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THE PARLIAMENTARY JOINT STANDING COMMITTEE ON SUBORDINATE LEGISLATION MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON FRIDAY 22 MAY 2020

INQUIRY INTO NOTICE UNDER SECTION 22 OF THE COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT 2020 (RESIDENTIAL TENANCIES)

BEN BARTL, ACTING PRINCIPAL SOLICITOR, AND **ALEX BOMFORD**, POLICY OFFICER, THE TENANTS' UNION ON TASMANIA MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR (Ms Rattray) - Good morning; I welcome you to the hearing and broadcast.

Before we start, I remind you that all evidence taken in this hearing is protected by parliamentary privilege but I remind you that any comments you make outside the hearing may not be afforded such privilege. Do you have a copy of the information for witnesses?

Mr BARTL - Yes, we do, thank you.

CHAIR - The evidence you present will be recorded by Hansard and then published on the committee's website when it becomes available.

At the table I have with me the member for Murchison, Ruth Forrest, and the member for Nelson, Meg Webb. We have Nic Street, the member for Franklin; John Tucker, the member for Lyons; and Alison Standen, the member for Franklin. I am Tania Rattray, MLC for McIntyre.

Mr BARTL - To begin, we would like to make an introductory statement. First of all, thank you very much for agreeing to hear from us this morning.

My name is Ben Bartl, I am the acting principal solicitor at the Tenant's Union and I have with me Alex Bomford, our policy expert.

Our first point is that we are very appreciative of the measures the Government has taken in relation to COVID-19 and the protections that they have introduced for residential tenants. I am not sure if the committee is aware that Tasmania was the first jurisdiction in Australia to ban evictions for residential tenants. It was originally just for rental arrears but following the debate on the Floors of parliament, that was extended to all evictions, which was a really good move by the Tasmanian Parliament. We welcomed it at the time and we continue to welcome it.

In relation to section 22 notices, again we are supportive of both of the notices that have been introduced. We believe that there should be a freeze on rental increases and we also believe that the emergency period should be extended.

Dealing first with the freezing of rental increases for residential properties: as we pointed out in our discussion paper, commercial tenancies - we could establish there was a 30 per cent reduction in turnover and their rent was frozen from 1 April, which was backdated because the order was actually made on 9 April.

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For residential tenancies, the order freezing rental increases was only introduced on 23 April, a number of weeks later, and it was not backdated. Something we would recommend to the committee is that the freeze on rental increases for residential property should be backdated until 1 April. That would ensure consistency with commercial tenancies. We encourage the committee to introduce or recommend that matter.

Second, in relation to the extension of the emergency period, like you, we are not sure how long COVID-19 is going to be in our communities. We do not know whether it will be eradicated in a month or two or whether it might be six months or a year. Given that, and acknowledging the fact that the median renter in Hobart and indeed the median renter in Tasmania was already in rental stress before COVID-19, we would like to see an extension of the emergency period for a further three months so that tenants who may fall into rental arrears are given more time to pay the arrears.

They are probably the two most significant recommendations we would like to see introduced. There is a further one in relation to general repairs, which Alex will speak to quickly.

Mr BOMFORD - Currently, one of the changes made to the Residential Tenancy Act as part of the disease emergency act was that landlords would not be compelled to carry out general repairs during the emergency period. That can include things like rectifying mould, doing pest control, fixing up a stove element, provided that the stove otherwise works. It is only minor things that can be quite significant things, especially mould coming into winter.

At the moment, a tenant who has a general repair that needs doing cannot compel a landlord to carry out that general repair by seeking an order from the Residential Tenancy Commissioner and they cannot issue a notice to terminate their tenancy in response to a general repair not being carried out. If the emergency period is extended without the RTA being amended, that moratorium on general repairs will continue for a further three months. We think that is probably a bit unreasonable, especially given, as I said, mould over winter can cause its own health issues, respiratory health issues, and it is probably unreasonable for tenants to have to put up with that aspects of their property not being repaired for up to seven months. We ask that the committee recommend that be amended, if the emergency period is extended.

CHAIR - Thank you. I will now open up for questions, thank you, members.

Ms STANDEN - Thank you for appearing before the committee. You mentioned a discussion paper, but I have not received one.

CHAIR - Can we check with you to see if there was something to be distributed to members?

Mr BARTL - I sent an email to Stuart yesterday at lunchtime, and I asked him to pass it on to the committee.

CHAIR - We will track it down, thank you.

Ms STANDEN - We haven't received it yet. I suppose you've covered the ground that presumably your discussion paper covers in terms of recommendations, but are there any other gaps you'd like us to be aware of now? I am sure your paper will be circulated; it's not too late for that. Is there anything else at this stage you wanted to flag before we get into our questions?

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Mr BARTL - Probably the most important factor that we were able to point out in the discussion paper is that because the freeze on rental increases for residential premises only commenced on 23 April, there was a gap between 27 March when the omnibus bill became law and 23 April, so approximately a month, when the order was made.

One of the things we did was look through our records. One of the services the Tenants' Union provides is that any residential tenant can call our service for legal information and advice. Looking through our records, 13 tenants, off the top of my head, had called us. So that is tenants calling between 27 March and 23 April, to say there was a rent increase -

Mr TUCKER - Can you just repeat how many rental people you are talking about there? Thirteen is that correct?

Mr BARTL - There were 13 and those details are all listed in our submission.

CHAIR - We have received the document now. It went to the Subordinate Legislation Committee, but everyone has been under a bit of pressure around here. We have it now so thank you.

Mr BARTL - That's great. All those details are on page 3 of our paper. All those people were tenants who between 27 March and 23 April were going to have rent increases commence. Our point is that if the order had been made on 1 April, those tenants would have been protected so they wouldn't have had rent increases brought into effect, but as well as that, as you would be aware, not every tenant calls our service for advice. Many tenants will look on our website; they'll look on the Consumer, Building and Occupational Services website; they'll read the newspapers; they'll watch the news. In a lot of those cases those tenants are not going to get in contact with our office. The Rental Deposit Authority provides us with quarterly data that shows how many tenants have entered into new lease agreements over that quarter. What we were able to do - and this is just at the top of page 4 of our submission - is establish that a year ago, so between 27 March 2019 and 23 April 2019, so exactly a year ago, 526 households entered into new lease agreements. The reason that data is important is because most of those tenants, in our opinion, would have extended their lease. Those 526 households would have received 60 days before their rent increase a notice to say their rent will be increasing.

Some of them may not have a rent increase, but generally speaking every year your rent does go up, so approximately 500 households would have received rent increase notices and would have been affected because the order only come into effect on 23 April.

Ms STANDEN - That is very helpful data. Thank you very much indeed for that.

To be clear, in your view, if the notice had been backdated like the commercial tenancies one, if I were a tenant and my lease anniversary was 1 April, even if I was issued with a notice 60 days prior to that, had the COVID-19 notice been dated 1 April, even if I had a notice of increase, it would have been illegal for that to go through - is that right?

Mr BARTL - That is right.

Ms STANDEN - I wanted to be clear on that. Have you data on the approximate number of private residential tenants in Tasmania?

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Mr BARTL - You are putting me on the spot there. Hopefully between the two of us we can work it out. It is approximately -

Ms STANDEN - I think 40 000-ish.

Mr BARTL - I am not sure if it is quite that high.

Ms STANDEN - If you are happy, Chair, we might put that question on notice if the Tenants' Union has data on the number of private residential tenants.

I am satisfied that social housing tenants seem to have been covered through other measures, public and community housing providers, so it is really the private residential tenants we need to look to concerning safeguards through this notice.

Do you know whether those tenants and landlords covered under the existing National Rental Affordability Scheme - NRAS - agreement, whether those tenants would be covered by this notice? I am not sure whether they would be protected by the Residential Tenancy Act in Tasmania.

Mr BARTL - I will start; if Alex has anything to add, I am sure he will put his two cents worth in.

It all depends on how long the NRAS lease has been in place. We have received a number of forms this year from tenants who are coming off the NRAS. Members may be aware the federal government does not intend at this stage to extend the NRAS.

One of the 13 tenants whose data is provided in our document was on the NRAS. It is the fifth one down. They rang on 1 April; their rent had been \$270, which was under market rent because the landlord was receiving the NRAS supplement, and their rent is going up to \$420, so a \$150 a week increase.

I am aware this committee is not here to talk about the benefits or the management of the NRAS but there are definitely tenants who are affected because the NRAS is winding up, and some of them have been impacted.

