

WESTERN AUSTRALIA

LEGISLATIVE ASSEMBLY

VOTES AND PROCEEDINGS

No. 191

FIRST SESSION OF THE FORTIETH PARLIAMENT

MONDAY, 20 APRIL 2020

1. Meeting of Assembly

The Assembly met at 12.00 noon pursuant to adjournment.

The Speaker took the Chair.

An Acknowledgement of Country and Prayers were read.

2. Speaker's Statement – Sitting Arrangements

The Speaker advised that Questions without Notice would take place after any Brief Ministerial Statements.

3. Paper

The following paper was presented and ordered to lie upon the Table of the House –

By the Clerk –

Corruption and Crime Commission – Review of a WA Police Force investigation into use of force in respect of a child (3346).

4. Notice of Motion

5. Questions

Questions without Notice were taken.

Question on Notice No. 6105 was asked.

Questions on Notice Nos 6053, 6054, 6058, 6060 and 6062 to 6064 were answered.

6. Residential Tenancies (COVID-19 Response) Bill 2020

Message No. 118 dated 17 April 2020 from the Legislative Council was reported as follows –

The Legislative Council acquaints the Legislative Assembly that it has agreed to the *Residential Tenancies (COVID-19 Response) Bill 2020* subject to the amendments contained in the Schedule annexed; in which amendments the Legislative Council desires the concurrence of the Legislative Assembly.

Schedule indicating the amendments made by the Legislative Council in the Residential Tenancies (COVID-19 Response) Bill 2020

No. 1

Clause 14, page 12, line 19 — To delete “whether or not”

No. 2

Clause 16, page 14, line 24 — To delete “This” and insert:

- (1) Subject to subsection (2), this

No. 3

Clause 16, page 14, after line 24 — To insert:

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

No. 4

New Clause 18A, 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.

No. 5

Clause 19, page 16, lines 10 and 11 — To delete “A notice of termination given under subsection (1)(a) by a tenant in relation to a tenancy agreement for a fixed term may” and insert:

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

No. 6

Clause 26, page 22, line 1 — To delete “whether or not”

No. 7

Clause 28, page 24, line 6 — To insert after “Sections”:

30A,

No. 8

New Clause 30A, 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.

No. 9

Clause 31, page 26, lines 4 to 7 — To delete the lines and insert:

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

No. 10

Clause 45, page 34, lines 4 and 5 — To delete the lines and insert:

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

No. 11

Clause 45, page 34, line 9 — To insert after “relevant dispute”:

or failure

No. 12

Clause 46, page 34, line 27 — To insert after “the agreement,”:

or that a person has failed to comply with an order made in connection with the agreement under section 57(1),

No. 13

Clause 46, page 34, line 28 — To insert after “relevant dispute”:

or failure

No. 14

Clause 47, page 36, line 19 — To delete “for the purpose of enforcing” and insert:

in relation to a failure by a person to comply with

No. 15

Clause 47, page 36, after line 25 — To insert:

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

No. 16

New Clause 54A, page 41, after line 7 — To insert:

54A. Evidence of financial hardship

- (1) If, during a conciliation proceeding, a person claims that they are experiencing financial hardship caused by the economic effects of the COVID-19 pandemic, the Commissioner may, in writing, require the person to —
 - (a) give the Commissioner details of the financial hardship; or

- (b) give the Commissioner a statutory declaration setting out the details of the financial hardship.
- (2) The Commissioner must specify in the requirement a reasonable time within which the person must comply with the requirement.
- (3) If the person does not comply with a requirement under subsection (1) within the time specified in the requirement, the Commissioner must make a certification under section 56(5) in relation to the person.

No. 17

Clause 58, page 43, line 17 — To delete “for the purpose of enforcing” and insert:

in relation to a failure by a person to comply with

CONSIDERATION IN DETAIL

The Minister for Commerce moved, That amendment No. 1 be agreed to.

Amendment agreed to.

The Minister for Commerce moved, That amendment Nos 2 to 4 be agreed to.

Amendments agreed to.

The Minister for Commerce moved, That amendment No. 5 be agreed to.

Amendment agreed to.

The Minister for Commerce moved, That amendment Nos 6 to 9 be agreed to.

Amendments agreed to.

The Minister for Commerce moved, That amendment Nos 10 to 14 be agreed to.

Amendments agreed to.

The Minister for Commerce moved, That amendment No. 15 be agreed to.

Amendment agreed to.

The Minister for Commerce moved, That amendment No. 16 be agreed to.

Amendment agreed to.

The Minister for Commerce moved, That amendment No. 17 be agreed to.

Amendment agreed to.

Consideration in detail concluded and the Legislative Council acquainted accordingly.

