

COVID-19 COMMERCIAL AND RESIDENTIAL TENANCIES LEGISLATION AMENDMENT
(EXTENSION) BILL 2020

TABLING OF STATEMENT OF COMPATIBILITY AND SECOND READING SPEECH

Tabling of Statement of Compatibility

In accordance with section 28 of the *Charter of Human Rights and Responsibilities Act 2006*, I table a statement of compatibility for the COVID-19 Commercial and Residential Tenancies Legislation Amendment (Extension) Bill 2020 (the Bill).

Second Reading Speech

I move that this Bill be now read a second time.

In April of this year, we met in this place to debate and introduce a set of laws enacting emergency measures that would empower Victoria to face the challenge of the coronavirus (COVID-19) pandemic.

We passed these laws to protect Victorians during these unprecedented times and to make sure that public services and the justice system can continue to operate safely and efficiently. In recognition of the extraordinary nature of some of these measures, we ensured that they were time-limited and would sunset after six months.

These emergency measures have been a vital part of the State's response to the COVID-19 pandemic. Unfortunately, we are not yet out of the woods. Victoria and the world continue to grapple with the challenges of the pandemic, and we continue to need many of the emergency measures introduced by the *COVID-19 Omnibus (Emergency Measures) Act 2020* (Omnibus Act).

In light of the ongoing challenges, this Bill extends some of these temporary support measures for a period of up to a further six months.

The measures to be extended by this Bill are the support measures for tenants and landlords – both residential and commercial - which include a moratorium on evictions, a freeze on rent increases and government-supported dispute resolution mechanisms.

Extension of reforms to support residential tenants and landlords

The Bill will extend the support measures for residential tenants and landlords introduced in April this year. These measures include a broad moratorium on residential tenancy evictions, subject to specified exceptions, which limits evictions by VCAT order to specified circumstances where it is reasonable and proportionate to terminate the tenancy; a freeze on rental increases for all residential tenancies; and the establishment of temporary residential tenancies dispute resolution scheme.

The COVID-19 pandemic has significantly disrupted the rental market and there is an ongoing need to support households experiencing rental stress, which will continue after the planned six month duration of the current support measures. The economic conditions that jeopardise tenancies are expected to continue regardless of the continuation of Commonwealth financial support for Victorians. In addition, the public health reasons for limiting unnecessary moves and evictions remain.

The Government had hoped and expected that the temporary measures would not be needed beyond their original intended timeframe. Unfortunately, due to the resurgence of COVID-19 in Victoria, the circumstances that gave rise to the need for the emergency measures in the Omnibus Act continue. As the pandemic has progressed, we have seen more people facing housing and financial stress, with renters particularly hard hit due to a convergence of factors including their age and employment conditions.

It remains difficult to predict how long these temporary measures will be needed. As announced in August, it was originally envisaged that these measures would be extended initially for a period of just over two months to 31 December 2020. Reflecting the dynamic and uncertain nature of the pandemic and the scale of the subsequent economic recovery, an extension for approximately five months to 28 March 2021 is now proposed. This will provide housing stability in the short term as the State continues to combat the public health crisis – noting the significant risks to public health caused by homelessness in this context – and will provide ongoing support over a more realistic and reasonable economic recovery period.

The extension to 28 March 2021, acknowledges economic recovery will may not be a quick and that vulnerable cohorts, such as renters, will need continued support over a longer horizon as we move towards a COVID normal.

The Bill will also provide a mechanism to extend the measures further to no later than 26 April 2021 if required.

The eviction moratoria and freeze on rental increases will continue unchanged. While it is Government's expectation that tenants will continue to meet their rental obligations where possible, a tenant may not be evicted for non-payment of rent where they are experiencing financial distress during the moratorium. However, evictions will still be possible in specified circumstances, subject also to whether it is reasonable and proportionate for eviction to proceed. The continuation of the moratorium recognises the importance of sustaining tenancies, giving tenants and landlords the ability to manage the ongoing impacts of COVID-19. Rent increases will remain suspended during the extension, during this period, tenants cannot be listed on a residential tenancy database for a breach related to the impacts of COVID-19.

The current residential tenancies dispute resolution scheme will also be extended until 28 March 2021. Residential tenancies disputes, including eviction matters, will continue to be referred to a 'single front door' administered by Consumer Affairs Victoria where landlords and tenants will receive information and support to reach agreements, primarily to reduce rent. As of 23 August 2020, the front door service provided by Consumer Affairs Victoria has been

contacted more than 79,000 times, with over 97 per cent of those matters closed or referred to the Victorian Civil and Administrative Tribunal (VCAT).