Ms STANDEN - I am aware the Government has announced a rent relief grant scheme and I am aware of your advocacy in relation to that. Applications open next week for that, which will allow up to \$2000 or four weeks rent relief for tenants and landlords. Do you think now that there is an even playing ground for residential and commercial tenants and landlords?

You talked about the timing period, but if this notice could be made retrospective, in particular I am aware that the commercial tenancy arrangements are out to 1 April next year and you're arguing now for a three-month extension.

Mr BARTL - Well, I wasn't aware of that. What we're suggesting or recommending is that it's at least three months so we hope it could be reconsidered after that.

Our view is that commercial tenancies seem to have upended the urban residential tenancies. The freeze for them commenced on 1 April. We are hearing today that it's for a year whereas where for residential tenancies, it started on 23 April and will be ending soon unless the Government acts to amend that.

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It's not a level playing field but that said, we welcome the initiatives that the Government has introduced. One of the reasons we want the emergency period extended is because the COVID-19 rent relief scheme is a maximum of four weeks rent and many tenants are going to be unable to pay their rent for longer than four weeks. Quite possibly a number of tenants - a significant number of tenants - will be in rental arrears even after they receive the moneys from the rent relief fund. The longer residential tenants are given to pay back the arrears means the more likely it is they'll be able to keep a roof over their heads.

Ms STANDEN - At the end of the emergency period landlords can ask tenants to repay all arrears and evict them if the arrears are not paid within 14 days: is that right?

Mr BARTL - That's right. The point we make in the paper is that if landlords know when the emergency period ends, they can serve notice to vacate 14 days before the emergency period ends.

CHAIR - Alex, do you want to add something?

Mr BOMFORD - No, I just want to clarify that it is not strictly true - notices to vacate for rental arrears are just completely ineffective until the emergency period ends. It's not the same for notices to vacate for other reasons that have been temporarily put on hold through the section 22 notice. They can be issued during the moratorium, but they just won't take effect until after that period ends so there is a bit of difference there.

I think the problem with the rental arrears moratorium is that no exit plan has been put in here. As soon as the period ends, it just goes back to normal and there's no capacity - there's nothing - in the act that mandates the landlord has to enter a repayment plan. There's nothing in the act that allows a magistrate, if the matter goes to court, to enforce a repayment plan. Either the tenant is evicted or they're not evicted, and if the tenant is in rent arrears, prima facie they have to be evicted. As well as the emergency period being extended as long as possible, there also needs to be consideration as to how we prevent a flood of evictions or a bunch of people being in debt at the end of this.

Ms WEBB - I have a straightforward question. In terms of the backdating and the lack of backdating of this notice to 1 April to give that consistency, have you engaged in communications with the Government and received any rationale for that or any reason for not backdating it for that consistency?

Mr BARTL - We haven't received any correspondence from the Government, but what we would say is that when the omnibus bill became law on 27 March, the intention of parliament was that a notice would be given for commercial and residential tenancies. We can't understand why the Government would have introduced one on 1 April just for commercial tenancies but then wait approximately three weeks, or a just over two weeks, to introduce one for residential tenancies.

As I said, we think the intent of parliament was that it was to flow so the order really should have been for both as well.

Ms WEBB - To be fair, administratively there was a lot going on at that time and the delay may well have been because of a lot of different elements having to come into play. However, you are making the point that even if it was 23 April, it could, in the same way commercial tenancies

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on 9 April were backdated to 1 April, also have been backdated to 1 April. It is not so much the delay in bringing it and it arriving on 23 April, it is that it does not contain a backdate?

Mr BARTL - Yes. No criticism of the Government. We totally understand there was, and continues to be, a lot on their plate.

CHAIR - Ben, I have been listening to media reports, as everyone does, but particularly us, and Airbnb has had a significant challenge. I have heard a lot more homes are available for rent, particularly in and around the pressure areas - and they are probably right across Tasmania - around Hobart. Have you seen any increase in people being able to access housing because of Airbnb and the shared house economy not doing so well at the moment, and probably not for quite some time?

Mr BARTL - Anecdotally, a lot of the properties available on realestate.com.au are smaller properties, so one- and two-bedroom houses or units, and in many cases they are furnished, which is not suitable for a lot of tenants.

Generally they also are at the higher end of the market so they are targeted more at the middle class rather than people generally who need them at the affordable end of the market. Yes, in some cases tenants have been able to access those properties but, in many cases, they are either not affordable or they are for short periods of time.

I have seen a lot of Airbnb hosts waiting to see how long this pandemic is likely to last. The sooner the Government comes out to say that the lockdown is lifted and the borders will open again, the more likely it is that Airbnb hosts will continue to have the tenants they have brought in on short-term lease agreements. In some cases, they remain keeping them empty in the hope that the Government acts soon to open the borders so they can get those domestic and international tourists back in.

Mr BOMFORD - I would add that the line Airbnb and similar companies always pushed was that the short-term accommodation market and the long-term rental market did not impact on each other and did not take away from the long-term rental market. Since tourism has basically shutdown it has been definitively proven that is not true and was never true. Now we know that is not true, we should go back to the status quo after this is finished.

CHAIR - The definition of 'short term': is that like a three-month contract or is a six-month contract is considered the more regular or the normal of a short-term agreement?

Mr BARTL - No, many properties on realestate.com.au are by the week or by the month. We are not talking about a long period of time. The standard lease agreement in Tasmania is 12 months. Six months is short, but generally speaking, the agreements we are seeing on realestate.com.au are for very short periods. These are a week or perhaps a month.

CHAIR - So they are really not that useful for anyone looking for some long-term residence.

Mr BOMFORD - I also know that SQM Research put out statistics last week saying that the vacancy rate had doubled in Hobart over the previous month, but it was still significantly below the national average; it was still very low.

CHAIR - Do you have any data or any information around areas outside Hobart and into the more rural areas?

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Mr BARTL - No, sorry, we don't. I generally have looked just in Hobart and Launceston because they're the two bigger population centres.

CHAIR - Members might have some data on that. We get them through our offices; it's pretty sad at times to have to listen to their stories. Thank you, appreciate that.

Ms STANDEN - I have certainly had some representations from people on the east coast - Mr Tucker might have had the same, I suspect - where there's been a high proportion of short stay and quite a bit of pressure on the residential rental market. It will be interesting to see how that shakes down.

A further question on resourcing: earlier in the piece there was a period of probably a couple of weeks when people were just dealing with the health emergency and their income support and so on, but by early May, when I spoke with you, Alex, you said that resourcing was starting to be a problem for the Tenants' Union. Where are you at in terms of being able to cope? Have you noticed an increase? Do you have some data on the number of calls? How are you coping generally in terms of supporting your constituency?

Mr BARTL - Thank you for the question. We provided information to the Department of Justice that in April, we had about a 120 per cent increase in the number of calls we received over the same period last year. Off the top of my head, we had approximately 150 calls in April last year -so that's calls where we've provided legal advice - and in April this year it was about 310.

We have made clear to the Government that we require some additional resources. I am not sure if members are aware but the federal government has also made some funding available to the legal assistance sector, so that is Legal Aid and the Community Legal Centres.

The state Government has received applications from all the legal assistance sector providers in Tasmania this week, and it's likely that a decision will be made within the next week. At the moment, yes, we are quite stressed and there is a lot of work, but we're hopeful that in the coming week we may receive some additional resourcing.

Mr TUCKER - Coming back to Airbnb because, as Alison has mentioned, yes, I've had a few people talk to me about this sort of thing. I've spoken to the local council at Break O'Day and they've found that Airbnb rentals have decreased in the last 12 months in our area. It's interesting talking to the general manager up there; he mentioned to me that a lot of Airbnb houses up there are holiday houses used by people for holidays. If they didn't use them as Airbnb or short stay, they wouldn't rent them at all because they use them themselves. Do you find that in Hobart or is that a different situation?

Mr BARTL - No, it's a different situation in Hobart. They would have been former bed and breakfasts in Battery Point and those sorts of areas that would have converted to Airbnb because they've left regulation and red tape around Airbnbs. Off the top of my head, we know that more than 1000 properties in the greater Hobart region have been turned into Airbnbs and in most of those cases they were not previously bed and breakfasts.

Yes, I appreciate the Break O'Day situation. A lot of those properties would have been holiday houses and B&Bs, but that is not the case in greater Hobart.

