CONSUMER PROTECTION LEGISLATION AMENDMENT BILL 2018

Committee

Resumed from 24 September. The Deputy Chair of Committees (Hon Martin Aldridge) in the chair; Hon Alannah MacTiernan (Minister for Regional Development) in charge of the bill.

Clause 72: Act amended —

Progress was reported after the clause had been partly considered.

The DEPUTY CHAIR: I draw members' attention to supplementary notice paper 96, issue 8.

Hon RICK MAZZA: Minister, when the committee was last considering this bill, I had asked some questions around the group professional indemnity scheme to do with the Settlement Agents Act. I think we finished off at the point at which the minister was going to find out who the underwriter of the group scheme for professional indemnity was and, in relation to the conditions that can be imposed on an agent's licence, whether the inability for them to obtain that insurance would mean that their licence would be suspended or cancelled.

Hon ALANNAH MacTIERNAN: Sorry. Could the member just repeat that last bit again?

Hon RICK MAZZA: Yes, it will be a pleasure to do so.

If the settlement agent, for some reason, is unable to obtain their professional indemnity insurance within the group scheme—the underwriter or broker believe the risk is too great—and meet the requirements of their triennial certificate and licence, does that mean the settlement agent's licence would be either suspended or cancelled?

Hon ALANNAH MacTIERNAN: My understanding is no. When the commissioner has determined to enter a master policy—I think we have discussed that master policy—that becomes the exclusive source, so they must be covered by that scheme. Settlement agents can source extra cover outside of that, but they must participate in the group scheme for professional indemnity and fidelity insurance. For example, if an agent had an additional concern about cyber fraud that they did not believe was covered, they could go and get that. I understand that the broker does offer extra cover to agencies providing additional insurance options over and above the standard package. But they cannot decide that they are not going to participate in that scheme and go off and seek their own insurance.

Hon RICK MAZZA: I thank the minister for that answer, although it does not quite answer my question. I understand that settlement agents are able to take additional cover as far as cyber fraud may be concerned. My question is: if the insurer of the master policy will not cover a settlement agent for some reason—their risk is too high, or they have made too many claims—does that mean the settlement agent would have their licence either suspended or cancelled, or does the master policy have to cover all settlement agents, regardless of the risk involved?

Hon ALANNAH MacTIERNAN: The advice that I am receiving from the officers here is that that is the case. Where there is a master policy, one has to be part of that master policy to be eligible to hold a triennial certificate. If a master policy is put in place, then one is required to be part of that master policy agreement. If one is not, the licensee is deemed not to be a holder of a triennial certificate until another valid certificate of insurance is produced to him or her by the commissioner. As I understand the schema of the legislation, it is not open to a person to go and get independent insurance. If they are deemed to be too big a risk to receive coverage under the master policy and are therefore unable to get it, they will no longer be eligible. I think the member could imagine the concerns. If the master policy set up specifically to deal with the settlement agents considers a settlement agent to be of such a risk that it would not insure them, that would be somewhat prima facie evidence that there is a problem with that operator. As I understand it, the legislation does not leave it open for the settlement agent to go and get independent insurance, other than extra insurance.

Hon RICK MAZZA: I thank the minister; I appreciate the clarification. On page 49, proposed section 34AA(3) states —

> Without limiting subsection (2), the Commissioner may impose a condition that relates to —
>
> (a) the holding of a policy of indemnity insurance …

That condition can be imposed on the licence or triennial certificate. If it is a requirement that the settlement agent is part of the master insurance policy and must have that policy to maintain their triennial certificate and licence, would it follow that the commissioner would impose that condition on all licences and triennial certificates?

Hon ALANNAH MacTIERNAN: It is important to understand that we are not proposing to change any of these provisions, so, strictly speaking, this is not covered by the bill. But the sort of condition that this proposed section might cover is when, for example, a settlement agent who is employed by a company may have inscribed upon their certificate that they are not required to individually subscribe to the master policy because they are covered by the employer's insurance. It is not just general provisions that cover everyone; it is when there is some individual variation—for example, a person who has to have a settlement agent's certificate in their own right, but who is an

employee of a larger company that has insured its employees. That is the sort of condition that may be written into that provision. But I do think it is important to remind the member that we are not proposing changes to those provisions, and we should really be focusing on where we are proposing change rather than the existing legislation.

