow, through government intervention, a situation in which the tenant can simply break a lease without any fees, that would seem to do the opposite of the government's boast in the explanatory memorandum that the bill is seeking to stabilise the rental market during this extraordinary time. I ask for an explanation from the government on that. It seems to me that the bill will do the precise opposite by allowing tenants to break a stable agreement.

Later in the media release, there is a quote from the Premier. He says —

> "What we're introducing are sensible amendments to help landlords and tenants to work together during these challenging and uncertain times."

I certainly concede the point that the bill is helping tenants during these challenging and uncertain times. There is no debate from me; I have no quarrel whatsoever. But I question the Premier's suggestion that the government is helping landlords during these challenging and uncertain times. Perhaps we can explore that a little later during Committee of the Whole House.

I conclude with my assessment of the information in the media release from earlier this week with a quote from the Minister for Commerce, John Quigley. He said —

> "We expect that as a consequence of the impact of the pandemic, there will be a spike in disputes during the emergency period.
>
> "As a result of these concerns, the legislation will provide a mandatory conciliation step in the dispute resolution process.
>
> "This will act as a buffer between complainants and the Magistrates Court and the State Administrative Tribunal (SAT) protecting the Magistrates Court and SAT —

I will pause for a moment. What is the Attorney General saying we will protect the Magistrates Court and the State Administrative Tribunal from? He continues —

> from being flooded by residential tenancy dispute applications.

We can forget about protecting landlords. According to the government, this bill will protect the Magistrates Court and the State Administrative Tribunal from being inundated or, to use the language of the Attorney General, "flooded by residential tenancy dispute applications." My question to the minister with the carriage of this bill is: Does this then imply that Consumer Protection will be flooded instead? If so, what is its capacity to deal with this flood?

I have received some concerns from constituents about the matter before us. One constituent wrote to me earlier this week, and I quote part of a confidential email from this constituent. He wrote —

> I am the Father of two children under 10 years and own a number of rental properties, which are my super and a financial backup in the event my children lose their parents.
>
> Whilst I absolutely agree with the proposal to prevent evictions, I am concerned that there is no protection for landlords if a rental tenant deliberately gives up their employment.

He writes later in the email —

> What protection will I have if they decide not to pay rent?

I should hasten to say that we can perhaps park to one side the suggestion by the constituent that there would be people who would want to deliberately give up their employment, and get to the spirit of the constituent's concern, which is: What protection is in this bill for landlords if the tenant decides not to pay rent? Will any protections be available? That is a reasonable concern from a father of two children under 10 who seems to have his livelihood dependent upon the rent paid on these properties.

I have a number of questions that I would like to ask during Committee of the Whole House. I have not had the opportunity to give the minister notice of those questions, as I have had the opportunity to do with the other bill that we will deal with today. In the spirit of cooperation, I indicate to the minister that, at this stage—it is not intended to be an exhaustive list—I have questions about clauses 1, 2, 3, 4, 19, 31, 44, 47, 61, 73 and 75. We will hopefully get to those shortly.

For those stakeholders who would like further analysis of the bill, I regret to say that I am bound by time today because of the extraordinary battering-ram temporary standing order that we are operating under. I conclude by indicating that the opposition is not about to oppose something that arises from the national cabinet's decisions during this pandemic. However, we cannot offer full-throated support for a bill that is being introduced through a bad faith process and which has, in effect, zero regard for landlords and, indeed, appears to have wider application

than merely those impacted by rental distress due to COVID-19. With respect to that last point, I was encouraged to hear that the government is proposing some amendments, so hopefully that final concern might be alleviated during Committee of the Whole House. Nevertheless, it is clear that the bill introduced in the other place yesterday afternoon and now before us with proposed amendments from the government cannot be described in any way other than as a rushed, half-baked bill. It appears that the government has been more interested in spending time on other priorities than getting down to the detail of this bill. As I have said already this week, I was very concerned with the conduct of the Attorney General on the matters pertaining to the Corruption and Crime Commission. I wish he had instead spent his time on getting the details of this bill right so that those of us in opposition and who are lawmakers could have had an opportunity to digest the very laws that we are said to be passing for the people of Western Australia. I hope that the government can take responsibility for this matter. I look forward to considering the amendments that the government has for us during Committee of the Whole House.

HON RICK MAZZA (Agricultural) [9.43 am]: At the risk of sounding somewhat whiny, I have also had to get across a lot of legislation this week. I received the Residential Tenancies (COVID-19 Response) Bill 2020, along with the Commercial Tenancies (COVID-19 Response) Bill 2020, fairly late on Wednesday afternoon and had a half-hour Zoom briefing. It is a substantial bill so there is a lot to digest. Like other members, I spent quite a lot of time trying to get across all of the issues in dealing with this bill.

I appreciate the intent of this bill and the fact that the government is trying to protect tenants from basically ending up on the street should they be affected by COVID-19 and lose their job and not be able to make their rental payments. However, I think there will be some significant consequences in the long term from the issues that are before us now. Landlords will not be able to evict tenants for non-payment of rent without some safeguards around that. This bill seeks to amend the Residential Parks (Long-stay Tenants) Act 2006 and the Residential Tenancies Act 1987. Essentially, the intention of the bill is to put a moratorium on evictions, except in special circumstances. It also provides for a conciliation process through the department of commerce, with the Commissioner for Consumer Protection able to receive applications from tenants and landlords to try to conciliate those issues. One thing I am really worried about is that we are going to unpick centuries of commercial practice and contract law. Before the COVID-19 crisis, tenants also lost jobs and fell on hard times. Contract law, the Residential Tenancies Act and the Residential Parks (Long-stay Tenants) Act dealt with those issues. However, we are now going to bypass all of that commercial practice and contract law so that tenants cannot be evicted.

The government is trying to protect people from becoming homeless. However, I do not think enough consideration has been given to landlords. In many cases, particularly with residential investments, landlords are very small investors. They are mum-and-dad investors who might have almost paid off, or have paid off, their house and then buy a second house to create a little bit of wealth for their retirement. They often borrow a lot of money to buy that second house. They provide rental accommodation for those in the community who are in the rental market. The unfortunate thing for them in this circumstance is that if a tenant decides to not pay rent, and their reason for doing that may not be a true one, they will be without rental income from their investment property. In addition, they will be making mortgage repayments, paying rates and paying insurance, so all of those costs will be mounting up. Notwithstanding that banks will defer payments, their loan will continue to grow, with interest being accrued. On top of that, landlords may themselves lose their job because of the COVID-19 crisis, so landlords are in the same boat as everybody else and their income could be affected by the COVID-19 crisis. Another issue for them is that the housing market is tipped to fall by at least 10 per cent during this crisis, so they will have a growing gap between the value of their asset and the amount their loan is accruing by, as well as not having an income coming in from that rental property. It is a perfect storm for landlords, many of whom could face bankruptcy at the end of the day. This is a very serious matter.

I personally believe that, in tackling this issue, the government would have been far better placed to provide a rental assistance scheme for renters who find themselves in hardship. If they are struggling to pay rent, they could apply for rental assistance. I am sure that if a rental assistance scheme were in place, the government would require proof that the tenant was facing hardship because of job loss or some other reason relating to COVID-19. Under this bill, they do not have to provide that proof to the landlord. I flag that I have a couple of amendments on the supplementary notice paper to provide that tenants give some proof that they are facing hardship.

The bill contains a sunset clause of 12 months. What really worries me about this is that it is retrospective to 30 March and is envisaged to go until 28 September—a six-month period. From what I read in the bill and the explanatory memorandum, there is then a three-month moratorium after that date before an eviction notice can be provided to a tenant. There is also provision in the bill for an extension of that emergency period. A landlord could face a period of one year and three months without receiving any rent, because a tenant will not make those rental payments. I am hopeful that in most circumstances landlords and tenants will be reasonable. My experience has been that the vast majority of landlords and tenants are usually quite reasonable, but there are elements on one end of the scale

who are totally unreasonable, and there are elements on the other end of the scale who will not pay the rent or whatever the case may be. That will be very difficult to deal with.

The bill, as I said, provides for a conciliation process through the Commissioner of Consumer Protection. I am a bit concerned about the time it may take for applications to go to the commissioner for that conciliation process. My understanding of the bill is that if someone does not participate in this conciliation process, they could be liable for a penalty of $5 000. If they submit to the process and are unable to come to agreement, the commissioner can issue a certificate that can then be presented to the magistrate, in the case of Residential Tenancies Act 1987, or the State Administrative Tribunal, in the case of the Residential Parks (Long-stay Tenants) Act 2006. But it will still be quite a lengthy process to get to a point at which parties may have an agreed outcome.

I also read in the bill that there will be penalties of up to $20 000 for entering a premises without due cause. Some significant penalties will be applied to landlords, with a couple of penalties of $20 000 for breaches of this legislation. In addition to rental assistance being provided to tenants, which I think would be a fairer way to deal with this issue, consideration should also be given to land tax to provide relief for landlords at this point in time. I will have a bit more to say about that when we get to the Commercial Tenancies (COVID-19 Response) Bill 2020. Certainly, some relief for landlords in that area would be most welcome, and would contribute towards keeping those private landlords afloat. My worry is that, in time, people will leave the residential investment market. Private investors will be hurt by this issue; their experience will be bad and they will leave. That will dry up the available private rental market which will do two things. Firstly, there will be a shortage of private rental accommodation, then there will be a rent spike because of the supply and demand issue. After this bill expires or is repealed, there will be a rent spike and a shortage of private rental accommodation. Secondly, the Housing Authority will come under enormous pressure to provide housing to try to make up that shortfall, and that will be a huge cost to the state, and far more, I would say, than providing a rent assistance scheme during this state of emergency. Without some safety mechanisms around it, there will be some significant consequences as a result of the bill that is before us.

Clauses 14 and 26 of the bill do not require a rent repayment agreement to be in writing, which I find odd. I would think that any agreement, particularly one that has an adjustment of rent, should be a written agreement. Under the Transfer of Land Act, it is a statutory requirement that all property agreements need to be in writing. If a rent adjustment agreement is made or an agreement comes into being, there should be a written agreement; otherwise, with time having passed, people could suddenly have a change of mind about what was agreed to. The idea of a written agreement is to record exactly what was agreed to at that point in time. I have a number of questions for the Committee of the Whole House stage, and one amendment we should be pursuing is to have any agreement in writing.

Our time is limited, so I will not continue too much longer other than to say that I have great reservations about the bill in its current form. I will not oppose the bill, because we are in this COVID crisis and the government sees this as the way of dealing with that crisis; however, I implore the government to keep a very close eye on where this goes with tenants. The Premier has been reported in the media saying that this is not a get-out-of-jail-free card for the tenant; that rent will accrue and landlords can pursue that debt. The unfortunate thing is that in my experience, when someone who lives week to week, as many tenants do, gets behind on their rent for three or six months, the chance of them ever catching up on that outstanding rent is very slim. In most cases, sensible landlords will not go to the expense and trauma of trying to recover that rent. It is just not worth it. A lot of landlords will be out of pocket, notwithstanding that rental arrears have accrued.

It has been suggested to me that there has been some dialogue with the Insurance Council of Australia about landlord's extra protection insurance, and that as long as landlords and real estate agents strictly comply with the provisions of this legislation, they will be entitled to claim for any losses incurred when a tenant breaches this legislation. That may be the case. I am not prepared to say whether that will be the case until such time as it has been tested. However, if a tenant has failed to pay their rent because of hardship, under this legislation, I do not know that that will comply with a claim against the insurance policy. A whole range of scenarios could arise out of that, with great difficulty for landlords. I have reservations. I will have some amendments on the supplementary notice paper that will require a tenant to provide proof that they are affected by COVID-19 when it comes to non-payment of rent and if they wish to break a fixed-term lease. If they have a fixed-term lease for 12 months and the tenant is only three months into it, once this legislation is enacted, they will only be required to give 21 days' notice to vacate that lease. There is a range of other situations around leases. If a lease expires during the COVID-19 emergency period, the lease will then go to a periodic lease, in which case a landlord will need to give a 60-day notice of termination. Currently, they can give that notice prior to the expiry date so that it coincides with the expiry date. I understand they now have to give that in addition to the expiry date. There is a whole raft of things around that. I look forward to Committee of the Whole. I have a number of questions, as I am sure others will. I have a couple of amendments on the SNP, which I hope are supported by the house.

HON TIM CLIFFORD (East Metropolitan) [9.57 am]: I rise to speak on the Residential Tenancies (COVID-19 Response) Bill 2020. I echo some of the points made by previous speakers about the limited time

provided to prepare for this debate. I understand the urgency and the need for some clarity around what is going on in residential tenancies with the COVID pandemic and everything, but I have concerns about the amount of time provided to digest so much information. I put on the record that we have sought clarification around some points in the legislation and we still have not received that. That was sent through regarding some of the amendments that were put forward last night. In saying that, it is important to understand that leading up to this pandemic there were already a lot of issues in the residential tenancies space regarding rent and renters. We need to understand that a number of people are already under an extreme amount of pressure with their rent and managing to pay their bills. I have heard a lot about mum-and-dad investors, landlords and what has been going on more broadly in real estate with a housing price decline, but the real underlying issue is that a huge cohort of people in Australia, and all the young people coming through, are facing perpetual rent. They are not able to save for a mortgage, and that will now be even harder. The reality is that before this pandemic, a real power imbalance already existed between landlords and those who signed residential tenancy agreements, let alone some of the issues that I will be raising later in my speech. There were already a lot of cracks in the system, but the COVID-19 crisis has really exposed some of the underlying issues that have been there in the first place.

I am concerned that it has taken more than two weeks since the Prime Minister's announcement on residential tenancy reform for the legislation to reach this Parliament. As I mentioned, it is not ideal that we have only had since yesterday to consider it, but I am heartened that there is a bill on the table. I understand we have limited time to consider the bill, but I will raise a couple of issues later. We need to put things into perspective. Whatever happens after today, we really need to monitor things and to see what goes on. We cannot have tenants walking away from this having incurred huge debts and landlords pursuing them in the courts. A lot of other issues could stem from that. If we are willing to push this bill through in the way that we are doing, we must also be willing to come back into this place as soon as possible to rectify any issues that arise.

I support the moratorium on evictions. During this health crisis we need to make sure that people have a roof over their head, and the moratorium is a step in the right direction. The bill also deals with fixed-term tenancies. Coming into this crisis, some people may have been coming to the end of their leases, so it is a good step to provide for periodic leases so that people will not be forced out of their homes. Concerns were raised about tenants on blacklists. It is good that people will not be blacklisted if they experience COVID-19-related financial hardship.

As I said, people have raised concerns through my office about debts that will be incurred. I fear that many people might be forced to choose to throw in their keys to the landlord and sleep on someone's couch because they do not want four months' worth of rental debt hanging over their heads at the end of this crisis. The prior speaker alluded to rent relief as an avenue for those people.

We cannot lose focus of the fact that this is a health crisis and we need to keep people in their homes no matter what. I am very concerned that this bill will go only halfway to addressing all the issues more broadly. I would like to talk about the circumstances in which a lessor may terminate a lease. The bill will retain a court's ability to terminate a lease under section 74 of the Residential Tenancies Act if it is satisfied that a lessor or tenant would otherwise suffer undue hardship. Although I accept that this termination avenue may be necessary in circumstances in which a lessor is forced to move back into a property, I would not want this provision to be relied upon by a lessor when they are simply experiencing financial hardship but do not require repossession of the property. There is other potential relief for landlords who suffer financial hardship, such as mortgage deferrals and government support payments, but I have a question about this. Will any of these reforms affect a landlord's mortgage insurance? That has not been highlighted. I know that there is a lot of federal and state crossover, but it is important to highlight that landlords might be unwilling to step up to the table to negotiate if there are implications on their mortgage insurance. That is one question I have.

I understand that when making a determination whether to terminate a lease under section 74, a court will weigh up the potential hardship experienced by a landlord and tenant in the current health crisis. That is not just about the interests of the tenant and the lessor; it goes back to what I said before about the public interest consideration. We need to prevent homelessness. I am very concerned about some of the stories that have been coming out in previous weeks about police handing out move-on notices to homeless people who have been gathering in crowds. Homelessness is related to people being pushed out of their homes. We need to look at the whole scope of what is happening. Under this bill, will the public interest be taken into account with regard to this health crisis?