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Ms STANDEN - In relation to the timing of the notice, I spoke with the minister's office - and we will be seeing the minister later today - and I think there was a sentiment in the first instance that the Government was reluctant to issue the notice. We will find that out.

The basis put to me was that there were enough safeguards in the RTA to protect tenants from rent increases; that in the event a landlord increases rent which the tenant believes is unreasonable, they can apply to the Residential Tenancy Commissioner who has the power to strike out or even reduce the rent; that the Residential Tenancy Commissioner, under the circumstances, would take a grim view of any landlord seeking an unreasonable rent increase; and, finally, that the Government believes that in current market rents are flat or falling.

I invite you respond to those reasons outlined concerning the delay in issuing the notice. Are those things true, in your assessment, or do they resonate with you?

Mr BARTL - First of all, we would say that probably at least 500 households across Tasmania are directly affected because the Government did not act sooner or did not backdate the order to 1 April. When we say 500, it could well be more because the data we have provided is only those households who paid bonds, so entered into new lease agreements, one year ago, but a lot of households would have been in their rental properties for more than a year. There would be properties from two years or three years ago or even longer.

By the same token, there would be people who have moved out of those properties, so there would not be any rent increases. Therefore, I would say there is roughly 500.

In relation to the rental increases, if you make an application to the Residential Tenancy Commissioner to say that you think the rent increase is unreasonable, it is true that the Residential Tenancy Commission can reduce the amounts of the increase.

If, for example, a tenant's rent was \$400 and the landlord wanted to put it up to \$500, the Residential Tenancy Commissioner can either find one of three things: they can find that it is totally unreasonable and should stay at \$400; they can find that it is reasonable and it should be \$500; or they can find that it should be somewhere in between. What they cannot do is reduce the rent below what the tenant is already paying.

I do not think we have hit rock-bottom. Yes, a lot of people are out of work and we are probably in a recession, but even with house prices going backwards, we are not yet at a situation where rents are going backwards. In any event, the Residential Tenancy Act does not allow the Tenancy Commissioner to reduce the rent below what the tenant is already paying.

That is another amendment we think should be looked at, because property prices are not always going to go up and there may be a time when property prices go backwards and, in that situation, we would say the rent should also be able to be reduced.

Ms FORREST - Ben, can I clarify that point: it's related to the Residential Tenancy Act, not as much as this notice. It's a separate argument at this point?

Mr BARTL - Yes.

Mr BOMFORD - Assuming a rent increase, it's also incumbent on the tenant to make that application, which is quite a bit of work because the onus is on the tenant to prove that the rent

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increase would be unreasonable. It is quite hard to do that at the moment, where intuitively you know that the market is going to drop, but the statistics still say that the median rent is \$500 a week. You have to wait until the market drops to show that drop, and people are also reluctant to lodge these applications because they do not want to jeopardise their relationship with their landlord. They ultimately prioritise the security of their tenure more than maybe having to pay more rent. If it's automatic, they wouldn't have to worry about that.

Ms WEBB - Following from the comments from the Government in correspondence to Ms Standen, that of the tenants you dealt with - the 13 you put in a table in the document you provided to us - who contacted you between 27 March and 23 April, would those tenants have been able to take those rent increases through that process to the Residential Tenancy Commissioner and seek a determination about whether it was reasonable? Do you know if any of those did in fact go through that process? How were they dealt with by the commissioner in terms of a determination being made that, given the COVID-19 circumstances, the rent increases proposed were unreasonable?

Mr BARTL - Yes, in some cases we would have recommended to the tenants that they go through that process because we thought that something might happen. The Residential Tenancy Commissioner doesn't make decisions in a couple of days; it takes at least a couple of weeks for the decision to be handed down. In some cases we would have recommended that tenants do challenge it. That said, just because you suggest to someone that they should follow a course of action doesn't mean that they necessarily do.

Mr BOMFORD - And that also relates to our funding in some respects because in an ideal world we would be able to take on all these tenants as clients and do it for them. We just don't have the capacity to do that so we have to advise these tenants about what they can do but it's complicated and it's a lot of work, and some people just aren't capable of doing that or don't feel they're capable of doing that. If we had more capacity, we could have done it for them.

Ms WEBB - That's an interesting point. I think the capacity to actually engage with the process that's there to protect tenants and whether unassisted people have an opportunity to do that -

Ms STANDEN - To even know that that's an option. You mention that at least 500 households are potentially affected. Would that be only 12-month leases? Do you have any data on how many people would be on shorter term leases?

Mr BOMFORD - We don't have that data available offhand. I think the average length in Tasmania is 12 months. Anecdotally you see that in 90 per cent of cases, I'd say at least. I'd say the number of leases -

Ms STANDEN - There may be some say six-month leases that have rolled around and an increase would be -

Mr BARTL - Yes, but an increase can only be after 12 months so even with some six-month leases, the rent can't be increased at that period.

Ms STANDEN - You mentioned in your opening statements that landlords are not being compelled to undertake general repairs, mould et cetera. In the scenario that the emergency period and the notice are extended, in your view - I think inspections of properties are also included within all this remit - would there be adequate protection say if the Government was of a mind to extend this particular notice to 1 April, to line up with the commercial tenancy legislation? What additional

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protections in that space around inspections and maintenance of properties and so on should be considered?

Mr BOMFORD - The changes made to the act in regard to inspections and right of entry are pretty good. I do not think we would challenge anything about that, except that they be committed to carry out general repairs as well, not just emergency urgent repairs.

We have had a few real estate agents trying to flout those protections but they have been addressed. Otherwise, the issue of general repairs is the only one we are really worried about. Unfortunately, that would require the act to be amended.

Ms STANDEN - Yes, I had a public housing tenant, an elderly woman, who was self-isolating because of her vulnerability to COVID-19. She complained to me that Housing Tasmania had allowed contractors to come in and install her reverse cycle air-conditioned. Under normal circumstances, people would be delighted about, but the family was quite distraught because at that stage, social distancing was an issue.

Ms FORREST - I had the opposite where they said they would not do it. They did though, eventually.

Mr STREET - To be clear, Alex, are you advocating that landlords should still be restricted in doing inspections, but you would like the provision for emergency, general maintenance and other works to be carried out if the emergency period is extended?

Mr BOMFORD - Yes, that is the case. Emergency and urgent repairs are already still required, but we would like that to be broadened a little bit to include general repairs.

Mr STREET - Would you not concede that if you are going to make general repairs not mandatory, but able to be carried out, that you would also need to extend the same provisions to landlords to carry out inspections during the emergency period if it is extended?

Mr BOMFORD - Not necessarily. I would say that not all inspections are made equal. In the current changes, landlords are still able to enter the property if there is an emergency, and that would include serious damage to property that they have become aware of.

A lot of regular and routine inspections are fairly unnecessary, I would say, relative to general and emergency repairs that have to be carried out for the tenants to be able to live there. It is also the case that those changes in relation to inspections can be amended or withdrawn by a notice. The act does not have to be amended to change that so the emergency period could be extended and those changes could be withdrawn before the emergency period ends. We could still have a moratorium on rent arrears eviction, but those restrictions on inspections could be lifted.

We are concerned, especially in relation to showing properties - people being shown through for sales and if the property is being re-tenanted - real estate agents often put a lot of pressure on tenants to have open homes even though it is illegal to have one of those without consent even at normal times. We are worried that once that is lifted, if that is lifted, a lot of people will be shoved through the door without any proper checks in place regarding their health and safety.

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Mr BOMFORD - ... their health and safety.

Mr STREET - So that I'm clear in my mind and we can be clear on the record, where a tenant wanted some general maintenance to be carried out on their property by the landlord, the landlord should be able to do an inspection to ensure that it's actually necessary in both the landlord's and the tenant's minds. I guess that is where I'm at.

Mr BOMFORD - Yes, I don't see any issue with that. It pays to sensible about that. I think most of that could be done by photos and videos at the moment. If it requires an inspection, yes, then.

Mr STREET - No worries, thank you.

CHAIR - Thank you very much. I think we are all done. The committee very much appreciates your time. We know it's as you said, the increase in traffic into your office or by phone and email has been significant. We know that you're very busy and very much thank you for your time today and we'll continue on our inquiry journey. Thank you very much.

Messrs BARTL and BOMFORD - Thank you.

THE WITNESSES WITHDREW.

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Ms ELISE ARCHER, ATTORNEY-GENERAL, PARLIAMENT OF TASMANIA.