Hon RICK MAZZA: I will leave the professional indemnity insurance scheme because I think the minister has answered most of the questions I had, although I do have one last question. Earlier in the debate on this bill, I asked about the balance of the fidelity guarantee fund. Can the minister provide us with the current balance of the fidelity guarantee fund for settlement agents? I think this is very important because, obviously, a fidelity guarantee fund provides consumer protection for consumers who have been defrauded by a settlement agent and allows them to recover some of that money. The amount held in the fidelity guarantee fund indicates the level of security that consumers have when dealing with settlement agents. The other issue I would like clarified is: What happens to the interest that is earned on the moneys held in the fidelity guarantee fund? Who receives that interest?

Hon ALANNAH MacTIERNAN: The interest earned on the accounts goes back into the account. The settlement agents fidelity fund currently holds $47.595 million, so it is a sizeable account. That income is derived from licensing and registration fees, interest that is earned from agents' trust accounts, and interest that is earned from the fidelity accounts.

Hon NICK GOIRAN: In reference to this line of questioning about the fidelity fund, I note that clause 86, which is in part 10 of the bill, amends section 93 and will give the CEO discretion to allow access to the fidelity fund for the victim of an agent within six months of the agent ceasing to hold a licence or triennial certificate. How was the period of six months determined?

Hon ALANNAH MacTIERNAN: Again, there is no particular magical formula. Previously, once a person ceased to hold a triennial certificate or a licence, if they had lost their licence because of a defalcation, there could no longer be a claim. In some cases, the agent might have been able to go out and attract business and people have found themselves caught up in that, so we decided to give that a short period. For example, someone may be 11 months into their dealings with a settlement agent when a ruling is obtained and the agent loses their triennial licence, but the person dealing with the agent is not aware of that and continues to deal with them and finds themselves in a difficult situation. There has to be a cut-off time and it was determined that six months is probably enough time. In most cases there will be some publicity about someone losing their licence, but this is perhaps in reference to those cases in which someone has been dealing with a person before the defalcation, is not aware it had happened and continues in good faith. Not many cases come into this category and it was considered that six months was an ample buffer.

Hon NICK GOIRAN: I thank the minister for that helpful explanation. I wonder whether she would consider for a moment the decision to use six months as the extension period. I am very sympathetic to the example that the minister gave. I wonder whether the extension period should run up to the three-year mark, given that the certificates are triennial. Might it be more suitable for the period of grace, if you like, or the extension period, to run up to the three-year mark, rather than the six-month mark? To use the minister's earlier example, someone is 11 months into their dealings with a particular agent, but the agent still has another 25 months left of the certificate period. Might that be a better period than six months? Was that given some consideration and can the minister see some merit in exploring that?

Hon ALANNAH MacTIERNAN: We honestly think that six months is adequate. This problem has been manifest in very few cases and they generally have emerged in the few months after the licence has been cancelled. There will always have to be a cut-off period. I do not think the length of the licence, being a triennial one, really has anything to do with it. It is about the point at which the person is no longer allowed to do business and how long after that might be finishing off transactions that capture people. We think this is progress. Obviously, if it turns out that other sorts of cases are occurring, we will look at that, but the practical experience of those that administrate this law is that a six-month period really will provide adequate flexibility to capture those very few cases in which the defalcation occurs after the licence has been cancelled.

Hon NICK GOIRAN: The minister referred a few times to the fact that there are very few of these cases. How many of these cases have arisen in the last year?