I come now to termination of a lease by a tenant. I understand that the government intends to amend clauses 19 and 31, which allow a tenant to terminate a lease without specifying grounds. In the original version of the bill, any tenant would have had the right to terminate their lease under these conditions, but the government's amendments will seek to restrict these clauses so that only a tenant who suffers COVID-19 financial hardship can break their lease. There are a couple of things I would like to request in this regard, and we can go through this in more detail in the Committee of the Whole Stage. I ask that the government consider altering the amendment to ensure that, firstly, households are not disadvantaged when it is not the tenant who is suffering financial hardship. As the minister noted several times yesterday, a tenant's wife might lose her job or, in the case of a share house, someone in a share

house might lose their income. That will affect everyone else in the household and the whole household's ability to pay the rent. A more common example would perhaps be a share house in which one occupant, as I said before, loses their job and decides to move out. A lot of people are looking at those options. People who are in share house situations have contacted my office when other members of their household have had to leave the tenancy. That can put an extraordinary burden on the other people in the household because, if there is some agreement between them, all of a sudden they have to pursue the person who has left. There is a ripple effect to this that we need to consider.

Further, I believe that tenants should be able to break their lease on compassionate grounds. For example, a tenant may be required to move in with a family member either to provide care for that family member or because the tenant themselves requires care. There may be other compassionate grounds that we have not thought about in the limited time that we have had to consider this bill. I think we should discuss this in-depth when we reach the committee stage. I hope that more consideration is given to those people in those situations, considering we are in a health crisis and people with underlying health conditions will need extra assistance when they are home, so having an extra family member at home will help them.

I am also concerned about the proposed amendments and the difficulty in determining what constitutes financial hardship caused by the COVID-19 pandemic. Who determines financial hardship? Who has the burden of proof? Is there a threshold for this hardship? I would like to have outlined how that is going to be assessed. The minister also stated yesterday that one reason that the hardship test was not being included in the eviction moratorium is that it would be administratively onerous. How is that any different from what happens now?

I turn now to the conciliation process and rent payment agreements under clause 14. I believe that more support and guidance needs to be given to tenants and lessors to determine what is a reasonable rent repayment and what that will look like. The bill allows for landlords and tenants to enter into a rent repayment agreement for rent not paid in accordance with the usual terms of the lease. That may consist of a reduction in rent with no repayment obligation or a reduction in rent with an agreed repayment plan that the tenant must adhere to after the emergency period is over. If the parties can reach agreement on the terms of a rent repayment plan, I understand that either party may make a submission to the Commissioner for Consumer Protection and go through the conciliation process. The bill does not provide any guidance about what is reasonable and what principles will be applied by the commissioner in conducting the conciliation process. It was already highlighted before the pandemic that when people go over certain thresholds of their rent or mortgage as a percentage of income, it is considered rental or mortgage stress. Is it reasonable to expect a tenant to pay more than 25 per cent of their income on rent? Is it reasonable for a landlord to expect full payment of rent at the end of the emergency period or should they share some of the pain? If rent is to be repaid, what would a reasonable repayment plan look like? Those are a lot of questions that still have not been answered. For example, a tenant might be able to negotiate a reduction of $100 in rent a week. That might seem reasonable to the landlord, but the rent might still be 50 or 60 per cent of the tenant's support payments from the government or income from whatever job they have left if they have had their work hours restricted. We need to consider that a lot of people are doing it really tough and spending a huge proportion of their income on rent, which eventually leads them to having to break their lease anyway or make the hard decisions that I mentioned before. That really puts a lot of pressure on top of what is going on at the time.

I understand the minister's comments yesterday that the department intends to publish some guidelines; however, we have been given no information about the contents of these guidelines. It is hard to consider a lot of these things today without seeing that information, but I acknowledge that a lot of the work has been done on the fly by staff. We need to keep in mind that whatever the guidelines are, they must be clear and able to be absorbed and understood by people. Tenants could be students, someone who has just found accommodation after fleeing domestic violence or someone in some other situation, so the guidelines need to be strong enough to address some of the power imbalances in these considerations. Despite the promised publication of guidelines, there are still grave concerns about the imbalance of power, which I mentioned, in negotiating. We need to ensure that no-one gets exploited in this process. I have just heard reports of employers not passing on the full amount of JobKeeper payments in the stimulus packages. If there is a consideration of any rent relief in this process, I am flagging that down the track we need to make sure the process is strong and very clear for people so they cannot be exploited in any way.

I also note that there are consequences for both parties if they do not cooperate during the conciliation process; however, again, there is no guidance about what constitutes a failure to cooperate. For example, a landlord agrees to an $80 reduction in rent, but it means that the tenant still has to pay more than 50 per cent of their income, which I went through before. If the tenant tells the landlord that they are in dire straits and have a lot of commitments, thanks the landlord for the offer, but says that their income would still not cover the rent and they cannot come to the table, would the tenant be seen as not cooperating because they are not accepting that initial deal? We need to make sure that that is addressed.

I go on to maintenance issues. Clause 11 exempts a landlord from having to maintain the premises or conduct repairs due to financial hardship caused by the economic effects of COVID-19 and an inability to access premises due to

the direction given under the specified act. During yesterday's debate, there was a query about whether tenants would be obliged to report maintenance issues, which the minister confirmed was the case, but it would be up to the landlord to make the decision about whether to effect non-essential repairs. The bill has a list of very specific circumstances in which the landlord's obligation to conduct repairs is exempted. Could the minister please clarify whether those comments were mistaken and it is not simply up to the landlord? There is a lot of vagueness around that. Having guidelines and knowing where everyone stands is important.

There is no guidance on what COVID-19-related financial stress means, so how is that to be determined and who has the burden of proving it? I ask the minister to clarify that point as well. If tenants are being asked to go without maintenance or repairs for six months, or potentially longer if the emergency period is extended, there need to be clear guidelines about what happens beyond that. For example, if the landlord is not in a position to undertake those repairs, perhaps the tenant could be permitted to arrange them and have the cost deducted from their rent, or perhaps the tenant could be entitled to a rent reduction to reflect the fact that their home is not being maintained to a standard expected in the normal terms of a lease agreement. It has been put on the table that there are a lot of sneaky tenants out there who might exploit and take advantage of this bill by refusing to pay rent despite the obvious deterrent of the accumulation of so much debt, but I have concerns about the vagueness of this clause and what it could mean for some landlords to refuse to conduct maintenance and repairs that would be otherwise be expected of them because of financial hardship in the context of COVID-19. We also need to take that into account.

I move on to what the previous speaker spoke about, which is rent relief. The Premier made it very clear that this is a moratorium on evictions and not on rent. He made it very clear that tenants could be sued and would be required to pay, but, as I said before, I am really concerned that coming out of this, tenants are going to be straddled with debt. We need to make sure a process is in place. I have heard many people talk about how we want to restart the economy and get people back into a space in which they can start working, whether in casual or full-time jobs or whatever, and making a contribution. We cannot expect a full recovery if a huge cohort of people will be straddled with so much debt coming at the other end of this. As I mentioned before, a huge number of people in Australia rent. If we want to make sure that people recover to their full capacity so that they can go about their lives without having to worry about rent-induced debt, I am sure it would be good for us to have a real discussion about what things looks like on the other side of this.

I note that this week the Real Estate Institute of Western Australia urged the government to offer rent assistance, and I think that has been raised in other states, so I ask the minister whether the government will consider that. It could be a really important step forward in alleviating some of the pressures on people. At the end of this, we need to really think about what is going on in WA and more broadly. I understand that whatever is on the table today is going to change by the end of the six months, but if we expect everyone to come through this and try to ensure that no-one is left behind, we need strong guidelines. We need to look at all possible avenues.

I understand that when the Prime Minister was questioned about extending the stimulus package, the only real response was that this is the line in the sand. I hope that the Premier can go into bat for all tenants in WA and take this to the national cabinet, because it is really important that things like rent relief are considered so that people are protected on the other side of this. The interests of all renters in WA need to be taken to the national cabinet meeting and hopefully the Prime Minister will listen to that. I look forward to the committee stage, when we will go through more of this bill in detail. I look forward to listening to other speakers' contributions.

HON COLIN HOLT (South West) [10.20 am]: I am not going to cover ground that has already been covered. I will make some general points, but I look forward to the committee stage. Like other members, I have had limited time to scrutinise the Residential Tenancies (COVID-19 Response) Bill 2020. Some specific points of clarification are required on some of the clauses. The Nationals WA support the bill. We recognise that this is a commitment that came out of the national cabinet.

When I think about this issue and the bill, I think it is a great demonstration of where we find ourselves in the COVID-19 emergency, with all the knock-on effects that have occurred. We know that businesses have closed—some have been forced to close—and that many people have lost their jobs during this crisis, at least in the short term. I am sure that every member in this place has family members who are in the exact same spot. They are on the front line of the economic stress in response to this health issue. We can think about the knock-on effects of that. If someone who is renting a house loses their job, they will immediately be under economic stress. Lots of people live week to week and pay to pay. Obviously, the first thing that working people do is to make sure that they pay their rent. No-one wants to be kicked out of a home. People need stability in their housing situation and they do not want mounting debt as a result of not paying their rent. Of course, under this legislation, people who cannot pay their rent are being allowed to not pay rent and not be evicted, but the people who will wear the economic burden of that will be the landlords who are probably facing the exact same situation as their tenants because they will also be racking up debt as they will have less income coming in. We have to think about the knock-on effects on those people.

I have not heard anyone talk about real estate agents who manage rental properties. Most real estate agents who manage rental properties take a percentage of the rent received. How widespread will this issue be? On the face of it, I would say that it will probably be very widespread; a lot of people will be under stress to pay their rent. If a large number of renters take up the option of not paying their rent for six months, a whole heap of real estate agents who manage those rental properties will be without any income, and so the knock-on effects will continue. I am not sure that they have been thought about in this situation or how they will negotiate their way through this. They still have to manage the properties on behalf of the landlords, but there will not be any rent coming in and the property managers will not be receiving any percentage of the rent. I wonder how they will deal with that in the future.

I note the Premier's words when this legislation was announced. He said that this is not a moratorium on paying rent; it is a moratorium on evictions. That is a fair comment, because if people want to look for work in a new field during this emergency or to participate in the economy when we finally emerge from it, one of the main things they will need is stability in housing. People need a roof over their head and a settled life so that they can re-enter the workforce and participate in the economy when the time is right.

I also reiterate the Premier's words when he called for both renters and landlords to negotiate in good faith. I think that is right. We want the people who can pay rent to continue to pay rent so that we do not have the knock-on effects in the economy. We want the people who have lost work or have had their hours reduced, and therefore their income reduced, to negotiate and pay at least some of their rent so that they do not end up with a massive debt that they will find very difficult to repay. It also means that there will be less stress in the whole system for landlords, real estate agents, banks and all the rest. It is right for the Premier to say that both sides of the equation need to negotiate in good faith. If everyone did that, we probably would not need this bill.

Do you want me to continue, Madam President?

The PRESIDENT: I am listening to you, member. As you know, some people can do more than one thing at a time. I have been very distracted by the loud noises that have prevented me from giving you my 100 per cent attention, but I understand that that might desist soon, so I will focus entirely on you.

Hon COLIN HOLT: Thanks.

Hon Peter Collier: It is absolutely gripping; I am hanging on every word!

Hon COLIN HOLT: Thanks, bud!

The PRESIDENT: It is always good from the honourable member.

Hon COLIN HOLT: Now I have forgotten where I was up to. I will just start again!

The PRESIDENT: How is that for encouragement!

Hon Alannah MacTiernan: You had gone past negotiating in good faith.

Hon COLIN HOLT: Yes, correct. Of course, that is based on good relationships. There are good relationships between landlords and tenants, but we also know that that is one area in society in which there are a lot of strained relationships, and that is why we need this bill. We are living in extraordinary times. I, for one, certainly do not want people who have been affected by the COVID crisis and are under economic stress to be evicted. I want to find a way for them to be supported and protected in the current situation. However, I also want to make sure that landlords who are affected by the crisis are protected and supported. The question that must be asked, and I think it has been raised by previous speakers, is: does this bill as it currently stands strike the right balance between tenants' rights and support and landlords' rights and support? I would say that right at the moment, it does not. It is definitely skewed towards support for tenants. I heard the commentary in the other place and outside the chamber, so I look forward to seeing some amendments on the supplementary notice paper to address the need for a greater focus on the rights of landlords.

Obviously, I will ask some questions during the committee stage. I plead with all those who might think that they will be able to game the system in some way under this bill to not think it is an excuse for them to stop paying rent, because they will end up with a large bill at the end. When the time comes, they will be saddled with a rental bill and debt, and they do not want that. They need to work as hard as they can to pay at least some of the rent to keep the whole system flowing. They need to negotiate with their landlord in the first instance for a good outcome for both of them. I know that will be hard, because there probably will not be a good outcome for both of them, but they need to negotiate in good faith, as the Premier has said.

There needs to be some sort of hardship eligibility criteria for tenants to meet to prove to their landlord that they have lost their job and their income has been reduced by a certain amount. The way to build trust between landlords and tenants is to be open about the situation and to prove financial hardship to the landlord so that they can also

act in good faith. I am sure that landlords will also suffer some hardship. There is reference in the bill to landlords not needing to undertake repairs. Maybe there needs to be a hardship test for that, too, to require that landlords cannot use this time as an excuse to not undertake normal maintenance. Normal maintenance should be done if the landlord can afford it. There needs to be more of a balance in the bill than there is currently. We know that people applying for JobKeeper need to fill out a number of forms and meet a number of criteria before they can get that assistance. We expect that. In this situation, we expect that anyone who is looking for rent relief from a landlord should prove financial hardship.

I will touch on a couple of questions that the minister might be able to answer. The Housing Authority will be at the very pointy end of this COVID situation. Housing Authority rent is calculated on a percentage of a tenant's income. There is a moratorium on rent increases as well as evictions. I was told in the briefings that the methodology for calculating the percentage of income will not and cannot change under this bill, but that the percentage of income calculations could change for the tenants of a Housing Authority property. I am thinking of the potential support that Housing Authority tenants could receive through Centrelink or other payments. They could get a bit of a bonus. Will the Housing Authority then use its percentage to take a greater amount in dollar terms from people who are renting from the Housing Authority? Is that therefore counted as a rent increase, even though the percentage calculation has not changed? I think that needs to be clarified for all concerned. In one of the briefings it was suggested that that increase in real terms would not occur for the Housing Authority. I think that needs to be clarified.

The community housing sector has played a massive and increasingly important role in Western Australia in providing housing social housing for those most in need. That has especially been the case over the past 10 years when the community housing sector grew on the back of a great deal of government investment. The community housing sector works out rent based on a percentage of the tenants' income. Will the moratorium extend to it? Will it be allowed to continue to charge a percentage, even if it leads to a real dollar increase for renters? If so, how will that be dealt with under the legislation? Is it a rental increase or not? The very large and important community housing sector will need clarification on that issue because it definitely will be picking up the pieces as a result of the COVID damage.

I also have questions about mandatory conciliation. Maybe we can leave it to that section of the bill, although I will quickly ask: will there be a cost to either the tenant or the landlord if they go through the conciliation process? Will it cost them money to take it to the Commissioner for Consumer Protection? The commissioner can establish delegates who have skills in that area to act on his or her behalf. How well equipped is the department to supply those delegates? If it is not very well equipped and we expect this to be quite a large issue, which we do, and a lot of things go to mandatory conciliation, will more funding be directed towards that? I think we need clarification on how that will be handled because we certainly do not want to create a bottleneck at the conciliation stage when we are trying to avoid creating a bottleneck at the State Administrative Tribunal or Magistrates Court stage.

I had a briefing on the bill on Wednesday morning, and the draft bill at that time did not include clause 44. We might get to that when we go into Committee of the Whole. Clause 44(2) refers to a regulation-making ability for defining "relevant dispute". That seems to be the key to the whole process of conciliation. It would be great to know what some of the regulations will look like when defining a relevant or non-relevant dispute. We will need some indication of that.

In summary, I have a lot more questions to ask during the Committee of the Whole stage. Again, I implore landlords and tenants to act truly in good faith and negotiate at their level to resolve the problems in the short term because it will lead to longer term impacts throughout the whole economy. If they deal with it as best they can in the early stages, everyone will be better off, including those most affected by the loss of income and the risk to their rent in the future. The Nationals will support the bill but a lot of clarity will be required at the Committee of the Whole stage.