Mr PETER GRAHAM, EXECUTIVE DIRECTOR, CONSUMER, BUILDING AND OCCUPATIONAL SERVICES WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Attorney-General, thank you very much for making yourself available to the committee at this really busy time for this particular hearing about the residential tenancies notice the committee is examining. There is no need for you to be sworn.

Mr Graham, you have received all the information in regard to witnesses. You obviously know this hearing is being recorded and is being streamed live and also that you don't have privilege outside this hearing.

Mr GRAHAM - Yes.

CHAIR - Attorney-General, you're well aware of all those things, and I don't believe there is any need to introduce members - you know everybody at the table.

Ms ARCHER - No, I know you all.

CHAIR - Minister, we always provide an opportunity for you to provide an overview to the committee or any brief statement you might like to provide. We are happy to commence so thank you very much.

Ms ARCHER - Good, well, thank you - the good old days - I used to be on the Subordinate Legislation Committee so you have my deepest sympathy. No, it's a great committee to be on so thank you for the opportunity.

First, we apologise for not being able to comply with the 14-day time limit. I know if I can refer to Mr Graham as Peter, it's going to be easier throughout this hearing. I know you will accept that Peter was extraordinarily busy that week, as was I, with the COVID-19 Disease Emergency (Commercial Leases) Bill 2020 (No. 19) that we took through parliament. A lot of work was involved in that; not least of all, Peter was tied up with a lot of briefings, including with upper House members. It was actually ready for Peter to settle, but for obvious reasons he couldn't get to it on time. I hope the committee understands that our being unable to comply with the 14-day time limit was not intentional. Of course, we do our best to try to comply, and it was simply an oversight and an inability to get to it on time.

Members may not be aware that our Government was the first jurisdiction to recognise the need to take urgent action to prevent residential tenants from experiencing the worst economic impacts as a result of COVID-19. We did that in that first COVID-19 disease emergency bill, ensuring that residents could not be evicted for rent in arrears.

Subsequently the notice issued on 3 April, which has previously gone through this committee, and the detailed important residential tenancy changes for at least 90 days were not make lightly. We realised they would also have an impact on landlords and property agents, and we thank them for their understanding.

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We are here today because of the notice issued on 23 April to prevent residential rent increases. In between that period, though, it is important to note that safeguards were already in place to prevent such rent increase actions. Peter is available in his capacity as the Residential Tenancy Commissioner to explain that period, and why people were still protected then and, indeed, would still be protected in that period had we not provided this additional safeguard.

The notice of 23 April was really to provide comfort and surety of an already existing mechanism that is available under the Residential Tenancy Act, where a tenant can seek an order from the Residential Tenancy Commissioner for a rent increase to be deemed unreasonable. Peter again will be able to confirm any statistics for committee members in that regard as well.

I will leave it at that for the opening because I am sure you have further questions about that. If I cover it all in my opening statement, you may not have any further questions. I am very happy for you to ask questions and we will do our best to answer them.

CHAIR - Thank you.

Ms STANDEN - Thank you very much, Attorney-General, and Mr Graham - if I can call you Peter as well - for making yourselves available to the committee.

I certainly understand the pressure you have been under and appreciate the measures the Government has taken to provide protections for residential and commercial tenancies at this time, including the more recent announcement about the rent relief package, which goes some way to addressing a number of concerns.

I invite you to go further in exploring the time frame. Earlier today we met with representatives from the Tenants' Union. In their view, there is a concern about the 23 April notice not providing retrospectivity. The commercial leases are dealt with legislation, not by notice, but that did provide for some retrospectivity from 9 April back to 1 April. Then there is the matter of the end period, and 30 June is the end of the current notice for residential tenants, but for commercial tenants and landlords under the legislation, that is now pushed out to 1 April next year.

I invite you to make some comments about that, whether you feel there is an even playing field, as it were, for residential and commercial tenants and landlords in the current environment, and any anomalies that you see.

Ms ARCHER - I do not see there are anomalies because commercial leases are quite distinctly different. I can get Peter to explain the difference in nature for commercial leases and how they had to be dealt with, not least of all whether they are fixed term or not, because there are some differences there.

We also need to remember that in terms of residential tenancy, packages have been available from both state and federal governments, not least of all the JobKeeper and Jobseeker payments, that have assisted tenants to meet their obligations.

Obviously, the rent relief fund is a further additional measure. I have not had any negative feedback about it other than correcting some things that people have thought it mightn't cover and it does, so there are mechanisms in place to ensure that those people, even when they are receiving Jobkeeper or Jobseeker, are eligible for that relief fund.

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I will put that aside because I am very aware of what we are here to talk about today. Unlike an act, which, as you have correctly said, is how the commercial leasing is dealt with and needed to be dealt, subordinate legislation like this notice can't be retrospective unless the enabling act specifically allows for that. That is the reason why there's no retrospectivity.

I will give Peter an opportunity to explain that. I am not quite sure what the Tenants' Union is basing its figures on. I totally understand it has had an increase in inquiries, which is understandable and expected, but as to the nature of those inquiries, it may include questions about this, but I don't think it's solely about this. I think Peter in his role as the commissioner has now received five applications only. I might get Peter to explain that there has been minimal impact in relation to rent increases.

Mr GRAHAM - At the time the notice was made on 23 April, we had not received any unreasonable rent increase applications from 1 March. Since that time we have received five applications during the period from 1 March to 23 April. That's because tenants have up to 60 days to make an application after a rent increase is given. We are considering those applications at the moment. Each application is to be considered on a case-by-case basis. The fact is that you tend to have regard to including rents currently in the marketplace.

Ms FORREST - On that point, one of the representatives from the Tenants' Union talked about the issue of looking at the current rental market is that there's generally a lag before the market shows the impact of something like this, which has been so rapid. Do you have a view about that? I know you don't have a crystal ball - well, I assume you haven't; I don't think any of us have. It would be nice to have one.

Ms ARCHER - I wish we did.

Ms FORREST - Correct. That's the thing - one of their comments was that you don't have the power to recommend - you can recommend that rent not be increased or that it be partway, meet in the middle-type of thing - a lower rate of rent if you believe that the market is really flat or has declined.

Mr GRAHAM - That's correct. The power relates to increases only so the most you can do is say no increase.

With regard to your question about what's going on in the market, we do collect data through our rental bonds system and other kinds of things. I don't have an up-to-date report, but even from the early days of COVID-19 - sort of late March to early April - we've seen significant additional properties come into the market as a result of the collapse of short stay accommodation.

I can't speak for the whole state, but in general rents at that time were flat or falling, and we've seen that kind of maintained. We do collect this data and analyse it and can -

Ms FORREST - Seeing that, you would apply it to the determination?

Mr GRAHAM - Definitely. When I would look at an individual application, say, for a three-bedroom house in Glenorchy, I would look at the rent charged for a similar property in a similar area and we would focus on currency of information, so the most recent as opposed to being necessarily close by. So, yes, you try to get a closer sense of what the alternative would be in the marketplace on the day on which the order is made.

Ms WEBB - Just to be absolutely clear that the only factor you can take into account in determining whether a proposed rent increase is reasonable is market comparison. You can't take into account the fact that COVID-19 is happening or any circumstances relating to the tenant themselves or anything like that - it's simply market comparison?

Mr GRAHAM - No, it is under section 23 of the act.

Ms WEBB - Can you outline that?

Mr GRAHAM - Section 23(2): the first bit is the general level of rents for a comparable property and the second is any relevant matter. I focus on the market because that is the way in which the most part -

Ms WEBB - Under normal circumstances, you would use that?

Mr GRAHAM - Individuals are able, when they make an application, to set out their circumstances and any part of that can be considered.

Ms WEBB - In relation to that, given that you have had five applications made that relate to that particular in between period - and certainly without any specifics that may identify those - are you taking into account material presented to you that relates to the personal circumstances of a COVID-19-related circumstances in those cases beyond your more normal regular comparison of the market?

Mr GRAHAM - Every application is treated on a case-by-case basis, and it is treated in the entirety of information put forward.

Ms ARCHER - I can add to that: the Government has been at pains to point out throughout this process, and this is on the advice of Peter in this role, that he would not be likely to accept any rent increase as reasonable, given a tenant's circumstances in the current climate. We are really focused on that discretionary part of the section in the act.

Mr GRAHAM - While not prejudging any individual application, in general rents are flat or falling and that would be enough not to agree a rent increase is reasonable.

Ms WEBB - I accept you are saying that is the intention and that is very positive.