Hon ALANNAH MacTIERNAN: They do not have the figures but it is not very frequent. There was one case in which this was a problem with a real estate agent. As the member notes from the schema, we are trying to keep the two acts complementary. A case emerged with a real estate agent, not with a settlement agent, and we thought we would put the flexibility in. The scheme is clearly financially able to cater to this. We do not expect that it will be drawn on very often, but because there was this case in real estate, it was thought that in adjusting that, we should do the same thing on that same logic for settlement agents.

Hon NICK GOIRAN: That sounds very reasonable. I think it is prudent to make sure that the scheme for the settlement agents mirrors that which is intended for the real estate agents. In the case of the real estate agent to which the minister referred, what was the time within which that individual ceased to have their licence, as that is the mischief that we are trying to fix here?

Hon ALANNAH MacTIERNAN: The advisers do not have the specifics of the case, but my understanding is that it must have been within the six months because we have drafted this provision to deal with that, but we can get some more information on that specific incident and provide it to the member.

Hon NICK GOIRAN: In order to facilitate progress, I am happy to leave it there but on the understanding that someone within government will come back to me or the chamber to indicate the period. Obviously, preferably it would be more respectful to be indicated to the chamber, but if there is not an opportunity to do that, please come back to me behind the Chair at some point, even if it is by email. It makes sense to me that it would be within the six-month period and that is probably the basis on which this period was chosen, but it would be nice to have that confirmation. I am happy to leave it at that point.

Clause put and passed.

Clauses 73 to 79 put and passed.

Clause 80: Section 34 replaced —

Hon NICK GOIRAN: I have a quick question on clause 80. This inserts proposed section 34AB, empowering a licensee to apply to remove a special condition imposed by the commissioner. Are any application fees or charges payable in the event that a person wants to remove a special condition imposed by the commissioner?

Hon ALANNAH MacTIERNAN: We do not propose to attach a fee to this capability.

Clause put and passed.

Clauses 81 and 82 put and passed.

Clause 83: Section 65 amended —

Hon MICHAEL MISCHIN: Clause 83 reflects the amendments in clause 53 for the Real Estate and Business Agents Act, which in turn amends section 84(1) of that principal act. This seems to reflect a similar policy of increasing the penalties available for defalcations of moneys of clients from trust accounts managed by settlement agents, particularly withdrawals from trust accounts contrary to the contract, which is covered in the act by section 49(4); not paying moneys to those legally entitled under section 49(5); and the failure of a financial institution to credit interest to the trust account under section 49B(1). I do not have a difficulty with the penalties or what is being proposed, but when we were dealing with the equivalent clause—clause 53—on 17 September, Tuesday week ago, I asked for some information regarding prosecutions and defalcations. I was wondering whether that had been accumulated in the meanwhile; and, if not, what the status of that information is. Perhaps I will leave it there for the moment.

I would also like to have the equivalent information about misconduct by settlement agents and whether that has been manifested in a similar way to real estate agents, with a particular focus on what the police may or may not be doing in this field. The minister will recall that on the last occasion we discussed the problem that although the Commissioner for Consumer Protection might identify some serious defalcations by real estate agents, even in the order of over half a million dollars, the police did not seem to think it a sufficient priority for them to get involved and rather left it to the commissioner to pursue if he thought fit. I was hoping the minister might be able to give us a run-down of the situation with the Settlement Agents Act 1981 and whether similar difficulties have been encountered with that.

Hon ALANNAH MacTIERNAN: I have a couple of cases and the actions that have been taken by the department. On 20 June 2013, there was a case of unauthorised withdrawals from a trust account—a breach of sections 49(5) and 50 of the Settlement Agents Act. A total of $49 279.89 was misappropriated and there was a fine of $8 000, presumably for multiple offences under the current legislation. That is obviously a low penalty. The second one was on 18 March 2014. The total amount misappropriated was $204 469, and there was a $9 000 fine.

Hon MICHAEL MISCHIN: That raises the same concerns that I raised about prosecutions under the Real Estate and Business Agents Act. We are looking at some very substantial frauds. Although I do not question the competence or the will of the Commissioner for Consumer Protection to pursue these, I confess some surprise that the police are not interested. In one case we are looking at over $200 000, and the only penalty that could be handed down was a fine of $9 000. That hardly seems to be a punishment. Is the minister able to tell us whether any of the money has been recovered in these two cases and returned to those who rightfully deserve it?