HON AARON STONEHOUSE (South Metropolitan) [10.36 am]: From the outset, I would like to be clear that the Residential Tenancies (COVID-19 Response) Bill 2020 is not about controlling the spread of COVID-19; it is about managing the economic fallout if not created by, at least exacerbated by, the government's own restrictions that have left people jobless and desperate. It has done this by undermining private property rights and undermining contracts. By inserting government into areas of private contracts and dictating how privately owned property can be managed, the government is essentially making signed tenancy agreement contracts worthless pieces of paper, at least for the emergency period. The bill provides for a moratorium on evictions and on rent increases, and grants tenants the extraordinary power to break a tenancy agreement and face no penalties. These provisions will be implemented despite what may have been agreed to in a contract between two parties. That not only interferes with lawful contracts entered into in good faith by consenting parties, but also does so retrospectively. This bill is a time-travelling bill because many of the provisions come into effect on 30 March.

The key aspect of this bill, I think, is the moratorium on evictions. The government has repeatedly stressed that this is not a moratorium on rent. The government expects that tenants should continue to pay rent. The government

can expect that all it likes, but most people in society have little regard for the desires of the government. While trying to protect one class of vulnerable people, I fear the government has ignored the potential unintended consequences and harm that it will cause to another class of vulnerable people. A tenant could stop paying rent and be immune from eviction. They would not be required to provide any evidence of financial hardship in that case. The tenant may be receiving JobSeeker payments, yet they would still be protected by the provisions of this bill. I understand that this is intended to be a compassionate approach to tenants who are suffering financial hardship, but I think it ignores the financial hardship that may be currently felt by landlords. In these cases of competing hardships between a tenant and a landlord, whose hardship takes priority? We are pitting two classes of people against each other. It has me concerned because we live in a country that has a social safety net. Welfare is there for the least fortunate, and those who are down on their luck and need a helping hand. But when we provide welfare in this country, it is typically means tested and given only to those who genuinely need it. However, in this legislation, we are offloading our compassionate desire to protect people onto the shoulders of landlords. They will bear the cost of our compassionate desires. It will not be means tested.

I know that some people out there think that landlords are oppressors, and that the relationship between landlord and tenant is some kind of power struggle. But landlords are not the bourgeoisie that some people make them out to be. They are often mum-and-dad investors. They are people who have saved up for their entire lives to afford the capital to invest in a property. They are often self-funded retirees. For many of these people, the rent income that they receive is their sole income, or at least makes up the majority of their income. I point this out because we are going to put landlords in a position in which they may not receive rent on their property for a period of perhaps 12 months. I wonder how many of us here could survive for 12 months without income. It may be longer, because, as members will note, the emergency period in this bill is not defined as the state of emergency under the Emergency Management Act, as it is in other emergency COVID-19 bills that we have dealt with over the last two weeks; in fact, the emergency period can be extended indefinitely by regulation, and little in this bill explicitly defines how that emergency period may be extended and under what circumstances.

One of the provisions of this bill is a new conciliation process, or an expansion of an existing conciliation process provided by the Commissioner for Consumer Protection, that will be applied to residential tenancy disputes. This has some merit. I think that landlords and tenants working together in good faith is an outcome we would all like to see. In fact, I think it is already happening out there organically. The rental market is not doing particularly well. Rents are low and have been dropping. A good landlord would want to hold on to a good tenant for as long as possible and would want to provide a level of flexibility to that tenant. There may be some bad landlords out there who do not look at their relationship with their tenant in that way but, for the most part, landlords want to hang on to their tenants in these difficult and uncertain times. A conciliation process that keeps disputes out of the courts and can get parties to work together in good faith is a good thing. However, the government has talked about implementing this conciliation process to prevent the Magistrates Court from being flooded with dispute applications. That is the language the government has used—flooded with dispute applications! It makes me wonder how many dispute applications the government expects.

Hon Colin Holt: Good question.

Hon AARON STONEHOUSE: It is a very good question. How many does the government expect? It must have some prediction or modelling—a guess at least—of how many tenancy agreements there are in the state and how many people may become unemployed as result of the government's COVID-19 restrictions. This is a very good question, because getting through the conciliation process and into the Magistrates Court may be the only way that some people can get justice.

In his second reading reply in the other place, the Attorney General gave an interesting hypothetical scenario in which he was a tenant—the Attorney General of Western Australia, on his very generous salary. If a landlord had him as a tenant and he stopped paying rent, they may have cause for concern. Surely, the Attorney General of Western Australia is not under financial hardship and would be able to afford his rent. The Attorney General painted an example of the landlord being able to take the matter through the conciliation process with the Commissioner of Consumer Protection. However, that process would not necessarily get an outcome for a landlord when a tenant is doing the wrong thing or a tenant who is not suffering from financial hardship is merely refusing to pay rent at that time because they know that they can get away with it during this emergency period. That landlord's issue would still need to be escalated to the Magistrates Court to be adjudicated, for a decision to be made and for that landlord to receive justice if the other party—the tenant in this case—was being unreasonable. In those cases, the conciliation process would merely act as an additional bureaucratic hurdle for people to leap before they can access justice. Surely, putting up more barriers to justice is not a desirable outcome in this instance. Although I like the idea of a conciliation process, I have concerns that it may add a bureaucratic burden and create another step before people are able to receive recourse through the courts. In the example that the Attorney General gave, he created a little confusion.

This may be easily explained by the minister during her reply to the second reading debate; otherwise, I will pursue it during the Committee of the Whole House. In his second reading reply in the other place, the Attorney General —

The PRESIDENT: Member, you are quoting from uncorrected *Hansard*, are you not?

Hon AARON STONEHOUSE: I will refer to it, Madam President. I was watching the debate in my office as it played out yesterday. The Attorney General commented that in those circumstances a landlord could serve their tenant with a notice to attend a compulsory mediation conference on penalty of a fine if they did not attend. That is my understanding too. Then the Commissioner for Consumer Protection can inquire into the matter and make a binding order. He said the words "binding order". Members can avail themselves of the uncorrected *Hansard*, if they like, but that language was used yesterday when I was watching the debate. That is concerning because, from my reading of the bill, no mention is made that the Commissioner of Consumer Protection can make an order in the conciliation process. If they were to make an order, we would basically be turning the conciliation process that the Commissioner for Consumer Protection undertakes into a new tribunal—that is, essentially, a new court. That is much more complex than a mere moratorium on rent, evictions and rent increases. To create an entirely new tribunal or an entirely new layer of the judiciary is much more complex and we would need to pay more attention to the rules and procedures that will be put in place if that were the case. I am a little confused by the Attorney General because my reading of the bill implies that the commissioner cannot make an order. In fact, in the briefing I received I was told as much—that the bill has been strictly designed to ensure that the commissioner's role is merely to facilitate conciliation and mediation, and not to make orders. I suspect that the Attorney General may have misspoken, but I would like to have that clarified for me.

Hon Alannah MacTiernan: I will explain it for you.

Hon AARON STONEHOUSE: I thank the minister. I would like to have that clarified. That is also language that appears in the second reading speech, which is a little confusing. It makes reference to binding resolutions. The extent to which a resolution that comes out of the conciliation process may be binding needs to be clarified as well. Of course, if two parties consent and come to an agreement, I would expect that to be binding, but will the commissioner play any role in enforcing those agreements, or will that be left up to the Magistrates Court?

I would like to touch on the point I raised earlier. In his remarks in the other place, the Attorney General implied that the conciliation process will act as a way of protecting the interests of a landlord, but that is still unclear to me. It is true that if conciliation is initiated, both parties must attend conciliation, but if no orders can be made and one party is behaving unreasonably, the only recourse will be to have the Magistrates Court adjudicate the issue. The only way that a party who has been wronged by an unreasonable other party will be able to seek justice will still be through the Magistrates Court. The unintended consequences I foresee here are when at least one of the parties behaves unreasonably. If both parties are reasonable, surely, in conciliation, some agreement can be made. But when we are dealing with an unreasonable party, whether that be a tenant or a landlord, the only way to seek recourse is to still have the Magistrates Court adjudicate.

I remain concerned about this bill because it has been rushed through. Many members received the briefings on Tuesday or Wednesday, and we are here on Thursday debating the bill. I received a briefing on Tuesday morning, mere minutes after I received the bill and the offer for a briefing. The public servants who briefed me were gracious enough to extend our briefing out to about 45 to 50 minutes and we were able to cover many aspects of the bill, but it has absolutely been rushed. It was introduced into the other place and debated and passed in a single day. Normally, I would have an opportunity to catch up on the bill and brush up on its provisions while it is being debated in the other place, but I could not do that because, yesterday, I was in here debating the other three emergency COVID-19 bills that we had to deal with.

I understand, of course, the difficult position that the government is in, and the Attorney General in the other place explained the difficult position he has been in in drafting this legislation, in that the government members begin a drafting process and then they turn on the TV and they see the Prime Minister making a new announcement on some agreement that has been reached at the national cabinet level, and then the whole process has to begin again to implement the agreements reached at the national cabinet meeting. I understand that we are in a very difficult situation, but it is less than ideal to debate a bill in this place that was introduced not less than a moment ago and members have not had a chance to read and digest and consider the debate that has already taken place in the other place before coming here today to debate the bill now.

It has been put to me that we should expedite this and we should not be so concerned about the individual provisions of this bill and how it may impact various parties and classes of people because it has been agreed upon at the national cabinet meeting. The Premiers and the Prime Minister have come together at the national cabinet level and have agreed on this. I do not particularly care what the national cabinet agrees to or does not agree to. "National cabinet" is made up term. We live in a Federation in which the states are sovereign, at least for the most part, and it is ultimately up to the Parliaments to write the law. It is not up to national cabinet; it is not up to bureaucrats; it is up to the

Parliament to write the law, and so we have a responsibility not to the national cabinet, not to Canberra, not to the Prime Minister, but to Western Australia and the people of Western Australia to ensure that the law that we write and create serves the interests of our community first and foremost. We obviously have a responsibility to people outside of our state, but our first responsibility is to the people of Western Australia. National cabinet can agree to whatever it likes, but we still need to be critical and sceptical and forensic in our analysis of legislation that comes before us.

Do I support this bill? In its current form, no; I do not support this bill. It undermines private property and it undermines contracts; these are the pillars of our society. The idea is that people own the fruit of their labour and they can come to an agreement with another consenting party that is binding in law, and we are undermining that; we are doing so retrospectively. In my mind, this goes too far. There are other ways to address the economic hardship felt by people in our society, which has been exacerbated by government restrictions on our economic activity. I do not think that this is how we go about it. However, I will follow the Committee of the Whole House very closely and I will be looking for opportunities to amend the bill to soften some of those infringements on property rights. I will leave it at that.

HON ROBIN SCOTT (Mining and Pastoral) [10.53 am]: Unfortunately for me, as previous speakers have said, I have not had enough time to read the 49-page Residential Tenancies (COVID-19 Response) Bill 2020. Also, due to a meeting I had on Wednesday, I was unable to join in on the Zoom briefing; however, I would like to make a brief contribution. I have been a residential landlord for three decades. I know and I have experienced good and bad tenants. This bill appears to favour the tenant. Good tenants and good landlords have always communicated to come to an agreement regardless of whether it was about rent, fees or maintenance and repairs. Bad tenants will be rubbing their hands with glee. This bill gives them a get-out-of-jail card. I want to help and protect good tenants; however, I feel that this bill could have been written in such a way to also protect landlords. Not all landlords are wealthy. Many landlords are mum-and-dad investors who are trying to secure a future retirement for themselves and not rely on government handouts. But, more importantly, these mum-and-dad investors create work for the building industry, which happens to be one of our biggest employers. It employs the brickies, carpenters, electricians, plumbers and plasterers. Without these mum-and-dad investors, the building industry would not be building as many homes. Also, as mentioned by Hon Rick Mazza, without these investors, the government would have to build more state housing to accommodate people who require rental properties. Many future investors will be watching this debate closely and watching how the bill pans out, and many future investors may decide not to invest in the residential market and choose to invest in the share market instead.

Due to, and only due to, this COVID-19 pandemic, One Nation will reluctantly support the bill.

HON ALANNAH MacTIERNAN (North Metropolitan — Minister for Regional Development) [10.56 am] — in reply: I thank all members of the house who have participated today. As someone who has spent a long time in opposition, I know what an absolute challenge this has presented to the opposition members. The very truncated time frames for the opposition to get across complex pieces of legislation, I think, is regrettable and certainly not something that we would consider to be normal practice, but we know that we are in challenging times. I want to acknowledge our appreciation of the degree of cooperation that we have received, notwithstanding this very great challenge that we have imposed upon the opposition. The Residential Tenancies (COVID-19 Response) Bill 2020 is a very complex piece of legislation and one that we have been changing as we become aware of some of the unintended consequences.

I recognise that in normal circumstances this would not be a sufficient answer, but we have made an effort and we have endeavoured over the last couple of days to really hear the opposition's concerns about some of the principles and some of the detail of the bill. We have been able to work with the Attorney General and his team to develop some amendments, which now appear on the supplementary notice paper, which seek to address some of the concerns that have been expressed by members. Some of those concerns are fundamentally about the issues of balance.

There has been a great deal of concern in the community about the economic fallout of the necessary restrictions we have now placed on the community, and how we go about creating the right environment to deal with these.

Hon Nick Goiran spoke about the lack of notice, as did all members. I completely concur. I appreciate very much the forbearance and the preparedness, notwithstanding that, that members have shown as we try to address this.

Hon Nick Goiran thinks there is some imbalance and questioned the stabilisation of the market. He suggested that one of our measures might create destabilisation of the market by allowing people to surrender their fixed-term leases. It will be a very dramatic loss. The rate of unemployment has gone from about five per cent to 10 per cent, and there is some concern that this could go up to 15 per cent. To a very large extent, those job losses are being endured by younger people who are renters. Work in the hospitality industry, for example, is overwhelmingly the province of younger Western Australians. The very considerable difficulties that are being experienced will impact people who are renting. We are trying to give a pause to ensure that there are no rental increases over that time and to provide a better mechanism for negotiating rent reductions, and for a moratorium on evictions. There is

recognition there might be people in certain sectors who have possibly been renting in an area that was dependent on them earning a high income, which they no longer have, and they need to vacate that property. We do not anticipate that that provision will be used anywhere near as much as the provision of people relying on that stabilisation mechanism of no rental increases and no evictions.

A number of members have asked whether Consumer Protection is equipped to deal with this. I have received advice that there are many skilled negotiators and conciliators within Consumer Protection. They will move away from other areas of Consumer Protection to focus on this particular area. Special provisions are in play to bring people in from departments where normal activities have reduced. Lawyers et cetera will be brought into the Consumer Protection arena to backfill some of those other tasks so that very experienced and senior negotiators in the Consumer Protection area can very much focus on this. The departmental officers who I have spoken to are confident that they will be able to deal with this.

Many members, indeed all members from the other side, said they were concerned that there had not been a proper balance in the levels of protection between landlords and tenants—sorry, with the exception of Hon Tim Clifford, whose concerns were in the other direction—and I will address some of those. Other speakers were concerned that this legislation will put an undue burden on landlords. It was pointed out that many landlords are not necessarily wealthy. I am not sure that having two children aged under 10 means someone is not wealthy. It is certainly the case that many of the properties, particularly in the lower end of the market, are owned by people of modest means. They are often self-funded retirees who depend on that income as part of their retirement income. We recognise this. As the Premier has said, the moratorium on rent is only a moratorium. We need to strengthen these provisions.

Members will note there are now amendments in my name on the supplementary notice paper. Landlords who believe that a tenant has chosen not to pay the rent even though they are not experiencing a COVID-19-related hardship may take a process, first of all, through the declaration of a dispute—going to a court—and would have the capability to have that moratorium on eviction overturned. This is not now an open-ended invitation for people to game the system. As the Premier said, there has always been a requirement for the rent to be paid, but if it appears that the tenant has not had an issue of financial hardship but is just choosing not to pay the rent, a mechanism will be inserted. Likewise, the concern about the early termination provision that was expressed by many members has been addressed. The tenant must now give notice of early termination. If the landlord does not believe a COVID-related hardship underpins that request, the landlord can contest. I understand that that will go to conciliation and then, if necessary, to court. Again, it is not carte blanche for tenants who want to get out of a tenancy to overturn it.