My concern this relates to a concern raised by the Tenants' Union. It provided information to us that, for example, of inquiries made for assistance from them in that period, 13 relevant inquiries related to rent increases during that period in between. The Tenants' Union then cannot actually assist those people to come to you. It can advise them that they are able to and point them towards making a complaint to you as the commissioner, but it cannot undertake that or provide much material assistance towards that because of its limited resources and role.

What is your response to the fact that while technically people impacted by a proposed rent increase during that in between time had an avenue to bring it to you for consideration and perhaps have it negated or not deemed to be reasonable, many tenants who may have encountered that situation simply either would not necessarily have been aware of that opportunity or, even if they been - as the 13 who went to the Tenants Union were made aware of it - they may not have been in

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a position to make the complaint to you? Therefore, given that there was not a blanket coverage in that in between time, we will have people out there who potentially have been pretty adversely affected.

Mr GRAHAM - Can I answer that in two parts? Definitely, there is an awareness issue. Unless you know these protections exist, you cannot take steps to act on them. There is accessible information on our website and the Tenants' Union plays an important role, and other community centres, to make people aware, but there is definitely that issue if you are not aware.

Ms ARCHER - It is on coronavirus.tas.gov.au. Sorry for butting in, Peter, but it is really important that if anybody is experiencing hardship in any particular area, the answers and the links are available there. The Government is trying to push out as much information as possible so people know what they can do, or they can ring the minister's office or ring members of parliament, and we will try to sort it out that way. Largely everybody has been very cooperative in that regard.

We are ensuring that people do have the information. All we can do is encourage people to contact us, which the Premier does on a daily basis through his media conferences, as we all have as local members, encouraging people to come forward.

Apart from that, what else can we do except try to assist in that circumstance? Particularly in relation to the Tenants' Union, they know that under the new national legal partnership arrangements and my discussions through Council of Attorneys-General we will be providing funding for community legal services that have had an increase in or influx of inquiries or business or advice that they've needed to give during the COVID-19 period. That's through federal government assistance funding; we have communicated that.

As for the amount, we are just nutting out how much each community legal service gets so I just want to cover that off. It's not that the Government is not willing to provide some additional funding.

Ms WEBB - There wasn't a suggestion of that. We heard that quite clearly from the Tenants' Union; when we spoke with them earlier, they said that too.

While that's very positive, by the time it actually comes through, we will have had at least the first two months of this period during which the biggest flurry - I would have thought - of activity around this may have occurred. We heard from the Tenants' Union of a 120 per cent increase during April, for example.

For people who may be impacted, the capacity of the Tenants' Union to provide assistance was constrained so that they weren't able to help them through.

Ms ARCHER - Except that they can advise every single person to contact the Residential Tenancy Commissioner.

Ms WEBB - Of course, and of course they did was their advice to us. Did you want to continue answering the rest of that question, Peter?

Mr GRAHAM - All I would say is that the application process is relatively simple. It just requires information regarding the tenant and landlord, a copy of the residential tenancy agreement

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and a copy of the rent increase notice. There's not a huge onus on an applicant to demonstrate their own circumstances or other kind of things because it really relates to the increase itself.

I would say that process is relatively simple. It does require people to be able to do that and definitely some people have difficulty accessing services due to language or literacy and other challenges, but there are things in place that can help people do that.

Mr TUCKER - The issue of general repairs came up today with the Tenants' Union, and also with Nic Street, who asked questions about landlords being given access to inspect a property. They were talking about mould and faulty stoves, general maintenance like that. What is the situation with that at the moment?

Ms ARCHER - I will get Peter to explain that. Generally, as a principle we obviously want people not only to be able to observe social distancing and increased hygiene measures - in terms of people visiting the property and those residing in the property - and that any visits to their property weren't unnecessary and were only in circumstances of wilful damage and things like that, but also to allow some form of inspection by property agents. I might just get Peter to address the detail of that.

Mr GRAHAM - The Residential Tenancy Act has three types of maintenance under it. The first is emergency, which is your burst pipe kind of example. The second is urgent, which relates to an essential service, so your heater, your cooking equipment and those kind of things. The third is general repairs, which are all other repairs that are to keep the property as it was when you let it.

CHAIR - Do you class mould as general or emergency and urgent?

Ms ARCHER - It depends how bad it is, probably.

Mr GRAHAM - It would be general in the first instance, but if it became more of a problem -

CHAIR - It's quite harmful, though.

Ms ARCHER - That's what I was thinking.

Mr GRAHAM - The emergency period changes make no changes to emergency or urgent repairs. Those need to be done and done in line with the time frames in the act. The changes did switch off the general repairs provisions for the emergency period. Again that was done because we looked both at the right of entry provisions and the repairs provisions. We had received a lot of anxiety from tenants regarding third parties accessing their home. This was when there was uncertainty with regard to -

Ms ARCHER - I think it was property inspections.

Mr GRAHAM - Those kind of things, so we tried to have a balanced set of provisions that switched off those things and gave people comfort that, except for in circumstances that are really necessary, such as emergencies or urgent repairs and things related to those, there wouldn't be third parties in their home without their consent or invitation. That was really the basis of those changes.

What does that mean for someone who has a general repair? They still can raise that with their landlord. If there's mutual agreement, it still can be fixed. These tend to be things that ensure that

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the fabric of the property is maintained and other kinds of things. I am aware that many landlords have undertaken general repairs at the request of tenants because we have definitely had contact from people asking that if the tenant agrees, are they allowed to do it.

Ms ARCHER - There was a bit of misunderstanding that it was banned altogether, but, as Peter said, if it is by mutual agreement, that is perfectly okay as long as they comply with social distancing and other measures.

Mr GRAHAM - As we said, a general repair left incomplete may become an urgent or emergency repair at some point. At that point, the provisions of the act dealing with urgent or emergency repairs switch on. Where a landlord does not undertake those, the tenant can seek an order from the Residential Tenancy Commissioner that they be done within a certain period.

We have not had much complaint from tenants regarding general repairs. Most of the contact we have had is from landlords checking that if the tenant wants something done, the landlord would not be in trouble for facilitating that to happen. I am not aware of complaints from tenants regarding general repairs.

CHAIR - Is that process relatively easy, where they might contact you directly, with an email or a phone call to seek information?

Mr GRAHAM - There is information regarding repairs on our website. In most part, we have nothing to do with this because tenants and landlords sort it out for themselves and other kinds of things. Where we get involved is general advice to either party about their rights or obligations and then in disputes. In the event a tenant has what they consider a needed repair, they can get us involved. We typically try to talk to the landlord to get it dealt with, but if we cannot, I can issue an order making that happen. It is not a big part of what we do.

Ms ARCHER - If I can assist there, too: what has been very helpful in this time, as you can imagine, across industries with all issues to do with COVID-19, the principal or peak membership bodies - in this instance, the Real Estate Institute of Tasmania - have been incredibly helpful in disseminating this sort of information to all their members.

I even noticed on my Facebook this week, in announcing the rent relief fund, that a lot of property management agents have been sharing that information via their networks and through social media as well. The information is managing to get out there because a lot of landlords' properties are managed by property agents and the Real Estate Institute has been incredibly helpful in ensuring that property agents - i.e. those representing landlords - know what their rights are and what they can and cannot do, and that the Residential Tenancy Commissioner is there to provide any further information or settle any anomalies or questions they need answered. That type of system is working well.

Ms STANDEN - The Tenants' Union this morning cited some data from the Rental Deposit Authority from 27 March to 23 April 2019. They said 526 households had entered new lease agreements. We have been talking about relatively low numbers that have come to you and to the Tenants' Union for assistance. I certainly have had a number of tenants come to me for clarity in this period. too.

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They concede that might not be all, but that there may have been people who are on longer term lease agreements that have rolled over and rent increases might be in the frame there, and shorter term leases too. It is uncertain.

Ms ARCHER - Do you mean where it is built into their agreement?

Ms STANDEN - Standard lease agreements, as I understand it, in the residential sector are for 12 months. There are some that are longer and some that are shorter.

According to the Tenants' Union at least, there are, say, potentially 500 households statewide that could have been up for, in terms of the anniversary of their lease, rent increases. Given that, why did you not issue the notice at the same time as you issued the notice for the banning of evictions?