Thousands of Victorian tenants and landlords have also mutually agreed to a rent reduction, with more than 28,000 agreements for reduced rent registered with Consumer Affairs Victoria as of 23 August 2020.

The continuation of the dispute resolution scheme and the associated rent reduction processes to 28 March 2021 will ensure that renters have the ability to negotiate and enter into rent reduction agreements to give them financial relief and housing stability in the medium term as the State moves toward economic recovery. Financial supports for landlords to offset reduced rent will also be continued and increased as previously announced.

Where parties need additional support, they will be referred to the specialist mediation service provided through the Dispute Settlement Centre of Victoria. The mediation service has the ability to make binding orders. If the order is breached, the matter will be referred to the VCAT for hearing. VCAT will consider the order and the action of the parties since it was made and then determine the dispute accordingly.

Extension of the Commercial Tenancy Relief Scheme

The impact of COVID-19 on many small and medium business operators in Victoria continues to be profound. This Government's commitment to supporting the state's small and medium businesses through the crisis commenced with the \$1.7 billion economic survival package on 21 March that provided valuable support to businesses. The Business Support Fund has helped tens, if not hundreds of thousands of small and medium enterprises, helping them pay their rent, their employees and their utility bills. The Business Support Fund has been further enhanced with expanded funding to assist businesses to make it through the stage four restrictions and into recovery.

Many small and medium businesses continue to face the impact of COVID-19 restrictions on their business. For some businesses this is the first time they have had to close their businesses since the start of the pandemic, and they are now requiring rent relief for the first time. For others, the Government's need to reduce the movement of people has resulted in a very large drop in customers and therefore, revenue. While able to still trade, demand for these businesses has dropped significantly, and for some of these businesses it is no longer viable to remain open.

Part 2.2 of the Omnibus Act permits the making of regulations to give effect to the Commercial Tenancy Relief Scheme (CTRS). The CTRS is currently due to expire six months after the commencement of the Omnibus Act. The COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020 (CTRS Regulations) were made under Part 2.2 of the Act to give effect to the CTRS and fix its end date at 29 September 2020.

The impact of COVID-19 has extended longer than was originally envisaged and it has become apparent that the need for a formal framework for landlords and tenants to negotiate rent relief agreements will be required beyond the current end date of 29 September 2020. The extension

of Part 2.2 of the Act will permit the extension and amending of the current regulations to 31 December 2020 and the capacity to extend up to 26 April 2021 if required.

It is intended that the provisions will continue to apply in respect of all eligible commercial leases where the tenant qualifies for (and is a participant in) the Commonwealth's JobKeeper program and has an annual turnover of up to \$50 million. As originally intended, this includes but is not limited to eligible sole traders, not for profit businesses and franchisees. This Bill will amend the Omnibus Act to enable the eligibility requirements for rent relief to be determined under the regulations, which will allow for the removal of the requirement that tenants must be employing businesses. This will confirm the Government's intent that sole traders are eligible to participate if they are participating in JobKeeper and will increase flexibility for the Government to adjust as the JobKeeper program evolves.

It is our expectation that most commercial tenants and landlords will continue to work together to reach agreements that will best assist the ongoing survival of businesses. Where the landlord or tenant cannot reach agreement, either party may refer the matter for free mediation by the Victorian Small Business Commission.

The Government commends the many landlords and tenants that have participated in negotiations in good faith and reached agreements to ensure that as many businesses as possible survive the impact of COVID-19.

It is disappointing that the Government continues to receive reports that good faith negotiations are not happening in all instances, and it is important to note that both tenants and landlords have obligations under the Omnibus Act and the CTRS regulations. Tenants that are eligible have an obligation to request rent relief in the form prescribed in the CTRS regulations. Rent relief is not automatic. The Government has endeavoured to make the application process as streamlined as possible, noting that information requests to tenants should be as minimal as possible to support their applications, in most part mirroring information they will have already provided for their JobKeeper application.

It is important to note that compliance with the regulations is mandatory, and landlords have obligations to respond to requests for rent relief. To address this issue, this Bill also enables the making of regulations to enable the VSBC to make an order where this is considered fair and reasonable in all the circumstances. It is intended that the VSBC would use these additional powers to resolve disputes between the parties, in particular, where a landlord is consistently failing to respond to VSBC pre-mediation requests to negotiate in good faith.

This Bill is an important continuation of the work commenced by the Omnibus Act. It extends and enacts a number of reforms critical to our state's response to COVID-19.

We must carry on with this vital work until the COVID-19 crisis is behind us.

I commend the Bill to the house.