Hon Rick Mazza said that we are overturning centuries of contract law and commercial practice. I point out to the member that in times of crises we often have to do exceptional things, such as were done during the Great Depression and during wartime. We note the Prime Minister talks about this as a war. There are exceptional circumstances because exceptional measures are called for. We are required to put in place things that depart from our normal structure. I have made it very clear that this is for a limited period. I think it was Hon Aaron Stonehouse who was concerned about an extension of this time. That extension can only be done by regulation, and that would be a disallowable instrument. It is certainly not our government's desire to do this. As Premier McGowan has said over and again, we have ensured that we have kept the economy operating because we understand that a huge burden has been placed on people as a result of shutdowns. We have tried to keep as much industry going as is compatible with good health advice.

I was a little concerned about one of the comments made by Hon Aaron Stonehouse when he said that this legislation does not deal with COVID-19 issues but deals with the economic fallout created by the government's own restrictions. I do not want to overstate this, but there appeared to be an implied criticism that we should not have introduced those restrictions because they interfere with the laissez-faire attitudes that underpin the member's personal philosophy. As COVID and its contagion demonstrates, we are all in this together. We are not just a series of social isolates; we are a community. What one person does impacts on the others. I hope that the member recognises that the restrictions we have put in place have been absolutely necessary to deal with these issues.

Hon Rick Mazza also expressed some concern that we were allowing some oral agreements to be given status. We can go through that in a little more detail during Committee of the Whole. I am advised that the provision he was talking about was included to protect the landlord. For example, if a landlord says to their tenant that the tenant does not have to pay any rent next month, and orally waives the payment of rent or tells them to just pay half, then subsequently wants to revert to the previous rent or have that previous rent accepted as the standard rent, the landlord will not be prejudiced by the fact that they had orally waived or reduced the rent from the month before. That is the advice that I have. If the member needs more detail, I can provide that.

Hon Tim Clifford took a different approach. He was concerned about whether we had properly considered people's vulnerability. I do not know whether the member was in the chamber when I was talking earlier. I said that we have

acknowledged to a considerable extent that these COVID restrictions have impacted on the livelihoods of many young people. I understand, for example, that many students have had to give up their studies. They supported themselves as baristas, waiters and waitresses in the hospitality industry. Now they simply cannot afford to pay their rent. I understand that this has affected a lot of kids who go to university. It has affected a lot of kids who live in regional Western Australia. Their parents live in the country. These kids have not been able to pay the rent in their share houses and they have had to go home. We acknowledge the impact that the restrictions have had on so many young people who disproportionately occupy positions in the hospitality industry. Those are the people who, because of their stage of life, are disproportionately renters. We totally accept that vulnerability of many renters.

Many members focused on those people who are going to follow the money. Quite rightly, Hon Tim Clifford wanted to bring our focus back to those who need to be protected. Hon Tim Clifford was also concerned—again, perhaps we can address this during Committee of the Whole—that there might be other COVID hardship that was not directly financial. For example, a person with COVID may have to move out of their share household or someone's parent may have COVID and they may need to look after them, or they may need assistance on some other compassionate grounds. I understand that the hardship provisions will cover those circumstances, but we can go into that in some more detail.

Hon Tim Clifford, by his nature, looks at the good in people, and he has been focusing on that. He expressed concern about the repair provision. As a practical matter, I do not think this is a real issue. The landlord is still required to carry out any emergency repairs. Quite frankly, anyone who has lived in a share household knows that landlords are not popping around all the time doing maintenance tasks and repairs. It is highly unlikely that any usual repairs would be made during that six-month period. I do not know whether that is a particularly important burrow for us to go down.

Hon Tim Clifford said that he was concerned that people could be straddled with debt at the end of the restriction period. That is true. A number of protections are in place. We have a number of issues. We have to look at the bill holistically. If a tenant really cannot pay their rent because of their circumstances, they have the right to terminate. They will not necessarily be straddled with that debt. They can also seek conciliation to see whether they can go through a process of negotiation with the landlord to get an outcome. If the landlord does not come to the table and act in a reasonable way, that will not mitigate the debt at the end of the period of the lease, but it means that the landlord cannot initiate a termination because of the unpaid rent, even subsequent to the end of the emergency period. There is an encouragement and an incentive from both sides to enter into positive negotiation.

Hon Colin Holt raised a good point that I had not thought of. He asked what the consequence would be on many real estate agents. As we know, there have not been many property sales. Many agents will be relying on the percentage income from their rent roll. It is true that this could have a knock-on effect for them.

Hon Colin Holt: It will happen anyway, even without this bill.

Hon ALANNAH MacTIERNAN: I understand that the rental vacancy rate is pretty low at the moment. Obviously, with the contraction of the economy, it will affect them. If we can stick with the program for another couple of months, we are confident from the advice we are receiving that we can rebuild. We do not have Trump's imagination that we will have an amazing bounce. Many people have died in the United States, but he thinks we will have this incredible bounce. But there will be a rebuild. We have put in place very strong social distancing rules, and we have been able to keep the mining, construction and manufacturing sectors operational. Hopefully, if we can keep with the program, we can start to rebuild these other sectors and maybe we will not need these measures for the full six months.

Hon Colin Holt expressed concern, as have most other members, that we do not have the balance right. We have listened to their concerns and we have made a series of amendments. Hon Aaron Stonehouse was also concerned about the suggestion that the conciliation process could turn into binding orders. That will happen only with the consent of the parties. When the parties have made an agreement and are in a conciliation process, that agreement can then become a binding order. I presume that a breach of that would be a matter that is justiciable through the court process. The Attorney General was very clear that he absolutely understood and was committed to not having confusion between a mediation process and an arbitration process, if you like. That is why we are staying with the Magistrates Court if there cannot be a mediation. I have not read the Attorney General's reply speech, but the binding order is possible and indeed necessary when there is an agreement. That gives substance and grunt to the mediation so that the mediation does not have to be escalated to a court process in order to become justiciable.

Hon Robin Scott talked about, as many members rightly have, the difficulty of dealing with this legislation in the time available and his concerns with the question of balance. I reiterate that I know that this has been immensely difficult for members. They have had to deal with all these different pieces of legislation in a very short time. The Residential Tenancies (COVID-19 Response) Bill 2020 is very complex with many consequences; I do not doubt that there will be unintended consequences. But we really have listened to the concerns of members and we have

improved this bill without compromising the protections that can be given to vulnerable people and by reducing the capacity for this legislation to be scammed. Again, I thank members for their contributions.

Question put and passed.

Bill read a second time.

Committee

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

Clause 1: Short title —

Hon AARON STONEHOUSE: Just to start off with, can the minister assist me as I am still playing catch-up with this bill. During the second reading debate and the consideration in detail stage in the other place, were any amendments moved by the government and adopted; and, if so, can the minister give us an outline of what they were and their effect?

Hon ALANNAH MacTIERNAN: No. Because of the truncated time frame, it was determined that the amendments would be moved in this place. There are two classes of amendment: the substantive amendments that we discussed today during the second reading debate, and a series of technical amendments that emerged as the bill was being further checked. We have two sets of amendments.

Hon NICK GOIRAN: During my contribution to the second reading debate, I was quite moderate—at least for me—in my remarks. Had I known that I would be given a seven-page supplementary notice paper from the government, I can assure members that I would have been nowhere near as moderate in my remarks.

The first time I saw the second reading speech was just after nine o'clock this morning. In it the minister said —

> Since its introduction into the other place, discussions and negotiations have taken place in relation to tenants who may abuse this moratorium. As a result, substantive amendments have been prepared and will be proposed during Committee of the Whole House.

That was the extent to which I knew about the amendments, other than a brief verbal indication earlier this morning. Now I have seven pages of supplementary notice paper. For those stakeholders watching the debate today, time is ticking and we currently have two hours and 27 minutes to go. Stakeholders need to know that this is a highly irregular procedure; time does not normally run like that. It would not normally be the case that there are only two hours and 27 minutes to go, and I would not normally have the second reading speech and a bill presented to me today, and now seven pages of amendments, not by other members of the chamber, but by the government, which pressed this bill through the lower house yesterday. I ask that stakeholders watching this debate understand that opposition members and, in all fairness to them, all other members from non-government parties in this chamber, are in an impossible position. In two hours and 26 minutes the guillotine will launch and that will be the end of the discussion on this bill. It is only 11.30 in the morning and my phone is about to run out of battery because of the many text messages and emails from stakeholders and the like who have been asking for amendments and sharing all the concerns raised by members this morning. Sorry stakeholders, but the guillotine will launch in two hours and 26 minutes because this government has decided that the extent to which it is committed to dealing with this bill, which it says in its explanatory memorandum seeks to stabilise the rental market during this extraordinary time, is by dealing with it today, on Friday, 17 April. It is inconceivable for this government to consider sitting next week and dealing with this matter properly. No—the legislation has to pass through this place on Friday, 17 April. It must be done today. The guillotine must be launched. We must expect members to digest seven pages of amendments from the government on the supplementary notice paper. For the stakeholders who are watching this debate, that is what is happening.

In other circumstances I would wax lyrical about this issue, but time is running out, so I will get straight to the questions I have for the minister. I will conclude my comments about the supplementary notice paper, but I hasten to add to what I said earlier: I respect and acknowledge that the Minister for Regional Development is the minister representing in her capacity, so all my remarks and the passion with which I deliver them are not intended to be directed to the minister but to those who are ultimately responsible for this farce that we are dealing with today. I trust that the minister will understand that when we get to her amendments—certainly from my perspective, and I imagine from that of other members of the chamber—we will want some explanation about each of the amendments. That explanation should be at least as comprehensive as would have appeared in the explanatory memorandum had these clauses been in the bill in the first place. I foreshadow that for when we get to the relevant clauses.

As we are on clause 1, my question to the minister is: what is the worst-case scenario for landlords under this bill? It is indeed the case that a landlord may potentially receive no rent for six months and at the end of that six-month period—I hasten to add the six-month period to which I refer is, of course, the government's chosen six-month

emergency period as outlined in the bill—might they then be required to instigate an eviction process against the tenant, relying solely on the security bond, which I understand accounts for only one month's rental, and otherwise be reliant on an insurance claim to cover those losses? Is that the worst-case scenario for landlords under this bill?

Hon ALANNAH MacTIERNAN: The government's amendments will give landlords the ability to avoid that worst-case scenario; that is, if a landlord does nothing. If people do not pay their rent and they do nothing, do nothing and do nothing, that can happen. However, that could happen now if a landlord did nothing and did not avail themselves of the options. The amendments on the supplementary notice paper seek to insert new clauses 18A and 30A. Although the seven pages of amendments look like a lot, the amendments are just replications from the Residential Tenancies Act for lodgers and boarders. If a landlord is not receiving rent and believes it is not a COVID-19-related problem, the landlord can take action to give a remedial notice. If a tenant fails to pay rent during the emergency period, and the tenant's failure to pay rent is not due to financial hardship, the owner may give the tenant written notice. If within 60 days the tenant has not paid rent or has not entered into a rent payment agreement, the owner may apply for a termination of the tenancy. The worst-cast scenario with this is not that situation, because the landlord has the ability when the belief exits that the person is not acting reasonably to take action and then have the benefit of that six-month moratorium removed.

Hon NICK GOIRAN: As I understand it, with the bill as it currently reads, the worst-case scenario as I painted earlier is with the six months and limited ability to do anything, or really no ability to do anything until the six months is over. The cure that is proposed by the government is new clause 18A. To the extent that it will cure this problem for landlords, it will make the worst-case scenario a two-month period rather than a six-month period. I want to clarify whether that is the case. Can the minister also indicate to what extent the amendments proposed by Hon Rick Mazza will intersect with the minister's amendments? As I understand it, the honourable member simply seeks to ensure that if a tenant wants to avail themselves of those protections, they will need to provide, for example, a statutory declaration. Is there any reason his amendments could not be supported while also supporting the government's amendment to ensure that the worst-case scenario is confined to two months rather than six months?

Hon ALANNAH MacTIERNAN: I understand what Hon Rick Mazza is trying to achieve with his amendments. He is trying to put a requirement that there be covertness in people taking advantage of these protections. A landlord might decide that they would enter into a rental agreement without requiring that. We do not think this clause really gets to the nub of it. The government is ensuring that it has put in place two sets of provisions that deal with the two areas in which landlord rights are being affected; that is, the right to terminate for non-payment of rent and the right to terminate the lease. A statutory declaration to enter into a rent agreement is not required and does not add benefit; in fact, it will just make the situation more complex. The member has spoken about this in terms of commercial tenants. Many landlords will say to their tenants, "Let's reduce the rent over this period. Let's get this done." The government has listened to the concerns about the two sets of rights. We think this would make it very awkward. It would not add value. We have in place a provision under this legislation that will stop the worst of behaviours. In order to terminate the lease, the tenant must demonstrate a COVID-related hardship. If a landlord believes that a tenant has just stopped paying rent and has made no attempt to negotiate, the landlord has the right to take the matter to court and put the onus on the tenant to establish that they indeed have that hardship. We think we have done it in a more comprehensive way than through statutory declarations. As I said, I am not someone who is not open to accepting amendments, but that now would not sit comfortably with the scheme of the legislation.

Hon NICK GOIRAN: Minister, just to be clear, if the chamber were to support the government's amendments and Hon Rick Mazza's amendments, that would not make the bill inoperable in some fashion. There is no need for the minister to repeat the point that it is not the government's preferred option. I understand that; she has made that point clear. I am labouring this point because we have no other time to consider this matter. We are considering it now and we have to make a decision. In fact, my colleagues are waiting for a recommendation from me on whether we support the government's amendments and Hon Rick Mazza's amendments. I want to make sure that this is clear. If members were inclined, as is currently my inclination, to support both the government's amendments and Hon Rick Mazza's amendments, that would not undermine the bill. Yes, it might not be the government's desired option, but the system could still work. For example, if a tenant wants to avail themselves of the protections, they will need to provide a statutory declaration. If a landlord wants to avail themselves of the cure proposed by the government, they will need to comply with the provisions in proposed new clause 18A. I want to make sure that all those things can still work and that no element of it will simply undermine it and make the process inoperative.

Hon ALANNAH MacTIERNAN: It would be an unfortunate development. As Hon Colin Holt said, most people are reasonable and will be able to enter into good faith negotiations. What might be a better option, if the member wants something along these lines, would be to require the conciliator, in determining these matters, to request a statutory declaration, because a lot of people will not need to go to conciliation if they have the ability to discuss issues and work with each other. Putting on them the obligation of a statutory declaration—bearing in mind that the circumstances of many people means that they will not necessarily always have access to the personnel, skills

and knowledge to write a statutory declaration—would load them with bureaucracy at the front end and would be a punitive thing when there need not be one. If the member were very determined to have a provision such as this, the appropriate place for such a provision would be when a matter goes to conciliation with a claim of COVID-19 hardship. At that point, the person could be required to sign the conciliator-acquired statutory declaration. That would fit much better within the schema and would not create an unnecessary hurdle in the rapid negotiation and coming together of the parties.

Hon NICK GOIRAN: I will finish on this point with regard to this theme. I understand that the minister is saying that it could work—that it would be possible to accept the government's amendments and Hon Rick Mazza's amendments and the scheme would still work. It is not the government's desired approach; in fact, the minister has alluded to a possible improvement. From the position of the opposition, we will leave it to the government and Hon Rick Mazza to negotiate those things. Certainly, we would not stand in the way of a further improved approach. I wanted to be clear that it would still operate and I am now satisfied that that would be the case.

Hon RICK MAZZA: I do not know that the statutory declaration would be overly onerous, but I will wait to prosecute that when we get to the relevant clause. Because there has been limited time to go through the bill thoroughly and because a new layer of conciliation will be put in place, can the minister give us a sense of how it will work? I understand that the Commissioner for Consumer Protection will undertake the conciliation. What time frames are we looking at? Is there any cost for the conciliation? How quickly will decisions be made? Can the minister give us an idea of what the conciliation will look like before a certificate is issued and it goes to either the State Administrative Tribunal or the Magistrates Court?

Hon ALANNAH MacTIERNAN: Our current estimation is that it will take around two weeks. These sorts of negotiations already take place under tenancy agreements. The whole notion of mediation and conciliation is a critical part of so many pieces of legislation, including those that relate to the Family Court and consumer protection, so these are not unusual concepts. We have people who are used to dealing with these arrangements so it is not as though people in the department do not have a background or experience in dealing with rental agreements and landlord–tenant relationships. We are allowing people from within Consumer Protection to focus on this area and we will be backfilling some of the other consumer protection work with lawyers from other agencies, because the whole effort of government is being rearranged to meet the demands of COVID-19. We say that it will be a two-week process. If the landlord and the tenant can agree, why would we want to put this additional layer of bureaucracy on the tenant? That would be completely unfair. I take the member's point; if the matter is going to go to conciliation on either of those fronts, we could entertain the requirement of a statutory declaration at that point. If the member is prepared to agree that he will not pursue this amendment, we will get advice on drafting an alternative provision.