Ms ARCHER - I addressed that in my opening statement. We already believed, and I still believe, that the protection was there. This notice was issued to provide greater surety and clarity to ensure rent increases would not happen. As minister, I was very satisfied that through the Residential Tenancy Commissioner rent increases that were unreasonable just wouldn't be approved. Given the flexibility allowed in the act itself for the commissioner to take into account the specific circumstances of the tenant that Ms Webb's question went to during COVID-19, all of those relevant circumstances would render or deem a rent increase unreasonable. I'm quite happy for you to address this after me, Peter.

Mr GRAHAM - The only thing I would say is that first notice matched exactly the commitment the Government made in the Legislative Council, and that didn't cover rent increases so we did it as quickly as we could and it was just like, 'This is the commitment of the Government.'

Ms STANDEN - But the two provisions were in the same clause of the same bill.

Mr GRAHAM - Sorry, do you mean they both relate to section 22 of the COVID-19 act?

Ms STANDEN - Yes.

Mr GRAHAM - That's right, but as soon as we were through the passage of the first COVID-19 bill, we turned our mind to drafting a notice that gave effect to the commitment the Government made in the Legislative Council during the bill's passage. It matched that identically so we didn't consider other issues because we wanted to make it quickly.

Ms STANDEN - Sorry, there was a clear commitment in the House of Assembly debate to issue not just a ban on rental evictions but also rent increases. That was the amendment to the bill agreed to in the House of Assembly so I don't understand.

When this came about, I contacted your office, Minister, and I was told the Government had decided not to issue a notice at all in relation to this matter.

Ms ARCHER - The commitment in the House of Assembly was certainly to ensure that there wouldn't be rent increases. We as a Government satisfied ourselves that a notice wasn't required and I'm still of the view, knowing the commissioner's powers, that we didn't need to issue a further notice. However, if you like we did that to provide that certainty because people were calling for a notice but in effect the notice itself simply does what the commissioner's powers are already.

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I think we need to look at that period as well. We haven't had people, and the figures demonstrated that, between 3 and 23 April, come forward about rent increases so I am not quite sure why you're hung up on that period.

Ms STANDEN - But, as I've just said, because potentially up to 500 households are in the situation where the anniversary - that's probably not the right term, is it, Peter? - for their lease agreement has rolled over. For a lot of people in that circumstance a rent increase would be ordinarily due. I've certainly spoken with a number of constituents who have been caught up in that period and have been told they have to increase their rent and they've accepted that.

I think the problem I see with this anomaly of the three-week window or so, is that it puts the onus on the tenant to know what avenues there are to explore this. I think in the majority of the cases of those 500 or so households it's likely a lot of tenants would have just accepted a rent increase where it was demanded and coughed up, as it were.

Ms ARCHER - We also need to come back to the underlying principle of all the measures we've taken in relation to residential tenancies, which is that it doesn't provide a rental holiday and where people can still afford to pay their rent, please do so. With the rent relief fund we still want to ensure that where a landlord and their tenant can in good faith enter into an agreement for rent reduction, they do so if there's hardship. We then obviously look at providing that relief through the other criteria we've announced, which are very reasonable and extensive and also include migrants and temporary visa holders, to ensure we're capturing those who are suffering extreme hardship.

During in this period, I accept - myself and others who have been able to continue working are excluded from this - that a significant number of people have suffered hardship, but we also need to come back to that principle of where you can afford to pay your rent, please do so. The reason we have provided this rent relief fund is that if you are paying more than 30 per cent of your income in your rent and your household savings are less than \$5000, largely you are going to be eligible for this fund because you are under extreme hardship. They are the people we want to ensure are captured as well.

I accept that everybody is in different circumstances and we have tried to capture those who are experiencing hardship as a result of these measures. I think that with that latest announcement, we have largely captured everyone, as many as possible.

Ms FORREST - To clarify a point: Peter said earlier that you have 60 days to lodge a complaint or review, whatever it is called, and you have only had five cases relating to that period. Because 60 days have not passed yet -

Mr GRAHAM - Not quite.

Ms FORREST - You could still get a few more, potentially.

Mr GRAHAM - Yes. Really, 60 days would be sometime around 23 June. That would be the period so we could get more, definitely. The ones I understand we do have relate mostly to early March, the kind of 60-day period. I don't think we have not seen any from April, but I cannot 100 per cent say that.

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Ms FORREST - Following on from that, Minister: with your announcement a few days ago, has that made people more aware of the support available? Obviously, there is financial support here but the fact the process of appeal. Alison made the point that it is up to the tenant to seek redress, if you like. Is that likely to make people more aware?

Ms ARCHER - Every time we announce something in this space, particularly residential tenancy, and I thank the media as well, there has been pretty good coverage of all the measures we have taken in the tenancy space, whether it is commercial or residential. We certainly get correspondence as and when things are announced - people wanting clarification and fact sheets, and that is why we, as soon as possible, issue those facts sheets as well. They take a lot of effort as well, but as much as possible they are done either on the day or within 24 hours so people can get their hands on that information and hopefully the answers to their immediate questions.

There are always going to be follow-up questions so we always have that people to contact CBOS in that regard. Certainly in relation to the rent relief fund, we are connecting in with Communities Tasmania through Housing Connect because they have expertise in administering these sorts of schemes. That means that Peter does not have to administer the scheme, but answers all the queries and it is well balanced there.

Again, it is disseminating that information. Because people are connected more than ever through social media and other mechanisms, the word is spreading out there. For example, when I made the announcement this week and, on the day, put up something on my own Facebook, I was getting questions that I was answering that night, or the next morning with specific questions. There was one person I asked to email me to deal with their specific query.

We are trying to take the approach where we assist as quickly and as immediately as possible. People have realised that if they contact the minister direct, or a member of parliament, we will try to address their questions as quickly as we can.

Ms WEBB - I would like to follow up on a couple of areas. To return to the passage of that initial legislation through parliament, it would have been my interpretation, based on what happened in the lower House -

Ms ARCHER - Is that the first one that the Premier took through?

Ms WEBB - Yes, in late March. When initially there was discussion around the protection from evictions and the rent increase matter, which was inserted in the lower House to apply to residential tenancies, was it the Government's intention at that point that there would be no rental increases for residential tenants across the emergency period? That is the way it appeared from the discussion in the two Houses. Can you clarify if that was the intention?

Ms ARCHER - We were certainly confident through the measures Peter referred to in his previous answers under section 22, that rent increases were not going to be an issue because of the deeming unreasonable provision, and that COVID-19 was a pretty sufficient reason for someone to apply and it being able to be deemed unreasonable.

As I've said, the notice has now created a lot more certainty about that. When we look at that period, I have every faith in Peter in his role as commissioner that he's not going to make a decision about a rent increase that will not adequately take those things into consideration.

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Ms WEBB - I don't think there's an issue around how that might be dealt with should an issue come to the commissioner. I think the discrepancy here, and the consternation we may have heard from the Tenants' Union on behalf of tenants they have heard from, and perhaps from some of us as members who have been contacted directly by people who have been impacted by this, is that there is a difference between the Government's stated intention during the passage of that initial legislation that rental increases shouldn't occur in the residential space and that wouldn't be deemed to be appropriate versus some of the measures people can take to protect themselves from unreasonable rental increases, but those are two quite distinctly different things.

In not issuing a notice promptly that put a hold on it, I am just wondering about the distinction there because -

Ms ARCHER - Can I just clarify something? I'll address that. I think it's really important to remember that the amendment in the House of Assembly only enabled a notice to be given. It didn't commit the Government to doing so. The Government didn't commit to a notice. It committed to that general commitment. I think members are getting hung up on whether you do it by notice or whether you do it by some other means. We did it by some other means. We've subsequently done it by notice, if you like, largely so that people weren't hung up on this notice issue, which is what we're experiencing now, but either way tenants have been afforded the protection and that commitment has been kept. Whether you do it by notice or not, we haven't breached any undertaking.

Ms WEBB - That's probably also a matter for interpretation, but I guess the thing is that if the commitment was that residential rents wouldn't increase during the emergency period, that's not what's transpired. If the commitment was that there would be -

Ms ARCHER - Sorry, on what basis?

Ms WEBB - Because many tenants have experienced an increase in rent during the emergency period. I accept what you're saying -

Ms ARCHER - I'll get Peter to address that because I think you're accepting evidence that we certainly don't have.

Ms WEBB - Absolutely.

Ms ARCHER - I would love to be proven wrong on that, but I'm not going to accept something on face value -

Ms WEBB - If I can come to a question -

CHAIR - We need one person speaking at a time.

Ms ARCHER - I am not going to accept being verballed on something that doesn't have evidentiary value.