7. Commercial Tenancies (COVID-19 Response) Bill 2020

Message No. 119 dated 17 April 2020 from the Legislative Council was reported as follows –

The Legislative Council acquaints the Legislative Assembly that it has agreed to the *Commercial Tenancies (COVID-19 Response) Bill 2020* subject to the amendments contained in the Schedule annexed; in which amendments the Legislative Council desires the concurrence of the Legislative Assembly.

Schedule indicating the amendments made by the Legislative Council in the Commercial Tenancies (COVID-19 Response) Bill 2020

No. 1

Clause 13, page 10, line 5 — To delete “commercial leasing” and insert:

small commercial lease

No. 2

Clause 13, page 10, line 28 — To insert before “lease”:

small commercial

No. 3

Clause 14, page 12, line 15 — To delete the line and insert:

- (b) includes —
 - (i) a code of conduct dispute; and
 - (ii) a financial hardship dispute;

No. 4

Clause 14, page 12, after line 15 — To insert:

financial hardship, in relation to a tenant, means financial hardship suffered by the tenant as a result of 1 or more of the following —

- (a) a restriction imposed under a written law in response to the COVID-19 pandemic;
- (b) changes in societal behaviour in response to the COVID-19 pandemic;
- (c) any other consequences of the COVID-19 pandemic;

No. 5

Clause 14, page 12, after line 18 — To insert:

- (2) For the purposes of this Part, a *financial hardship dispute* is a dispute between the parties to a small commercial lease in the following situation —
 - (a) during the emergency period, the tenant has breached the small commercial lease by failing to pay rent or any other amount of money payable by the tenant to the landlord under the small commercial lease (including, without limitation, a requirement under the lease to pay all or any of the landlord’s operating expenses); and
 - (b) the landlord claims that the breach was not a result of the tenant suffering financial hardship; and
 - (c) the landlord has not granted the tenant a waiver, deferral or reduction in respect of the unpaid rent or other unpaid amount of money.

No. 6

New Clause 14A, page 12, after line 18 — To insert:

14A. Relationship with s. 9

Nothing in section 9 prevents a landlord from making a request to the Commissioner under section 17, or an application to the Tribunal under section 15, in relation to a financial hardship dispute.

No. 7

Clause 16, page 14, after line 10 — To insert:

- (ca) if the proceedings relate to a financial hardship dispute — an order terminating the small commercial lease;

No. 8

Clause 16, page 14, lines 20 and 21 — To delete “if relevant in accordance with the adopted code of conduct — ”.

No. 9

Clause 16, page 14, after line 24 — To insert:

- (4A) In proceedings relating to a financial hardship dispute, the Tribunal —
 - (a) cannot make an order under subsection (3)(ca), or any other order to the disadvantage of the tenant, unless satisfied that the tenant’s breach was not a result of the tenant suffering financial hardship; and
 - (b) must make an order under subsection (3)(d) if satisfied that the tenant’s breach was a result of the tenant suffering financial hardship.

CONSIDERATION IN DETAIL

The Minister for Commerce moved, That amendment No. 1 be agreed to.

Amendment agreed to.

The Minister for Commerce moved, That amendment No. 2 be agreed to.

Amendment agreed to.

The Minister for Commerce moved, That amendment Nos 3 to 7 be agreed to.

Amendments agreed to.

The Minister for Commerce moved, That amendment No. 8 be agreed to.

Amendment agreed to.

The Minister for Commerce moved, That amendment No. 9 be agreed to.

Amendment agreed to.

Consideration in detail concluded and the Legislative Council acquainted accordingly.

8. Special Adjournment

The Leader of the House moved, That the House at its rising adjourn until a date and time to be fixed by the Speaker.

Debate ensued.

Question put and passed.

9. Adjournment

The Leader of the House moved, That the House do now adjourn.

Question put and passed.

The Assembly adjourned accordingly at 1.40 pm until a date and time to be fixed by the Speaker.

Members present during any part of the day's proceedings – All the members except Ms L.L. Baker, Mr I.C. Blayney, Mrs R.M.J. Clarke, Ms J. Farrer, Mr M.J. Folkard, Ms E.L. Hamilton, Mrs A.K. Hayden, Mr M. Hughes, Mr J.E. McGrath, Ms L. Mettam, Mr K.J.J. Michel, Mr Y. Mubarakai, Dr M.D. Nahan, Mr K.M. O'Donnell, Ms M.M. Quirk, Mr D.T. Redman, Mrs M.H. Roberts, Mr P.J. Rundle and Ms A. Sanderson.

KIRSTEN M. ROBINSON
Clerk of the Legislative Assembly

HON. PETER WATSON
Speaker of the Legislative Assembly