Hon RICK MAZZA: I appreciate the consideration that the minister will put in place for that conciliation. I have a couple of questions about conciliation. The minister is quite right; we are hopeful that most landlords and tenants can come to an arrangement without having to access the conciliation process, but the reason we have the conciliation process is that there are occasions on which they do not agree. It can cut both ways; it may be that a landlord claims hardship and wants to take possession of their property, which is provided for in this bill. I want to understand the mechanics of it. Will an aggrieved landlord or tenant have to apply to the department for conciliation as part of the process? If it takes two weeks before a decision is made, once that decision is made and they do not agree, what is the estimated time that this may take through a court or the SAT?

Hon ALANNAH MacTIERNAN: If a landlord or tenant experiences hardship, they already have the ability to take action in the court on the basis of undue hardship. I guess what this is interposing here is that if that undue hardship is COVID-19 related, it goes into the conciliation process. Under the previous process, terminations would go straight to court. With these section 74 requirements, whether on the part of the landlord or the tenant, they are required to go through the conciliation process first. The terminations can go straight to court; they do not have to go to conciliation first. Those sorts of terminations can already be dealt with under section 74 of the act.

I want to add one thing. The schema of the bill states that there will be no terminations other than those already set out in the act. In the act, there is already a series of termination possibilities, and we have specified some of those that will still apply. One of those is obviously if a landlord has an exceptional reason to need to terminate.

Hon COLIN HOLT: Madam Acting President, rather than Acting Madam President.

The DEPUTY CHAIR (Hon Adele Farina): Deputy Chair.

Hon COLIN HOLT: I still got it wrong! Sit down there so that I can get it right!

The minister raised the conciliation process in one of her responses, which made me think about the information the conciliator will look at to resolve the dispute. I do not want to speak for Hon Rick Mazza, but I think the key point about the bill as it stands is that if a tenant goes to their landlord and says, "I don't want to pay rent because I've got financial stress because of COVID-19", the landlord has to say, "Okay, thanks mate, here is your rental

holiday", and take it on face value. This potentially goes to Hon Rick Mazza's amendment. Is there a way that the landlord can expect a better answer from the tenant with proof before they get to conciliation, so that they can solve the problem at that level? It is about trust and confidence, with the tenant saying to the landlord, "I really am under stress here, here's my proof", even though they potentially do not have to show that under the legislation as it is. Maybe the member's amendment addresses that. Alternatively, the information to be used in the conciliation process addresses all that, and maybe there is a way it can be done before it gets to conciliation. I do not know; it is on the run, because we are dealing with this legislation on the run.

Hon ALANNAH MacTIERNAN: Just like in family law, if adults can make an intelligent, engaged arrangement about what they are going to do, they will not have to go through the court process. There will be a whole heap of circumstances in which landlords and tenants will just negotiate. What could happen and probably does happen is that the legislation will create an ecosphere of knowledge in which the parties negotiate. The bill has some impact on what could happen if they do not negotiate, so it is relevant to that, but they do not have to. There will not be any formal engagement. If they have not been able to do that and one party wants to take further action, they can then initiate this conciliation process. This conciliation process will be conducted as all conciliation processes are: the parties will state their cases; the conciliators can require information about the financial position of parties; and, if parties are not forthcoming, no doubt that will colour the conciliator's view of the degree of hardship and the ability of the conciliator to bring an agreement, and increase the likelihood that this matter will then end up in court, as it could at the landlord's request. The practicality is that if a matter goes to conciliation, and certainly if the landlord takes it to court, it comes under the provision that we have introduced. In the event that the landlord takes the matter to court and the tenant is required to show that the hardship is COVID-19 related, the tenant will need to produce evidence. That evidence may be informal. In a lot of court processes, statutory declarations are not sufficient, and parties need to produce pay slips and primary evidence. Now that we have these processes, a statutory declaration will not be required for the conciliation, because the conciliator will be asking for evidence such as pay slips and tax returns, or evidence that the tenant has lost their job. If the tenant cannot produce that evidence, the likelihood of them getting a conciliated outcome is probably reduced. Certainly, they would be required to produce that evidence if the matter were then taken to court by the landlord. If the tenant does not produce that evidence and is not able to satisfy the court of the requirement that is now going to be written into the legislation, they will lose the protection of the moratorium on eviction.

The DEPUTY CHAIR: Members, before I continue to ask for further questions, I would just like to draw members' attention to supplementary notice paper 187, issue 2. If members do not have that, obtain a copy, because you will need it.

Hon RICK MAZZA: I think that Hon Colin Holt makes a very pertinent and excellent point. I am not trying to pre-empt clause 4, by the way; we are on clause 1. I am just trying to maybe give the government a bit to think about on this issue. Hon Colin Holt made the point that if a tenant is required to produce a statutory declaration providing information on their hardship, as a show of goodwill and good faith, the landlord would accept that and there would be no need to go to conciliation and the parties would agree. I would think that, as legislators, our preferred position would be that the parties agree on an outcome without having to go to conciliation, the Magistrates Court or the State Administrative Tribunal. I think that providing that documentation would show good faith and goodwill and it would eliminate a lot of references to a conciliation process.

Hon ALANNAH MacTIERNAN: I honestly think that it is unreasonable to require people to enter into some sort of voluntary agreement. Because of the protections we have put in, if someone loses, they have to go to court. If the landlord wants to take the tenant to court, they have to go to court and they have to establish to that court that they have a COVID-19-related hardship. A statutory declaration is just what people say. In a court, they will be required to produce some evidence, such as pay slips. They will need to set out what their source of income was before and what it is now. For example, if they claim that they have been impacted by the COVID-19 crisis and cannot stay in their share house or whatever, they will need to demonstrate that. It would be unnecessarily punitive to put this measure up-front. I understand how this came about, because we spoke yesterday about how we could give some rigour to the system. I think that what we have now put in place is a more comprehensive way of dealing with the member's concern. Under this legislation, a tenant will not be able to terminate their lease unless they can demonstrate that they have been impacted by COVID-19. If someone seeks to terminate their lease, the legislation requires that they will have to demonstrate that. If a landlord says that the tenant is just not paying rent and skiving off and will use this process against them, the tenant will have to produce evidence to support their case, just as people must do in any other field of contract law.

Hon RICK MAZZA: I am a little confused about some of the minister's answer. Did the minister start by saying that people should not make arrangements themselves for rental agreements, and that the court should do that?

Hon Alannah MacTiernan: Not at all.

Hon RICK MAZZA: The way I perceived the minister's answer was that providing a statutory declaration and people coming to some arrangement was not the preferred option, and that they could go to court.

Hon Alannah MacTiernan: No.

Hon RICK MAZZA: I am a little confused about what the minister was trying to prosecute.

Hon ALANNAH MacTIERNAN: A landlord might know that the person to whom they rent their property is a cook. They might even know where that cook works. They might know that that hotel has closed down and that their tenant no longer has a job, and they might be prepared to enter into an agreement. We want to invoke the need to provide documents and evidence only when there is a dispute. Many people will know their tenants and their circumstances and will make those arrangements. Requiring those arrangements to be preceded by a statutory declaration is bizarre. The tenant will have an obligation to show that they are acting in good faith. They are going to have to produce evidence, whether to the conciliator or the court, to demonstrate that they are in a COVID-19 hardship position. I understand that when the member drew up his amendment, those other protections were not in the bill as strongly as they are now. I am not saying that there was not some positive intent. We now have a much more robust process in place to deal with this. This amendment would be an imposition on the system by requiring everyone to make a statutory declaration. I think that would create an environment that would militate against people making an agreement on the basis of their prior relationship.

Hon AARON STONEHOUSE: I raised this issue in my contribution to the second reading debate and I am not sure whether I got an answer. I would like whatever information the minister has on how many disputes the government is expecting. I imagine it is hard to have an idea of the burden that that might place on the Magistrates Court as that will really depend on how successful conciliation is, which would be difficult to predict, but surely the government has some idea, given my understanding that resources will be reallocated from other government agencies towards the Commissioner for Consumer Protection. Perhaps by looking at the quantum of reallocated resources the government would have some idea of how many submissions it expects will be made to the commissioner. That might be helpful. Leading on from that, I wonder whether the government has any prediction of how quickly resolutions might be achieved through that conciliation process. I think the minister said earlier that mediation currently provided by the commissioner has about a two-week turnaround. Given the potential complexity of tenancy agreements and the types of disputes people may be dealing with, as well as the amendments the government is proposing to this process, does the minister expect that two-week turnaround to remain the same or be shorter or longer? I would appreciate any insight that the minister can provide.

It seems to me that the amendment sought by Hon Rick Mazza rests on how effective that conciliation process will be in reaching a resolution between those two parties. If we want to require a statutory declaration before conciliation begins, that would perhaps be on the basis that we have less faith that there will be a quick resolution through that conciliation process and that we want to ensure that the facts are established early on to act as a deterrent to people abusing that system before the matter reaches conciliation. If parties can get into conciliation quickly and resolutions can be reached quickly, I might have more confidence in that statutory declaration requirement being embedded within the conciliation process. I am sorry; I have given the minister quite a lot there. If the minister needs to clarify anything, she can come back to me.

Hon ALANNAH MacTIERNAN: It really is hard to predict all these things. In March, we received 35 inquiries from tenants who were claiming hardship and facing eviction. There were numerous inquiries to the end of March. Overall, we had about 301 inquiries, with 153 of those from tenants, 51 from real estate representatives and 69 from private landlords, who were asking what the regime will be and how they will deal with this stuff. To some extent, those 300 queries over March tells us that people are looking for some certainty and a way forward to deal with this. We totally accept that there are a range of human beings with different motivations in this world, but, overwhelmingly, people have conducted themselves quite reasonably during the COVID-19 crisis. It is like wartime in a sense. I think there is a well-developed sense of needing to pull together and dig our way out of this stuff. I think that creates a bit of context. But people do need some certainty. They want to know what the economic framework will be. They know that there will be something and they want some certainty about it. When someone is not able to negotiate, the process will most likely be initiated by the tenant. The landlord will probably do it the other way around; if the tenant has not been paying rent, the landlord will seek to have the protection of the moratorium terminated. In terms of conciliation, a form will have to be filled in by the tenant. As part of establishing the good faith and bona fides of the tenant, the conciliator could require them to provide information. Most of that will be in the form of primary documents, such as pay slips and welfare receipts. I honestly do not think that in the environment in which we have added these protections, a statutory declaration makes a lot of sense. I am not being disrespectful to Hon Rick Mazza, because I understand that when he developed this, those other protections were not in place.

Hon NICK GOIRAN: If a tenant indicates to a landlord that they are unable to pay their rent, can the landlord commence an insurance claim before the end of the emergency period? Can they lodge that claim and commence it in order to, if you like, fund themselves through the emergency period? Alternatively, is the landlord required to issue a rent default notice under clause 14 and enforce that notice at the expiry of the emergency period, or, of course, under the provisions that are proposed under new clause 18A, which is some 60-day period? The point is, can they do that during the emergency period; and, if the answer is yes, they can, can the minister indicate that the government has consulted with the insurance industry on this issue?

Hon ALANNAH MacTIERNAN: I do not have insight into every tenancy landlord insurance agreement, but generally they are structured so that payouts are made only at the end, at the termination. Once the tenancy is terminated, the loss to the landlord is calculated. I have no visibility of whether insurance companies are looking to introduce some other provision, but I can say that the advice is that the general schema of landlord insurance is to provide compensation at the termination. The payout is made when the extent of the loss and what can be recovered by way of the bond is determined. It is entirely conceivable, though possibly unlikely, that we will find insurers developing a different product. We are talking about six months, and if we can continue our very good figures, we could be pretty confident that this will not be extended beyond six months. Certainly, that is our great hope. We will always be able to disallow this.

I repeat: I know that we have all been rushed in this. If it is necessary during the period and there are particular problems that we have not foreseen—we think that we have dealt with the worst of this with these amendments—it is not beyond the capability that we could bring something back. Regarding insurance, our understanding is it would not be on a weekly basis.

Hon NICK GOIRAN: Firstly, can the minister confirm the extent to which the government has consulted with the insurance industry. I will take this opportunity to ask a second question pertaining to this matter while I am on my feet. I understand that the government has sought to address some of Hon Rick Mazza's concerns about the issue of a landlord otherwise being left in the lurch for six months, and the government has moved to a scheme under proposed new clause 18A that would reduce that window from six months to two months. I understood that was the minister's earlier explanation. However, if we just park that to one side, there is of course the second element of this bill, which allows the tenant to simply give 21 days' notice without any reason whatsoever, pursuant to clause 19 as it currently reads. The government has some amendments to clause 19, and I understand the intent of those amendments is that a tenant will no longer be able to simply exercise their clause 19 terminations without specifying grounds; they will need to specify that it is COVID-19 related.

My question about the impact on the landlord and the effect of their relationship with the insurer remains. Specifically, let us say that a landlord has 10 months to run on a fixed-term tenancy, but once this bill becomes law, the tenant exercises their 21-day notice. Let us assume that the government's amendments get up and that tenants says, "Yes, I'm COVID-19 affected. I have a hardship." That will then terminate the lease. Will that then trigger a right for the landlord to make a claim on their insurance for the remainder of the fixed-term tenancy?

Hon ALANNAH MacTIERNAN: That would depend on the particular term of the insurance agreement. Of course, the landlord will then have a vacant property that they would be able to let. Let us not forget the practical reality that we have a vacancy rate of only 2.5 per cent at the moment. In practical terms, that might not be too difficult to re-let. Whether there was any capability for that to be covered by insurance would, of course, depend on the insurance policy. We simply cannot predict every policy, but generally speaking, there is already the possibility from time to time for leases to be terminated. The engagement with the insurance sector took place at a commonwealth level. The commonwealth government, in framing all its COVID principles, has been engaging with the Insurance Council of Australia about the impacts of how insurers are going to respond to these circumstances.

Hon NICK GOIRAN: My concern is that if we are going to handball the consultation with the insurance industry to the commonwealth, I cannot really be satisfied today whether there has been any consultation whatsoever with the insurance industry on the Western Australian law, as I am being expected to pass this new law in Western Australia. I accept that there has been consultation at the commonwealth level, as the minister says, but that consultation could not possibly have included the provisions proposed for Western Australia, because, as we know, until a few moments ago, we did not even have it. There could not possibly have been any consultation with the insurance industry, and that concerns me. The reason that I say that is I had an opportunity to read an article in *The Guardian*, entitled, "'Utterly unjust': Why Australian renters and their landlords need certainty on residential tenancies". The minister would be interested to know that this article was published on 11 April, some six days ago. I will briefly quote it —

> Landlords would like to claim unpaid rent under their insurance, but cannot because the insurance policies require landlords to issue an eviction notice before they can be compensated for lost rent.

I pause there to indicate that is consistent with what the minister indicated earlier. The article goes on to say —

> Nor are landlords covered for any reduction in rent they agree with tenants.
>
> "Obviously that's just not going to work in the current circumstances," Holst says.

She is one of the individuals, or experts, who has been quoted in the article. It continues —

> The real estate and insurance industries are at war over who will bear the cost of unpaid rent, which industry sources estimate could top $10bn.
>
> Insurance companies fear the states and territories might change the law to allow landlords to claim without issuing an eviction notice.

Therefore, it is in that context that I am seeking clarification on whether any assurances have been made that insurance companies will, indeed, assist in bearing the cost of unpaid rent. However, it appears that in response to my earlier question, there has not been any consultation here but that it has been done at a commonwealth level, hence my concern about this issue and the rushed nature of the entire process.

Noting that time continues to tick under these extraordinary circumstances, I shall move on to my next question—that is, to ask about the issue of rent assistance. I understand that the Australian Capital Territory has announced a scheme to offer rent reductions of up to $200 a week funded through land tax reductions for landlords. Is the minister in a position to indicate whether the government proposes to provide land tax relief for Western Australian landlords?