Ms WEBB - I am certainly not intending to verbal you, Minister. I am putting forward that we've heard both in documentation from the Tenants' Union, specific cases where rents were being increased during the emergency period, and I have personally heard from constituents about it, and I believe other members would also have heard. I am just putting that forward to you that evidence

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would readily be available to us that would say some residential tenants experienced rent increases during this emergency period.

What I'm interested in, and I absolutely accept what you've asserted - it is true an avenue has remained for people to bring that to the commissioner for assessment as to reasonableness - but in terms of if there was an initial intent that there shouldn't be residential rent increases during the emergency period, that hasn't been able to be given effect without a notice being more promptly issued by the Government. I guess that's the point I'm making.

What communications were made to landlords and real estate agents representing landlords at the very outset after the initial passage of the legislation about government intent around residential rent increases? Was something communicated to the sector about an expectation that increases wouldn't occur during the emergency period, based on what went on through the House?

Ms ARCHER - I do not want to misrepresent anything to the committee, but I would need to check if anything in writing was issued. Know that my office had discussions with the Real Estate Institute of Tasmania and that I had a personal meeting with them. They were very accepting of the fact that they realised that landlords needed to work with tenants in these extraordinary circumstances. They understood that the no evictions we were going to introduce were necessary. They did not want people to be homeless, those sorts of issues.

We certainly had discussions around what measures needed to be taken. Specifically, in relation to rent increases, I would have to refresh my memory at what stage that issue came up. I don't know whether Peter has any recollection of this, but as to timing of all this -

Ms WEBB - I would be interested to know about any communications made to the sector, the landlords -

Ms ARCHER - We certainly had regular contact throughout this whole period.

Ms WEBB - Undoubtedly, I am sure.

Ms ARCHER - As to dates and things, I would not be able to -

Ms WEBB - If something that can be provided, if that can be looked at, it would be of interest to see what was communicated, given that we know rent increases were proposed to some tenants in the state. I say that without passing you a piece of evidence about it, but I am asking you to take it on faith because we have evidence from the Tenants' Union, and some of us have heard about it. Was something put to them in terms of information to the sector, the landlords and agents, about an expectation around rental increases?

Ms ARCHER - Members need to appreciate, and I am sure you do, that matters and how they progressed through this period happened in the earlier stages very quickly, exceptionally quickly. With the first few measures, I recall that the Real Estate Institute was a little surprised by the actions we needed to take. From that point on, the regular engagement was more frequent. I accept that we were not able, in a humanly possible way, to communicate those things before we needed to make those initial decisions. They were really required urgently so that people were not homeless.

People understood what the Government was trying to do in that early period and as things have evolved and as things have progressed, it is very evident that the Government has reacted by

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trying to address situations as they have arisen. As issues have come forward, like rent increases, or needing the relief fund, where there have been groups we needed to capture, we are addressing them. We are providing funding and we are doing everything possible we can to address those issues as they arise.

In that earlier engagement, through the sheer speed at which that initial decision was made, we were not able to engage in writing. I recall we did not do anything in writing with the Real Estate Institute until we were able to meet with them and flesh out some of the issues they had. You can imagine from a landlord's perspective in those early days, they felt very hard done by and understandably so because a lot of it seemed to more pro-tenant than landlord.

Certainly, with the relief fund now, we have tried to make it so that it assists landlords as much as tenants. As we know, many people - who have contacted us all, I am sure - rely on income from tenants as part of their retirement plan, being an obvious example.

In all of this, yes, we have had to protect tenants, but I have been very mindful of ensuring we try to protect landlords and, in doing so, property agents as well because they have taken a massive hit.

Ms WEBB - I accept that and I am not so much interested in the discussion you might have had with them as that first bill was being developed, but in the immediate time afterwards when you certainly would have been communicating with all external relevant stakeholders about the things in that bill. I am interested, and perhaps you can provide the information at a later date for us, about anything in particular that was communicated to that sector at that time. I think given that this notice is about rent increases, it's not detrimental necessarily to a landlord not to have increased the rent. It's not asking them, as we have in other circumstances, to negotiate potentially even lesser rents. This is about the increases and the fact that tenants might have been subjected to them.

Ms ARCHER - I think we made it very clear publicly what the Residential Tenancy Commissioner's obligations were in assessing a rent increase and property agents know that, so I think it was fairly much reinforced in discussions. They understood to convey to members - I do recall this - that any rent increases that were going to be unreasonable would most unlikely ever to be approved. I think it's fair to say that.

A lot of these things happened in discussions. As and when we were developing things, we would ring up because that saves having correspondence back and forth. We will certainly look at what we can, but some of this is also that we provided so much information publicly on our website that a lot of the time property agents have been relying on the same information as tenants. We've had fact sheets for landlords, we've had fact sheets for tenants, and that's exactly the purpose of getting as much information out in the public as possible so that our engagement can be that way as well. With the bills, too, the consultation we would normally have as part of a bill process is very limited when you're dealing with things on an emergency level. You just don't have the time to consult as widely as you would on a usual bill, and so we are relying on getting a lot of this information out in the public so that everyone's aware.

Mr TUCKER - Minister, the Tenants' Union earlier this morning raised extensions for another three months in regards to this notice. Can the notice be extended? What is the process with that? They also talked about general repairs being extended and whether something is included in it in regards to that with the extension.

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Ms WEBB - To clarify, they were talking about an extension in the Residential Tenancy Act to the element of the emergency period that's in the act now, not the notice itself.

Mr GRAHAM - They're relevant because the notices can only be made in the emergency period as well. The emergency period was for an initial 120 days so that, I think, 25 July is the day the emergency period ends. It can be extended by a further 90 days as many times as necessary and there's a criterion in the act that the minister would have regard to in extending that period.

At the moment the maximum period is really to 25 July, but then that can be extended by 90 days as many times as necessary. That is really how that works.

As far as the question about general repairs being extended, I think what you asking that if the emergency period is extended, is there a way to return the obligation around general repairs? Is that the question? That wouldn't be without legislation because that is switched off for the emergency period.

Ms WEBB - Given that the emergency period, if it were extended, would still exclude the general repairs category, it might potentially, though the sort of matters that typically might have been regarded as general repairs, because of the passage of time might be escalated into the urgent repairs category. Say, mould across the winter period. Could that be dealt with if it was brought to you and suggested that it was an urgent rather than a general matter?

Mr GRAHAM - Yes, a general repair can definitely become an urgent or even an emergency repair in the event that it's not dealt with.

Ms ARCHER - That's why I said that mould can actually be something that is quite an urgency because we know it's dangerous to your health.

Ms WEBB - It might typically be in the general because of its severity or that the time elapsing could be escalated.

Mr GRAHAM - If I received an application for an audit for repairs and there was a clear link to health and safety, that pretty clearly needs to be -

Ms ARCHER - I think we covered health and safety issues.

Mr GRAHAM - We did, but really when something becomes health- and safety-related, it is by definition an urgent or emergency repair, and we would ensure that -

Ms ARCHER - That's what I meant. The definition.

Ms STANDEN - The current notice says it's revoked on 30 June. Given that the emergency period currently is to 25 July, I invite you to speak to that and whether you would be of a mind to reissue a notice to extend that, particularly relating to the fact that commercial lease protections now are so much further out.

I have had representations from the housing sector that because the timing of JobSeeker and JobKeeper - and I appreciate that is the federal and not the state jurisdiction - is September, it would be a potentially disastrous circumstance for people to find that they come through the emergency

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period, but the income protections drop out and they are potentially faced with loss of protections for rent in arrears, eviction and so on.

I am not sure whether the commercial lease protections have come into place yet. I think they have to be enacted through the regulations and I don't think they have been circulated yet.

Ms ARCHER - Certainly the intent of the code is currently operable. It is getting confusing having so many questions to address whether it's national or whatever.

It would be great if we had a crystal ball to show how all these things are going to fall into place, and dates and the like. I am sure the National Cabinet is having discussions about JobKeeper and JobSeeker and timing, and whether when they cease there is still some form of support et cetera. I know that by no means has that been settled. So I am limited in what I can comment about what the federal government might do in that regard, but it may well be that they still offer some support but through some sort of means testing. Some people will not have gone back to work and some people will, for example, so they might look at that.

In terms of what we might do as a government - and we have been very open about this - we are very willing and prepared to look at extending should we need to do so. We will need to be looking at the public health advice at the time, how that is impacting this. All of those things need to be taken into account. We are starting to review all of that and obviously as we get closer to those time periods, we will be in a much better position to know whether an extension may or may not be needed. I cannot give anything definitive at this stage, other than to say it is certainly our intention to review and extend that if it is necessary.