Hon ALANNAH MacTIERNAN: Obviously, we are looking at a whole range of measures. The member would be well aware of the massive cost that is already incurring to government to deal with the COVID crisis. Therefore, at this point in time, I cannot give any commitment that we will be providing assistance to landlords. People right across the community have been affected and decisions will be made from time to time as we consider what will give the community the best cost benefit. What we do know is, as far as I understand, that insurers have indicated they will honour their policies as long as people take reasonable steps. Whether that will cover an agreement by a landlord to reduce rent is probably unlikely. I do not have any further information on the discussions with the insurers. I am not able to get any further information. But we say now, for example—and what is understood and this is already the case with insurance policies—that landlords will have to take steps to mitigate their losses. If a landlord just sat on their hands and did nothing for six months and let the tenant not pay rent or try to negotiate and did not avail themselves of the action that we are now putting in place for the early termination of a lease or removal of the protection of the moratorium, their ability to make a claim might be compromised. They have to show that they have made their best endeavours to mitigate the losses before they can make a claim. As a lawyer, the member would be aware that that is a fairly standard concept in insurance law.

Hon NICK GOIRAN: The minister might be pleased to know that I have only one further question on clause 1. The Commercial Tenancies (COVID-19 Response) Bill 2020, which it is proposed we will deal with later today, I understand seeks to adopt or provide provision for the adoption of a code of conduct. Is it the government's intention to have a code for residential tenancies?

Hon ALANNAH MacTIERNAN: There is no intention to do that.

Hon TIM CLIFFORD: I have a couple of quick questions. The current theme that has come out of the contributions in the debate, and is a bit of a segue from Hon Nick Goiran's questions about relief, is: is the government considering rent relief? I raised that issue in my second reading contribution earlier, but it seems to me that rent relief would go a long way towards addressing a lot of the issues that we will confront today.

Hon ALANNAH MacTIERNAN: Rental assistance is provided by the commonwealth government, and anyone who is eligible for the JobSeeker allowance is also eligible for rental assistance.

Hon TIM CLIFFORD: Will the government consider a prohibition on physical rent inspections throughout this period? There has been a lot of information to digest, but I could not see that in the bill that has been proposed today.

Hon ALANNAH MacTIERNAN: There is no requirement for rent inspections. We do not anticipate to change the law either way on rental inspections.

Clause put and passed.

Clause 2: Commencement —

Hon NICK GOIRAN: The explanatory memorandum explains that certain sections will commence on a day to be fixed by proclamation so that the new dispute resolution process will be able to commence once the procedures of the process have been established. Why does the bill provide for part 4, divisions 1 and 2 to commence retrospectively on 30 March 2020?

Hon ALANNAH MacTIERNAN: It is because they are the provisions that relate to the moratorium on evictions. Just as from time to time with tax legislation we say that tax legislation is going to come in on the day that the

thing is announced rather than on the day that the thing is enacted in order to provide protection during that period, we wanted to make sure that we were not going to create a situation in which a whole bunch of landlords went around and evicted people and issued eviction notices once the scheme was announced. We had to make it clear that it was going to be retrospective in its operation. That has applied nationally, so every jurisdiction around Australia has done the same thing. Otherwise, the member can imagine some of the chaos that might have occurred in advance of that.

Hon NICK GOIRAN: Clause 2(d) states —

> the rest of the Act is deemed to have come into operation on 30 March 2020.

In other words, if a proposed section is not listed in clauses 2(a), (b) or (c), the start date is 30 March 2020. I think the minister will agree with me that part 4, divisions 1 and 2 fall under clause 2(d). We can see clearly that part 4, divisions 1 and 2 do not fall under clause 2(a) because it is only sections 1 and 2. It clearly does not fall under clause 2(b) because it is sections 25 and 42. It clearly does not fall under clause 2(c) because it refers to parts of sections 14 and 26. It also makes reference there about part 4, divisions 3, 4 and 5. My question is about part 4, divisions 1 and 2, which according to the bill is headed "Disputes". My point is that when we look at the reason given in the explanatory memorandum for section 2(c), we wonder why those provisions have been left to proclamation. The explanatory memorandum explains that that is because the government is preparing a new dispute resolution process and it wants only divisions 3, 4 and 5 in part 4 to commence once that process has been established. I am not bickering with that; I am simply asking why divisions 1 and 2, which fall under the same part, would not also wait for proclamation. That is not apparent to me. What is perhaps more confusing is why the government would then have those divisions starting retrospectively.

Hon ALANNAH MacTIERNAN: Because the dispute resolution procedures are going to relate to disputes that will come into effect any time from 30 March, it was considered important that those definition and administrative provisions also be made retrospective. Otherwise, we might be dealing with disputes that had come into effect between 30 March and whenever this bill will be proclaimed, in a week or so, and there would be uncertainty about what the definitions and mechanisms would be for the dispute resolution, so we had to bring that dispute resolution. The explanation given to me is that we had to bring in those dispute resolution administrative bits to tie them back into the retrospective operation of 30 March.

Hon NICK GOIRAN: Division 2 in part 4 is titled "Applications for relief". Applications for relief can be made to a competent court by a lessor or a tenant under the agreement in relation to a relevant dispute, and on such application the court may make an order. Clause 46 then goes on to say that an application for relief in relation to relevant disputes also applies to accommodation agreements. Correct me if I am wrong, minister, but is it not the intention of the government that there be mandatory conciliation taking place, which starts at division 3 in part 4? The date for the commencement of those mandatory conciliation processes is to be prescribed in due course. As I say, I am not bickering with that—the government will proclaim that period in the time that suits it—but if mandatory conciliations took place prior to any applications for relief, to me it does seem to follow that the provisions under "Applications for relief" can be made retrospectively from 30 March. For starters, who is making an application for relief under a provision of a bill that we are only just seeing now, yet supposedly this started on 30 March? It does not seem to make sense to me. I would have thought that the entirety of part 4 should commence at the same time, but if the minister has a superior explanation, I would be pleased to hear it.

Hon ALANNAH MacTIERNAN: The advice I am receiving is that the conciliation process can take effect. We are dealing with disputes that occur between 30 March and the time that this bill comes into operation. If we did not have the retrospective operation, the courts would not have jurisdiction. I think the member's question is: why are we not also giving the conciliation process the jurisdiction; is that right? Does the member want to know why we are also not backdating conciliation?

Hon Nick Goiran: I know why you are not doing that. It is because you are waiting for the new procedures they are developing, so that is why.

Hon ALANNAH MacTIERNAN: That is right. But we have to backdate the court jurisdiction; otherwise, once we go through the conciliation or whatever, there will not be any ability to resolve those disputes that took place from 30 March to whenever this thing comes into effect.

Clause put and passed.

Clause 3: Terms used —

Hon NICK GOIRAN: What classes of accommodation agreements are intended to be prescribed by the regulations?

Hon ALANNAH MacTIERNAN: It is there as an absolute catch-all in case there is something that we are not aware of; that is, that some other sorts of arrangements exist if a problem emerges. We do not anticipate that we

will be regulating to introduce any new classes. We think those three classes—classic tenant, residential tenancy; residential parks; and boarders and lodgers—will be comprehensive enough. It is just a pretty standard failsafe in case something else comes up.

Hon NICK GOIRAN: The protection for members will be that the minister will say these can be disallowed at a later stage. Will the government give a commitment that if this regulation-making power under clause 3 with regard to a class of accommodation agreements is used, it will table the regulation as a standalone regulation that could be then disallowed or debated by the house and not be caught up with a range of other regulations that might be made under this legislation that members might want to agree to?

Hon ALANNAH MacTIERNAN: If that is significant to the member as a way of moving things forward, on behalf of the Attorney General I am happy to make that commitment.

Clause put and passed.

Clause 4: Term used: emergency period —

Hon NICK GOIRAN: To facilitate the process I indicate I have a question about clause 4 and then my next question is about clause 19. What is the emergency end date intended to be prescribed under clause 4(b)(i)? I imagine the minister will inevitably say that the government would like not to have to prescribe any such period and it is going to rely on the September date in the bill. If that is the answer, what criteria will the government use to determine whether to invoke this power?

Hon ALANNAH MacTIERNAN: Obviously, it will be determined by where we are in relation to COVID-19 and the degree to which the economy has got back on track. It is our very strong desire and belief that we are not going to have to go beyond 29 September, but we are always mindful that just as with other pandemics such as the Spanish/Kansas flu—because it originated in Kansas, apparently—we may see a spike. We think that we are dealing with this well across Australia. We think we have this set, but we know that there is a high degree of unpredictability. We know that there has been a second spike with a number of different pandemics. Our very strong intention and desire is for this legislation to go no longer than 29 September. It would be fantastic if things went absolute tickety-boo and in three months' time we did not need something like this; it is possible that we could bring it forward. The reason for this is in case we have a second spike or the trajectory is not as we hope and there is a bigger sequela for the public. It will come back to this chamber by way of a regulation and it will be disallowable and we can have that debate. It is certainly not the intention of the McGowan government to extend this beyond that time frame if possible.

Clause put and passed.

Clauses 5 to 7 put and passed.

Clause 8: Rent cannot increase during emergency period —

Hon COLIN HOLT: I do not think I got an answer to my question about the community housing sector, which comes under this clause. If a person has a percentage calculation of income and that person's income goes up, and so their rent in real terms goes up, will they be breaching this legislation?

Hon ALANNAH MacTIERNAN: It is a bit different. I am glad I did not respond, because this seems to be a different piece of information from what I had before. If a person is on a fixed 25 per cent and their income increases, that is not considered to be a rent increase. In that case, the percentage is taken. It turns out that this is going to be a bit of a bonanza for many of our pensioners. We have the old Newstart allowance, which, apparently, for some reason could never be increased, and we have the supplementary COVID payment that is being made. I get the advice that the community housing sector is saying the same thing. I do not know whether that is required. Perhaps the commonwealth has made a rule. The supplementary COVID payment to the old Newstart allowance is not counted as income, so the 25 per cent relates to the previous income. The COVID supplementary payment will not be taken into account. There are two parts to that. If a person's income goes up and the percentage is fixed, but they are paying more in rent, that is not a rent increase. That is not going to happen in the way we thought it would because the COVID payments will not be counted as income.

Clause put and passed.

Clauses 9 and 10 put and passed.

Clause 11: Owner not required to maintain and repair under tenancy agreement if unable to do so during emergency period —

Hon TIM CLIFFORD: Can the minister confirm that it will not be up to the landlord to decide whether they undertake non-essential repairs?

Hon ALANNAH MacTIERNAN: That provision will apply if, during the emergency period, the landlord has financial hardship caused by the economic effects of the pandemic or there is an inability to access the premises due to a direction given under the Emergency Management Act or the Public Health Act. I urge members not to spend too much time on this particular provision, because the amount of routine maintenance that will take place over the six-month period will probably be very limited. The landlord would have to establish that they had financial hardship caused by the economic effects.

Hon TIM CLIFFORD: I will keep it brief because we want to move on. What constitutes financial hardship caused by COVID-19? Who is going to determine that and where does that burden of proof lie?

Hon ALANNAH MacTIERNAN: It is exactly the same thing as for tenants. If they seek to avail themselves of the financial hardship provision with either the conciliator or the court, they will have to show some evidence. I presume that a landlord could show some evidence if he was not getting rent or was getting substantially reduced rent. It would be the same evidentiary requirement that is imposed on the tenant. We have not specified all the documents, but as with any similar provision, it is up to the evidence that is required by the conciliator or the court.

Clause put and passed.

Clause 12 put and passed.

Clause 13: Repossession of property during emergency period subject to tenancy agreement —

Hon COLIN HOLT: I want clarification on this clause. I understand that if a landlord gets into financial trouble and the bank or financier takes possession of a premises that is under a tenancy agreement, they cannot evict anybody.

Hon ALANNAH MacTIERNAN: Yes, that is right. During the emergency period, the mortgagee in possession will have the same obligations as the landlord would have.

Hon COLIN HOLT: Let us say that a bank takes possession. Is it allowed to sell the property; and, if the property is bought by someone who shows that they have financial hardship because of COVID—maybe they are downsizing or they have moved from a city property to a country property or something like that—and there is a tenancy agreement, can they evict the tenant? Perhaps the minister can answer the first question. If a bank takes possession, is it allowed to sell the property?

Hon ALANNAH MacTIERNAN: I am advised that the standard provisions that prevail will apply so that if it is a fixed-term tenancy, that will survive the sale, and if it is a periodic tenancy, that can be terminated, notwithstanding the act. Again, if we are thinking about the time frames, this is probably more of a theoretical problem than an actual one.

Clause put and passed.

Clause 14: Giving rent default notices under tenancy Acts for failure to pay rent during emergency period —

Hon RICK MAZZA: I move —

Page 12, line 19 — To delete “whether or not”.

I am very conscious of the time and that we are only a small way into the bill. I think my amendment at 9/14 is self-explanatory. I am concerned that the current bill defines a rent repayment agreement as an agreement “whether or not in writing”. If there is a verbal agreement for a rent repayment and after three months a tenant falls behind in paying rent, I am very concerned that people’s memories will get very distorted, for want of a better word, if it is a verbal arrangement. I think it would be far clearer and there would be less conflict if there were a requirement for the arrangement to be in writing so that if there was a difference of opinion down the track, the tenant and landlord could refer to the agreement and know exactly what the arrangement was.

Hon ALANNAH MacTIERNAN: Our concern is that this amendment would act against the interests of the landlord. I am advised that this would work against a landlord who had entered into a verbal rent repayment agreement with a tenant and the tenant did not comply with that agreement and the landlord wished to activate the new provision that is coming in down the line, which is the ability, under clause 18A to have the moratorium lifted. I am advised that a landlord might have entered into a verbal agreement to vary the payment regime or to have a rent repayment agreement and the tenant might have ignored that. I am told that this amendment would undermine the landlord’s ability to issue a default notice and activate the process whereby the moratorium was lifted. It would be against the interests of the landlord to do that because it would reduce the landlord’s ability to initiate a dispute resolution.

Hon NICK GOIRAN: Is that right? The minister referred to clause 18A. The owner may give the tenant a written notice—that is the remedial notice—stating that the tenant has failed to pay the rent in accordance with the tenancy agreement—that is just a statement of fact—and the owner offers to enter into a rent repayment agreement. That

is the owner saying, "I would like to enter into a written agreement but that is not happening." In addition, the tenancy agreement may be terminated under this section if the tenant fails to pay the rent and refuses to enter into a rent repayment agreement. I am trying to reconcile that with the minister's comments.

Hon ALANNAH MacTIERNAN: Perhaps we are talking about the normal process of going into conciliation. A landlord who has entered into a verbal rent repayment agreement and wants to rely on that, would not be able to activate clause 14(3), which states —

> (3) The owner cannot give a rent default notice in relation to the failure to pay the rent unless —
>
> (a) the tenant and owner have entered into a rent repayment agreement and the tenant has failed to make payments in accordance with that agreement;

The rent default notice is dependent on the tenant and the owner entering into a rent repayment agreement. The amendment proposes to change, and not to permit, an oral rent payment agreement; therefore, it would not count.

Hon RICK MAZZA: I do not accept that. This clause says "whether or not in writing", so there is a provision for it to be in writing. A verbal agreement can be disputed. If it was in writing and a tenant failed to agree to that written rent repayment agreement or was in default of it, it would go to the conciliation process with the commissioner and at least the commissioner would see what the agreement was rather than it being a case of "he said, she said". I think the amendment is prudent and I urge the house to support it.

Hon AARON STONEHOUSE: I support the very sensible amendment moved by Hon Rick Mazza. Let us not forget that having a written agreement protects not only the landlord, but also the tenant. It makes it very clear what was agreed to at that time and both parties know their obligations and rights under that agreement. Therefore, if there was a dispute, going into conciliation would be a lot clearer but hopefully it would ensure that there would be less need to go to conciliation and escalate the problems if there was a dispute. I absolutely support it. It is a very sensible amendment.

Amendment put and passed.

Hon RICK MAZZA: I have another amendment in my name at 1/14. We discussed this in some detail at clause 1 and I do not want to delay the house more than I have to, given that now we have less than an hour to complete the Committee of the Whole stage. I believe that it is very prudent to ensure that some form of evidence of financial hardship is provided to a landlord. It may be that a landlord requires a statutory declaration or does not, but I think it would be very valuable for a landlord and tenant to make their own arrangements and be satisfied with an agreement without it having to go to conciliation. If a tenant approaches a landlord because the tenant has lost his or her job or is affected by the COVID-19 crisis during the state of emergency and asks the landlord to agree either to a rent deferral or reduction and the landlord wants the tenant to provide some evidence of that, the landlord could be satisfied with the evidence provided and it would not have go to conciliation. I think that would be a good outcome for everyone. Therefore, I move —

> Page 12, after line 25 — To insert —
>
> (1A) Prior to the entering into of a rent repayment agreement, the tenant must provide to the landlord or the landlord's agent, a statutory declaration setting out the tenant's personal financial hardship as a result of the COVID-19 pandemic.

Hon ALANNAH MacTIERNAN: We oppose this amendment. We understand the intention but think it would make for a very clumsy procedure. It is not warranted given the other amendments that have been made and the requirement that to resist lifting the moratorium or getting an early termination, a tenant will be required to produce evidence that they are COVID affected. In our view, this would add a layer of bureaucracy to all parts of the process and is not necessary.

Hon AARON STONEHOUSE: This is another very sensible amendment moved by Hon Rick Mazza. I understand that there are some concerns around implementing a requirement for a statutory declaration this early in the process before conciliation has begun and before an issue is adjudicated in the Magistrates Court. The way the original clause is worded puts a requirement on tenants to provide a statutory declaration before entering into a rent repayment agreement. I think that is too unwieldy and that there needs to be some discretion because a lessor and a tenant may be able to come to an agreement and a lessor may be satisfied that the tenant is experiencing some kind of financial hardship without necessarily requiring a statutory declaration to be provided. Therefore, I have drafted an amendment to the amendment to insert some discretion.

I move —

> After "pandemic" — To insert —

, if the lessor requires the tenant to do so

A copy will be circulated among members.

Sitting suspended from 1.01 to 2.00 pm

The DEPUTY CHAIR (Hon Matthew Swinbourn): Members, we are back in Committee of the Whole House and we are dealing with the Residential Tenancies (COVID-19 Response) Bill 2020. I bring members' attention to issue 2 of supplementary notice paper 187. The question before us is that the amendment to the amendment be agreed—that is, the amendment moved by Hon Aaron Stonehouse. For all members, I note that the time remaining to deal with this bill is 54 minutes and 42 seconds, so members should keep that in mind when making contributions to ensure that we can get through our bill, because, at the end of that time, the question will be put for the remaining amendments and clauses without further debate.

Hon AARON STONEHOUSE: I moved my amendment but have not had a chance to speak to it yet. My amendment seeks to allow for some discretion for the lessor, so that rather than a statutory declaration being provided by the tenant when a repayment agreement is entered into, it will be at the discretion of the lessor. The language used here is the same language used in the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018. The exact same language is used, which is "if the lessor requires the tenant to do so".

I understand that the minister may have some critique of the substantive amendment moved by Hon Rick Mazza, but, to be clear, at the moment we are debating my amendment to that amendment. I think it is best that we proceed quickly. Whether members agree with Hon Rick Mazza's substantive amendment, they would surely agree that my change to it, which would allow some discretion, is desirable nonetheless. If we can agree to that and get that out of the way, we can go back to the substantive amendment.

Hon ALANNAH MacTIERNAN: At first blush, it does do that. But I ask the member to consider that he has, in fact, used the wrong word here, and that the word should be "owner" rather than "lessor" to fit in with the clause. The advice that we have is that the word should be "owner". In clause 14, line 25, there is a reference to "owner", so we were advised that the word "lessor" would not fit in.

But can I say that this is the wrong place to be requiring this and the member is making this very awkward. In one sense it does improve it, but the thing is, I think, fundamentally flawed. Clause 14 is designed to provide to the landlord—or the owner, but I am using landlord, not the lessor—the mechanism to commence the default. One of the things that gives the landlord the right to initiate default proceedings is that the landlord has a rent repayment agreement, which is enabled. It is in the landlord's favour, so why would the member want to put an impediment into something that will make this clear? The amendment will not be fatal; it will be an absurd complication. If we think about it, some tenants out there simply would not have the wherewithal—we all know them—to do a statutory declaration. Unfortunately, it is a tragedy of our education system. For a start, there are a lot of people who are not terribly literate and who are not able to marshal all the skills together to get a statutory declaration form, complete it and go to the local chemist or wherever to get it signed—it is all unnecessary because this provision is an enabling provision for the landlord.

As I said, I understand the genesis of this thing. As an alternative, if we do not go down this path, I am proposing that we introduce a new clause 54A in that when this thing gets to conciliation, there is a provision that the commissioner has to find details of financial hardship, or a person has to give the commissioner a statutory declaration because, as I said, there could be other things such as payslips, notices of termination et cetera that could be used.

At the very least, I think the member should change the word "lessor" to "owner" for consistency, but this is the wrong place to do so, and all that the member is achieving to do, like he did with the last amendment, is to make it harder for the landlord who has this obligation for their insurance purposes to make sure they are activating all reasonable steps to mitigate their loss and to get the termination process in place even though the actual eviction order would not take place until the end of the time period unless the landlord gets through clause 18A.

Hon AARON STONEHOUSE: The minister points out the inconsistency of the use of the word "lessor" rather than "owner" there. If I am able to move an amendment to my own amendment, Mr Deputy Chair —

The DEPUTY CHAIR: Does the member wish to withdraw his amendment and substitute it?

Hon AARON STONEHOUSE: I could withdraw it; although, it may be as simple as putting the question to amend my amendment.

The DEPUTY CHAIR: The process, member, would be for you to seek leave to withdraw your current amendment and then to propose a further amendment with the changed words.

Hon AARON STONEHOUSE: In that case, I seek leave to withdraw my amendment.

Amendment, by leave, withdrawn.

Hon AARON STONEHOUSE: I move —

After "pandemic" — To insert —

, if the owner requires the tenant to do so

Hon RICK MAZZA: I rise briefly to say that I support the amendment. It provides a bit more flexibility as to whether the landlord wants a declaration or whether the landlord is happy not to have a declaration and just accept the tenant's word. Therefore, I will support the amendment to my amendment.

Hon NICK GOIRAN: The opposition will support the amendment moved by Hon Aaron Stonehouse for its improvement, and indicate in advance that we will be supporting the substantive amendment of Hon Rick Mazza in the event that Hon Aaron Stonehouse's amendment is supported.

Amendment on the amendment put and passed.

Hon ALANNAH MacTIERNAN: We will be strongly opposing this amendment. We think that it adds a degree of complexity. In fact, it makes it harder for the landlord. We also point out, again, that the wrong language is being used. We now have a variety of languages because the amendment to the amendment refers to the owner, as it properly should, whereas the amendment moved by Hon Rick Mazza refers to the landlord, so it is out of sync. Again, I urge members not to support this amendment, even though it is not as bad as it was previously. Nevertheless, I think it is very unfortunate and will detract from the overall clarity of this piece of legislation.

Hon TIM CLIFFORD: The Greens will be opposing the amendment as it stands. There is already a conciliation process in place that can force the tenant to come to the table. It has already been highlighted—I think in clause 54—that penalties are involved if the tenant refuses to come to the table. We will be opposing the amendment.

Hon AARON STONEHOUSE: I would like to point out that although there is a mechanism in clause 54 by which the commissioner can require a statutory declaration, that power to request a statutory declaration sits only with the commissioner. It is substantively different from Hon Rick Mazza's proposal, which is that a landlord—or an owner in this case—may request, if they choose to do so, a statutory declaration. It is quite a different thing.

Members may disagree with the policy intent of the amendment but they are different. I think clause 54(1)(a), as was pointed out to me, makes that very clear. Again, it is only at the discretion of the commissioner. It does not even require the commissioner to do it as a matter of course. It leaves the discretion solely with the commissioner. Clause 54(1)(a) states that the commissioner may require the person to give them a statutory declaration setting out the details of the financial hardship. It is really a discretionary thing for the commissioner. The intent of the amendment is to give the landlord or the owner some power to request some kind of proof that a tenant is experiencing financial hardship.

Hon ALANNAH MacTIERNAN: I think the member is failing to understand how this clause works. If the tenant cannot or does not give the statutory declaration, there cannot be a rental repayment agreement and the landlord cannot move down the process —

Hon Aaron Stonehouse: The landlord does not need to request a statutory declaration in that case.

Hon ALANNAH MacTIERNAN: Then what is this achieving? This is achieving absolutely nothing other than making the legislation needlessly more complex. But we are not going to go on about it. I do not think the member can work out the schema of the legislation.

Hon COLIN HOLT: I really am trying to understand the point made by the minister. I will try to explain it in layman's terms—correct me if I am wrong, minister. Clause 14 kicks off an appeals or dispute process. It assumes that a rent repayment agreement is in place.

Hon Alannah MacTiernan: So what —

Hon COLIN HOLT: Hang on! Let me get my thoughts straight. It assumes that a rent repayment agreement is already in place. Therefore, this should not occur under this amendment, as amended. It should happen way back in the first instance of the discussion taking place. The rent repayment agreement is already in place and clause 14 seems to be about the landlord wanting to escalate a dispute; the minister can correct me if I am wrong. In that sense, this does not fit within clause 14. It should occur earlier on when a rent repayment agreement is being negotiated. I cannot see that in this legislation. I need some clarity on this and where it fits in the legislation.

Hon ALANNAH MacTIERNAN: That is correct. No-one is obliged to enter into a rent repayment agreement. We do not need something that requires people to have a statutory declaration. Anyone can enter into a rent repayment agreement. Under clause 14, we are not taking away the right of an owner to initiate the process of default. Their insurance requires them to take expeditious action in respect of default. This provision sets out the way in which

an owner can go about the process of issuing a rent default notice. As the member quite rightly reflected, it is a subsequent process.

One of two things have to happen before a person is entitled under clause 14. This has been designed to encourage people to go through a positive process before they embark on the termination process. There are two ways of doing this. An owner has to have either entered into a rent repayment agreement—getting the tenant and the landlord together—or gone to the commissioner and the commissioner is satisfied that the tenant is not coming to the party.

The member is quite right. This provision in the clause disenables the owner to undertake that process. Probably not a great deal turns on it because it is going to be sitting out there on a limb, but it is going to make the legislation harder to read and understand and confuse the whole picture. It does not make sense or add anything to the rights of the landlord, whom we are trying to protect.

Hon NICK GOIRAN: Over the last 18 or so minutes, a simple matter has become very complex. I urge members to deal with this matter and move on, because, in the overall scheme of this legislation, this is not what I would describe as playing for sheep stations. Nevertheless, I support the intent of what Hon Rick Mazza is doing, courtesy of the amendment moved by Hon Aaron Stonehouse.

I think that what the minister said prior to the luncheon interval would have been fair and reasonable had the amendment not been moved by Hon Aaron Stonehouse. However, now it is the case that it is entirely at the discretion of the owner if he or she wants a statutory declaration. If they want a statutory declaration to give them comfort and they will enter into a rent repayment agreement with the tenant, but only on the basis that the tenant provides information in a statutory declaration, that is terrific. If they do not want it, they do not have to ask them for it. Nothing else turns on that because clause 14(2) states that the section applies if a tenant fails to pay rent in accordance with a tenancy agreement. That is the trigger in clause 14. At that point the owner can give a rent default notice, but he or she can do so only if the tenant and the owner have entered into a rent repayment agreement. The minister may straightaway say that it has been complicated with a statutory declaration, but that is only because the owner asked for it. I think it is fair and reasonable that the tenant must provide the owner with a statutory declaration when the owner asks for it. It is no more complicated than that. It is not going to undermine anything else in the provision. I pick up on the sound point made by the minister on the language in the now amended motion before us. I move —

To delete “landlord” and “landlord’s” and substitute —

“owner” and “owner’s”

Amendment on the amendment put and passed.

The DEPUTY CHAIR: The question is that the amendment of Hon Rick Mazza, as amended, be agreed to.

Division

Amendment, as amended, put and a division taken, the Deputy Chair (Hon Matthew Swinbourn) casting his vote with the noes, with the following result —

Ayes (9)

Hon Peter Collier	Hon Rick Mazza	Hon Charles Smith
Hon Donna Faragher	Hon Simon O’Brien	Hon Aaron Stonehouse
Hon Nick Goiran	Hon Robin Scott	Hon Ken Baston *(Teller)*

Noes (15)

Hon Jacqui Boydell	Hon Diane Evers	Hon Kyle McGinn	Hon Dr Sally Talbot
Hon Tim Clifford	Hon Adele Farina	Hon Martin Pritchard	Hon Alison Xamon
Hon Stephen Dawson	Hon Colin Holt	Hon Samantha Rowe	Hon Pierre Yang *(Teller)*
Hon Colin de Grussa	Hon Alannah MacTiernan	Hon Matthew Swinbourn	

Amendment, as amended, thus negatived.

Clause, as amended, put and passed.

Clause 15 put and passed.

Clause 16: Application of Division —

Hon ALANNAH MacTIERNAN: I move —

Page 14, line 24 — To delete “This” and substitute —

(1) Subject to subsection (2), this

Amendment put and passed.

Hon ALANNAH MacTIERNAN: I move —

Page 14, after line 24 — To insert —

(2) Section 18A applies during and after the emergency period.

This is simply to allow us to give effect to new clause 18A that we are proposing so that it can also take effect after the emergency period, in case the times of the order straddle the emergency period. Some of the remedies available might, in fact, take place after the emergency period.

Hon NICK GOIRAN: Therefore, is it not necessary for the other provisions in division 2—which deal with the termination of the tenancy, whether that be for family violence or without specifying grounds or in other cases—to apply after the emergency period because the existing provisions in the act will apply?

Hon ALANNAH MacTIERNAN: That is correct.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 17 put and passed.

Clause 18: Termination of tenancy agreements arising out of family violence —

Hon TIM CLIFFORD: Even though it was brought up when we were debating clause 16, can we address points about new clause 18A on this clause?

The DEPUTY CHAIR: We have not got to new clause 18A yet.

Hon TIM CLIFFORD: Sorry; I am just trying to clarify.

Clause put and passed.

New clause 18A —

The DEPUTY CHAIR: Minister, are you moving this new clause?

Hon ALANNAH MacTIERNAN: Yes.

The DEPUTY CHAIR: The minister has moved amendment 7/NC18A in issue 2 of supplementary notice paper 187, which will insert the new clause at page 15, after line 22. I do not propose to read that unless the member would like me to; it is very long. Would the member prefer me to read it?

Hon Alannah MacTiernan: No.

Hon NICK GOIRAN: Mr Deputy Chair, this comes up from time to time. I do not know that we have a choice. There is only one way of getting it into *Hansard*, and that is that somebody has to read it. This is for people who are following the debate, and there are stacks of stakeholders literally watching us at the moment. It should be read in.

The DEPUTY CHAIR (Hon Matthew Swinbourn): Member, if you want me to, I will read it. It will just be quicker. The minister has moved —

Page 15, after line 22 — To insert —

18A. Termination of tenancy agreement in relation to failure to pay rent during emergency period

(1) In this section —

deciding entity means —

(a) for a long-stay agreement — the State Administrative Tribunal; or

(b) for a residential tenancy agreement — a competent court;

remedial period means the 60-day period beginning on the day on which the owner gives the tenant the remedial notice;

rent repayment agreement has the meaning given in section 14(1).

(2) This section applies if —

(a) a tenant fails to pay rent, in accordance with a tenancy agreement, due during the emergency period; and

(b) the tenant's failure to pay rent is not due to financial hardship caused by the economic effects of the COVID-19 pandemic.

(3) The owner may give the tenant a written notice (the ***remedial notice***) stating that —

(a) the tenant has failed to pay the rent in accordance with the tenancy agreement; and

(b) the owner offers to enter into a rent repayment agreement in relation to the rent; and

(c) the tenancy agreement may be terminated under this section if the tenant fails to pay the rent, and refuses to enter into a rent repayment agreement in relation to the rent, during the 60-day period beginning on the day on which the owner gives the tenant the remedial notice.

(4) Subsection (5) applies if the tenant unreasonably —

(a) fails to pay the rent during the remedial period; and

(b) refuses to enter into a rent repayment agreement in relation to the rent during the remedial period.

(5) After the end of the remedial period, the owner may apply to a deciding entity for —

(a) an order terminating the tenancy agreement; and

(b) an order for possession of the residential premises the subject of the tenancy agreement.

(6) However, the owner cannot apply to a deciding entity under subsection (5) on or after the day on which Part 4 Divisions 3, 4 and 5 come into operation under section 2(c) unless —

(a) the owner has made a submission to the Commissioner under section 48(1) in relation to the failure to pay the rent; and

(b) the Commissioner has certified —

(i) under section 56(2) that no agreement has been reached in relation to the failure to pay the rent; and

(ii) under section 56(5) that the tenant has not cooperated with the conciliation proceeding.