Ms STANDEN - The intent of the legislation was to provide protections for commercial and residential tenants and landlords and, in my view, equally. You have spoken to your interpretation of the debate. That is as it is. My understanding is that the Premier made a clear commitment to ensure that people are not homeless throughout this period and provide equal protections to residential tenants.

That is why I am pursuing the line of questioning around the different approaches. You have a notice for residential tenants and you have legislation for commercial tenants. You have said it is not possible for a notice to be retrospective, and I take that on face value. Is there any reason you issued the notice for 30 June and not at least the end of the emergency period at the moment, 25 July?

Ms ARCHER - Can we deal with the issue of how commercial leases were dealt with differently to residential? It is important we explain the difference in approaches and why that was necessary, and why commercial was legislation and not notice.

Mr GRAHAM - First, we legislated the commercial bill because we did not have it an enabling or existing statutory framework to use to be able give effect to that.

CHAIR - As other states had in place. That was made clear.

Mr GRAHAM - We have a code that sits under our consumer law, but it was not fit for purpose for achieving the objectives of the code of conduct that was required.

Ms ARCHER - It was a decision of National Cabinet through the Prime Minister.

Ms STANDEN - Yes, I understand that.

Mr GRAHAM - As far as issues with regard to timing in the COVID-19 commercial leases bill, the commitment regarding the code of conduct for commercial leases made by the Prime Minister is to 30 September, which may be extended. That is how that was framed.

We put the end of our commercial leases to be 12 months from commencement with the ability to end early. That was done really in response to feedback about not wanting to have open-ended time frames.

Ms ARCHER - That was specific feedback from the Legislative Council on first debate.

Mr GRAHAM - Yes. Then I suppose the design -

Ms ARCHER - They chronically had an issue with us having such a long period even though we were giving them what they asked for.

CHAIR - My amendment failed, Minister.

Mr GRAHAM - Instead of having a limit which then could be extended, it was we'll have a maximum that could be reduced

Ms ARCHER - I couldn't believe that debate.

Ms WEBB - I think it was partly because of the comparison that then ensued.

Mr GRAHAM - That was the reason. It was in response to feedback around wanting to have hard dates or needing to come back to the parliament, so a hard date with the ability to end early as opposed to an open-ended ability to commit. I suppose the thing is you can achieve the same outcome by virtue of notice by ending the commercial leases early or by extending the residential.

Ms STANDEN - Moving forward, it's possible for the protections for residential tenants to be the same as for commercial tenants provided the Government and you, Minister, are of a mind to extend the notices.

Ms ARCHER - What do you mean by the 'same'? Certainly in terms of time limits, and one being extended or one being brought forward, yes.

Ms STANDEN - Yes, but it is not possible to deal with retrospectivity now.

Mr GRAHAM - No, it wasn't provided for - had the original COVID-19 act provided the ability for retrospectivity, a notice could have had retrospective effect. It didn't so as it is, it cannot go backwards.

Ms STANDEN - I think there is an issue there in terms of the time frame, but I hope that for those 500 or so households, if that's the right data, that the rent relief fund will provide some protections there.

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So I'm clear, though, the commercial leases protections - they're not in place until the regulations are: is that right?

Ms ARCHER - That's right, we were going to address that.

Mr GRAHAM - The bill has received royal assent but has yet to be proclaimed, which will happen shortly. We're working with tenants and landlords on the basis of that was approved by the parliament and implementing the intent of the COVID-19 [legislation] so it doesn't need the regulations to be in effect.

Ms ARCHER - That's the key answer. It is in effect. What the regulations do is, I suppose - or Peter can explain better than I can.

Mr GRAHAM - The regulations will deal with a couple of specific issues regarding - I think it's sections 5 and 6 of the act, which relate to the notion of protected leases and eligible persons - if they need to be adapted or added or added to give the full intent of the code.

The second part is really regarding rent, and that's around definitions and other kind of things so many of our stakeholders - I think the Property Council raised with the Legislative Council at least issues around gross versus net rents and other kinds of things. The regulations will really clarify those matter, so really quite technical interpretation matters.

Ms STANDEN - Those regulations will come to us eventually. Have they been circulated as draft?

Mr GRAHAM - They haven't been circulated as draft yet. I've written to stakeholders regarding the scope in which they intend to cover, and asked them for feedback on anything that they consider urgent, and we anticipate to be circulating the regulations shortly. They're being prepared.

Ms STANDEN - When do you reckon they'll be finalised?

Mr GRAHAM - It really will depend on -

Ms ARCHER - I'm giggling because I'm thinking of OPC's workload at the moment.

Ms STANDEN - I'm putting the heat on you, I know.

Mr GRAHAM - I think the process we're going through at the moment will really out whether there are complex issues we haven't dealt with adequately, so I wouldn't want to say within a fortnight or something like that.

I don't think they will be particularly complex. Regulations - I think it's clear those issues they need to deal with, so really subject to drafting and consultation with stakeholders.

CHAIR - We have one final question because I have negotiated with the Minister that she stays to answer this question.

Ms STANDEN - Chair, I have a follow-on question if that's all right.

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Ms WEBB - Mine's a relatively quick one. If you want to follow on because it's related to that -

Ms STANDEN - No, mine's a quick one, but you go.

Ms WEBB - I am wondering on a practical level, given that notices don't have the ability to be retrospective, is there any way there's a record of rent increases that would have occurred in the window period between the first COVID-19 bill and this notice on 23 April? Most of you know that would have applied to leases that perhaps had come up for renewal and often that's at the time increases are applied. Do you keep records anywhere that would show us what had occurred in that window?

Mr GRAHAM - No. The records we keep are at the start of a tenancy because we collect bonds and at that point we also collect rent information. We would know the number of leases signed on any given day, and they are typically fixed term, but we would not know whether they are fixed term or not. We would know that the leases entered into 12 months ago from today -

Ms WEBB - Which are those 526 in that window 12 months ago.

Mr GRAHAM - Yes, but we would not know, first, whether the agreement made provision for a rent increase and, second, whether a landlord exercised their right to increase rent. We do not collect any information regarding a tenancy after its establishment unless there is a dispute, as in the Residential Tenancy Commission.

Ms STANDEN - Very quickly, we explored this with the Tenants' Union. A number of the 1500 or so households covered by National Rental Affordability Scheme are scheduled to drop off potentially within this window. Are they protected? Otherwise members will be aware that it is subsidised arrangement and potentially they are facing a 20 per cent jump in their rent if they do not have the protections under this notice.

Ms ARCHER - That it more into the area of housing, which is not my portfolio, NRAS.

Mr GRAHAM - It really would depend on the nature of the agreement, whether it is a rent increase or the withdrawal of a subsidy. If it were a rent increase, the potential to apply would exist and the prohibition on a rent increase would exist if it occurred during the period. If the rent agreement includes it as a subsidy, it is not actually a change in the rent amount.

I have not seen those agreements, but would be happy to look at them if someone was to provide them.

Ms STANDEN - The lease agreements are up to 10 years old for some of them and the issue is that once the scheme finishes, it is really up to the landlord as to whether they want to re-enter a new agreement.

Ms ARCHER - It is not my portfolio.

Ms STANDEN - It would be a residential lease, the same as any other.

Mr GRAHAM - As I said, I am not privy to the conditions of the lease, but we would be happy to look at any lease and provide a tenant with advice with regard to their circumstances.

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We have had some contact and asked for leases, but I am not conscious whether we have received any to look at. My information may not be current though. If you do have tenants who are concerned, they can contact the Office of the Residential Tenancy Commissioner.

Ms ARCHER - That is probably the best thing to do in these circumstances. If in doubt, send people that way.

Ms STANDEN - My general concern there is that we are in an environment where the onus is on the tenant to be aware of what protections are available. I urge the Government to take that on board. The more we can advertise the availability of avenues through the Residential Tenancy Commissioner, the Tenants' Union, rent relief programs and the like, the better. Other things being equal, there will be vulnerable tenants who would not understand what options there are for support.

CHAIR - Thank you very much. Minister, we know how extremely busy you and Peter's area are, and we very much appreciate the opportunity to talk with you. I suggest the information provided through this hearing has been very valuable and on behalf of the committee, we sincerely thank you.

THE WITNESSES WITHDREW.