(7) On an application under subsection (5), a deciding entity may make an order terminating the tenancy agreement if the deciding entity considers that —

(a) the preconditions set out in subsections (2) to (6) for the making of the application have been met; and

(b) the making of the order is justified in the circumstances.

(8) If the deciding entity makes the order under subsection (7), the deciding entity —

(a) must also make an order for possession of the residential premises the subject of the tenancy agreement; and

(b) may make such ancillary or incidental orders as the deciding entity considers appropriate.

(9) The *Residential Tenancies Act 1987* section 71(3) to (6) applies to an application and order made under this section with all necessary modifications, including as if a reference in those provisions to —

(a) the court were a reference to the deciding entity; and

(b) section 71(2) were a reference to subsections (7) and (8) of this section; and

(c) a lessor were, in relation to a long-stay agreement, a reference to a park operator; and

(d) a tenant were, in relation to a long-stay agreement, a reference to a long-stay tenant; and

(e) a notice were a reference to the remedial notice; and

(f) a notice given by the lessor upon the ground referred to in section 69 were a reference to the remedial notice.

Hon TIM CLIFFORD: I would just like to clarify a couple of points. It seems to me that this new clause will allow for evictions throughout the proposed six-month moratorium period. Is that correct? If so, it would undermine the overall intention of the bill. I seek clarification of that.

Hon ALANNAH MacTIERNAN: The overall intention of the bill is to provide relief to tenants who have been negatively affected by the economic downturn and other aspects of COVID-19. I know Hon Tim Clifford thinks very positively about people. Unfortunately, there are a few bad people in the world. They are not even necessarily

bad people, but as has been pointed out during the debate on this bill, it is possible that some people may seek to abuse this opportunity. For example, they may in fact not be affected by COVID-19 and may just refuse to engage in any of the processes. The conciliation process will be set up so that tenants have the ability to go to the Commissioner for Consumer Protection to have their rent reviewed and circumstances considered. If the landlord does not come to the party or respond positively, all the termination provisions will not be available to them. This new clause is really designed to make it clear that a person cannot just use this situation opportunistically. Tenants will not be able to refuse to engage in any dialogue about their rent, enter into an agreement or participate in the conciliation process and then not have to pay their rent for six months. This new clause will actually put some onus on the tenant to participate in good faith in the processes that have been set out. If they fail to participate in good faith in the process that has been set up to protect them, they will not have the protection of this moratorium. To ensure that this bill is seen to be even-handed and that it protects those people who truly have been affected by COVID-19 and not, on the other hand, allow scammers to game the system, it is important that we have this protection. Without it, I think overall support for this bill would be compromised and the protection for those people whom the member is legitimately concerned about might not be achieved.

Hon TIM CLIFFORD: Can the tenant apply for conciliation during the remedial 60-day period?

Hon ALANNAH MacTIERNAN: Yes. If the member looks at the process, he will see that in that remedial notice, one of the things that the owner has to do is to offer to enter into a rent agreement. Before the owner can proceed, they have to make a submission to the commissioner and the commissioner has to certify a number of things—that is, that there is no agreement and that the tenant has not cooperated with the conciliation process. They cannot move down this path without going into conciliation. In a way, this is about giving that balance, so that a tenant who is not cooperating cannot take advantage of the system.

New clause put and passed.

Clause 19: Termination without specifying grounds —

Hon NICK GOIRAN: The premise of this bill is that rent will not be required to be paid by a tenant when they are suffering financial hardship due to COVID-19 circumstances until the end of the emergency period; however, clause 19 of this bill provides that a tenant can terminate their lease without specifying any grounds for the notice of termination, and the landlord is not entitled to compensation for this, including loss of rent. How does this provision fit within the policy of the bill, which is to address COVID-19-related financial hardship experienced by tenants?

Hon ALANNAH MacTIERNAN: If the member looks at the amendment we have on the supplementary notice paper at 11/19, he will see that it states —

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

This fits with the policy of the bill by limiting the ability to terminate a lease to situations that have been caused by the economic effects of the pandemic.

Hon NICK GOIRAN: I realise that is the government's intent, but that is not how this amendment reads. This amendment simply makes the assumption that the tenant will have financial hardship caused by the economic effects, and then the person will issue a notice of termination. What is the requirement that that be the case? In other words, how will it work if a landlord receives one of these section 19 termination notices, and the landlord says, "This is outrageous. I have just been given this termination notice. I had 10 months to run on this fixed agreement and I have now been given 21 days' notice by this person who sells so much toilet paper in their shop that they are profiteering from the COVID-19 pandemic. I have received this thing." How do they then seek to set aside what is plainly not a termination arising out of COVID-19 hardship?

Hon ALANNAH MacTIERNAN: The lessor would simply not accept that termination on the basis that they do not believe that one of the conditions precedent has been established. That would then trigger the dispute and the matter would go to conciliation and, possibly, eventually to court. It is simply not up to a tenant to walk away; the landlord will have the ability to not accept the termination because they could argue that one of the conditions precedent has not been established.

Hon NICK GOIRAN: In other words, the responsibility would fall to the landlord to go to court to have the dispute resolved. I note that in lieu of the government's proposal, there is an amendment on the supplementary notice paper from Hon Rick Mazza, which would simply oppose this clause outright. Then new clause 19A on the supplementary notice paper contains a provision to allow for the tenant to go to the court to seek a termination. In all the circumstances, that sounds to me like a far more reasonable process. The person who is looking to break the lease and tear it in two despite the fact that there might be up to 10 months left to go on the lease could say, "I need to get out of here in 21 days", and the onus would be on them to go to court to get an order for the lease to come to an end. That sounds a far fairer and more reasonable process than what is currently proposed by the government, which is

that a tenant can just fire off a termination notice with, really, no regard whatsoever and without specifying any grounds, despite the fact that clause 19 is entitled "Termination without specifying grounds". Perhaps because clause 19 is entitled "Termination without specifying grounds" it is no wonder that termination notices could simply be given with no grounds. There will be no requirement for the tenant to provide anything. We already disagreed earlier with the idea of statutory declarations and the like. I am really struggling to see why this clause should be supported.

Hon ALANNAH MacTIERNAN: I think the member has made some good comments. I am just wondering whether we could agree to leave this clause until the end of the Committee of the Whole to give us time to take more advice on that.

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

[Continued on page 2365.]

The CHAIR: Clause 19 is postponed to a later stage. We now move to clause 20, "Termination in other cases". The question is that clause 20 stand as printed.

Point of Order

Hon NICK GOIRAN: The supplementary notice paper has a new clause 19A. I question whether this should be dealt with now before we move to clause 20.

Hon ALANNAH MacTIERNAN: Can I just comment on that. New clause 19A really appears to be a substitution for clause 19, and I wonder whether we can postpone consideration of new clause 19A because these are the same issues we are going to consider. Can we postpone both clause 19 and the proposed introduction of new clause 19A to see whether we can come back with something that accommodates the fundamental policy concern?

Hon RICK MAZZA: I am very concerned about that, simply because we have seven minutes and 27 seconds left at this point in time. If we are going to postpone clause 19 —

Hon Nick Goiran: We have postponed it.

Hon RICK MAZZA: We have postponed clause 19. If we do not deal with new clause 19A and we wait for other information to come through, it will all be over, because in another seven minutes and 10 seconds we will have finished deliberations on this bill. How can we postpone and wait if we do not know what we are going to be dealing with at some later stage? I would like to pursue my new clause 19A at this point in time.

The CHAIR: We have just had a change in Chair and there is a communication problem there, but new clause 18A has been dealt with, we have deferred clause 19 and now the question is whether we contemplate proposed new clause 19A at this time. Hon Rick Mazza has raised a point relating to the amount of time available to us, and there is not much of it. All the matters that lie on the notice paper and the supplementary notice paper will be put when our time has expired in seriatim, but they will be put without debate. Perhaps there will be an indication from the government about whether it is contemplating extending the committee stage.

Hon ALANNAH MacTIERNAN: I wonder whether we could just extend the committee phase by 10 minutes to give us time to deal with this. It is quite an important provision and we could attempt to deal with it.

The CHAIR: It is not up to me, minister.

Hon ALANNAH MacTIERNAN: Can I ask whether we could postpone this and proceed with the rest of the bill in the allotted time and then report progress and seek leave to come back?

The CHAIR: The substantive question that has been put before us is that we also postpone consideration of proposed clause 19A until a later stage.

Committee Resumed

New clause 19A postponed, on motion by Hon Alannah MacTiernan (Minister for Regional Development).

[Continued on page 2366.]

Clauses 20 to 25 put and passed.

Clause 26: Giving rent default notices for failure to pay rent during emergency period —

Hon RICK MAZZA: Earlier in debate on the bill I moved an amendment to delete the words "whether or not" from a clause in order to require that a rent repayment agreement be in writing. This amendment is really just to be consistent and to make sure that all these agreements are in writing. I move —

Page 22, line 1 — To delete "whether or not".

Amendment put and passed.

Clause, as amended, put and passed.

Clause 27 put and passed.

Clause 28: Application of Division —

Hon ALANNAH MacTIERNAN: I move —

Page 24, line 6 — To insert after "Sections" —

30A,

This amendment is self-evident. It allows us to introduce the identical provision for boarding and lodging to provide a termination mechanism for the failure to pay rent.

Hon NICK GOIRAN: Is this the mirror amendment to the one moved at clause 16?

Hon Alannah MacTiernan: It is a mirror provision for new clause 18A.

Hon NICK GOIRAN: That cannot be right. The amendment before the house is 8/28 and simply inserts "30A". What is the mirror amendment? It seems to me that is possibly a mirror amendment to 5/16 or 6/16, but I am not sure, given that I received the seven-page supplementary notice paper only just before the lunch interval. I seek confirmation about exactly what we are doing at this point.

Hon ALANNAH MacTIERNAN: Just as we needed to amend clause 16 to give effect to new clause 18A, likewise we are seeking to amend clause 30 to give proper effect to that subsequent amendment that now appears as new clause 30A.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 29 and 30 put and passed.

New clause 30A —

The CHAIR: I will give the minister the call, although I do not know whether this can be dealt with instantly or the minister wants to report progress and seek leave to sit again.

Hon ALANNAH MacTIERNAN: This is the equivalent of new clause 18A and reflects those same provisions. New clause 18A was for people under the Residential Tenancies Act, whereas this is a provision available for people who are offering lodgings and boarding. It is an identical provision to that in new clause 18A. I move —

Page 25, after line 22 — To insert —

30A. Termination of accommodation agreement in relation to failure to pay rent during emergency period

(1) In this section —

remedial period means the 60-day period beginning on the day on which the landlord gives the resident the remedial notice;

rent repayment agreement has the meaning given in section 26(1).

(2) This section applies if —

(a) a resident fails to pay rent, in accordance with an accommodation agreement, due during the emergency period; and

(b) the resident's failure to pay rent is not due to financial hardship caused by the economic effects of the COVID-19 pandemic.

(3) The landlord may give the resident a written notice (the ***remedial notice***) stating that —

(a) the resident has failed to pay the rent in accordance with the accommodation agreement; and

(b) the landlord offers to enter into a rent repayment agreement in relation to the rent; and

(c) the accommodation agreement may be terminated under this section if the resident fails to pay the rent, and refuses to enter into a rent repayment agreement in relation to the rent, during the 60-day period beginning on the day on which the landlord gives the resident the remedial notice.

(4) Subsection (5) applies if the resident unreasonably —

(a) fails to pay the rent during the remedial period; and

(b) refuses to enter into a rent repayment agreement in relation to the rent during the remedial period.

(5) After the end of the remedial period, the landlord may apply to a competent court for —

(a) an order terminating the accommodation agreement; and

(b) an order for possession of the residential premises the subject of the accommodation agreement.

(6) However, the landlord cannot apply to a competent court under subsection (5) on or after the day on which Part 4 Divisions 3, 4 and 5 come into operation under section 2(c) unless —

(a) the landlord has made a submission to the Commissioner under section 48(1) in relation to the failure to pay the rent; and

(b) the Commissioner has certified —

(i) under section 56(2) that no agreement has been reached in relation to the failure to pay the rent; and

(ii) under section 56(5) that the resident has not cooperated with the conciliation proceeding.

(7) On an application under subsection (5), a competent court may make an order terminating the accommodation agreement if the competent court considers that —

(a) the preconditions set out in subsections (2) to (6) for the making of the application have been met; and

(b) the making of the order is justified in the circumstances.

(8) If the competent court makes the order under subsection (7), the competent court —

(a) must also make an order for possession of the residential premises the subject of the accommodation agreement; and

(b) may make such ancillary or incidental orders as the competent court considers appropriate.

(9) The *Residential Tenancies Act 1987* section 71(3) to (6) applies to an application and order made under this section with all necessary modifications, including as if a reference in those provisions to —

(a) section 71(2) were a reference to subsections (7) and (8) of this section; and

(b) a lessor were a reference to a landlord; and

(c) a tenant were a reference to a resident; and

(d) a notice were a reference to the remedial notice; and

(e) a notice given by the lessor upon the ground referred to in section 69 were a reference to the remedial notice.

Hon NICK GOIRAN: I am sorry, but as I have said previously, courts of law rely on the information before us to find out what the interpretation is. We have to read the amendment that has been put so that it is in *Hansard*.

Point of Order

Hon ALANNAH MacTIERNAN: I wonder whether I can seek leave to incorporate the material into *Hansard*, particularly given that this is identical to a previous new clause. Can I seek leave to have the text of this new clause as it appears on the supplementary notice paper incorporated into *Hansard*?

The CHAIR: I should have repeated that the minister had moved new clause 30A, as per the supplementary notice paper, be inserted. With that reference, Hansard will incorporate the new clause.

Committee Resumed

The CHAIR: In any case, the time for the Committee of the Whole is now exhausted. Unless there is a motion that I report progress and seek leave to sit again, I simply have to put all the remaining questions in seriatim now.

Hon RICK MAZZA: My understanding was, in good faith, that we deferred clause 19 to discuss clause 19 and proposed new clause 19A. I accepted that in good faith, so I am hopeful that we will have time to deal with that clause and my amendment on the supplementary notice paper at some point. I accepted that in good faith, on the

basis that the minister was seeking a bit more information for us to discuss it at a later date. I hope that is going to be provided.

The CHAIR: I think that is understood. We are acting under a direction from the house that we will entertain a committee stage for a period of time. That time has now expired. The avenues that can now be pursued are that in accordance with the temporary orders and the suspended standing orders that have been agreed to, I now put all remaining questions without debate, or there may be a procedural motion that I report progress and seek leave to sit again. The fact is, it is the house that has directed what we are doing. If we are to have any more time on this, it is the house that will have to decide.

Hon ALANNAH MacTIERNAN: I am wondering whether a way forward would be to move the remainder of the motions that are here and, at the end of that process, to report progress on the bill. Then we can come back to deal with clause 19 and new clause 19A.

The CHAIR: There being no motion to the contrary, I am going to put all the remaining questions in seriatim now.

Hon ALANNAH MacTIERNAN: There is actually quite an easy answer to this. I think it is probably better if we seek to report progress on the bill and bring the remainder of the bill back after the Commercial Tenancies (COVID-19 Response) Bill 2020—after the next piece of legislation.

Hon Rick Mazza: Let's just deal with it.

Hon ALANNAH MacTIERNAN: There are two possibilities—that we deal with it now —

Hon Rick Mazza: Let's deal with it.

Hon ALANNAH MacTIERNAN: Perhaps I can just go back to the member and his concern about —

The CHAIR: Order! Time has well and truly expired. I have indicated what the options are and they are very limited. There being no motion to the contrary from the government benches, I will now put all the remaining questions in seriatim, as per the order of the house.

Hon ALANNAH MacTIERNAN: Just to keep faith, I was prepared to report progress and bring this back after the next bill —

Hon Nick Goiran: You're the government. It's up to you.

Hon ALANNAH MacTIERNAN: That is what I am prepared to do, but we would need to move on to the other bill to resolve these issues and get them dealt with after that bill. That is the quickest and most efficient way of dealing with this—to move on while these various clauses are being worked through, being clause 19. We can deal with that while we are doing the second reading et cetera of the other piece of legislation.

The CHAIR: Not only is our time exhausted, but my patience is starting to get exhausted as well. I will entertain a motion that we report progress and seek leave to sit again; otherwise, I will put all remaining questions.

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

[Continued on page 2360.]