Hon ALANNAH MacTIERNAN: I do not have information available to hand about whether the funds were ultimately recovered, but we can seek to have that. As I said before, I do not think it is necessarily fair to characterise it as the police not being interested. Resources are always finite and discussions are held between the police and the department about particular cases and who will take them forward, and whether the police feel that they can justify putting forward the resources. I am advised that whenever an agent or consumer informs the department that a theft

has occurred from a trust account, the department instructs them to also report the matter to the police. The department is unable to report it to the police because at that stage it is not a party to the offence, so it would be hearsay —

Hon Michael Mischin: Sorry. I didn't catch that.

Hon ALANNAH MacTIERNAN: Sorry. I will not necessarily repeat that.

I understand that if Consumer Protection refers a brief to the police, the police cannot accept it just because the evidence has been gathered by Consumer Protection; the police must gather their own evidence. Quite clearly, there are shortcomings in the system. We are trying to find a practical and workable alternative that will enable the department to have a more reasonable suite of fines available to it and also to seek a term of imprisonment when that is appropriate. As I said, I am told that people are always advised that if a theft has occurred, the department's strong advice is that the matter also be reported to the police. I understand from the earlier advice I had that from time to time there are discussions between the police and the department about particular issues. It appears that the police have to begin their investigation afresh and not just operate on the basis of the data that has been collected by the department. It seems to us that adding to the suite of possibilities a more substantial fine regime and a term of imprisonment will make for a more rational use of resources. It does not in any way reduce the role of the police should they wish to take the matter forward and they believe, after they put in place their assessment of public interest, it is a matter that they are going to pursue. This will add to the capability that exists across government to ensure that justice is done.

Hon MICHAEL MISCHIN: Are these the only two prosecutions that have taken place, or are they the only ones available to the minister at this time?

Hon ALANNAH MacTIERNAN: There have been only two prosecutions since 2013.

Hon MICHAEL MISCHIN: Are they the only two reports of defalcations that have taken place?

Hon ALANNAH MacTIERNAN: Two other cases have been drawn to my attention, and in those, rather than a prosecution, disciplinary action was taken. In one case, there was a failure to pay into trust accounts all of the money received as soon as practical for settlements, so moneys had not been misappropriated, but they had not moved as quickly as possible into the trust account. In that case, there was disciplinary action that resulted in a supervision order. In another case in 2017, money was withdrawn from a trust account by a person not lawfully entitled or authorised to receive it. A deficiency was found in the trust account and there was failure to balance it. No moneys were misappropriated in that case. At that time, a disciplinary procedure was taken by the State Administrative Tribunal and a $14 000 fine was paid.

Hon MICHAEL MISCHIN: There was a $14 000 fine in that case, yet a $204 000 defalcation gets a fine of $9 000. Is the minister able to bring me up to date on the information I requested on 17 September regarding details of the cases under the Real Estate and Business Agents Act?

Hon Alannah MacTiernan: Sorry?

Hon MICHAEL MISCHIN: Is the minister able to bring me up to date on the progress of getting the information I requested on 17 September regarding the prosecutions under the Real Estate and Business Agents Act that I think she undertook she would seek and provide in due course? When might I be able to receive that?

Hon ALANNAH MacTIERNAN: The officers believe that they will be able to access that at some point soon and we will get it to the member as soon as we find it.

Hon MICHAEL MISCHIN: Might I also then add to that workload further details—like details—about prosecutions under the Settlement Agents Act?

Hon Alannah MacTiernan: We have already outlined that.

Hon MICHAEL MISCHIN: I would like to know the number of charges—things of that character that the minister was not sure about. I wanted the circumstances of those offences so that I would have sufficient information to understand what the gravity was and how the defalcations came about. The minister cannot even tell me the number of charges in one of those prosecutions.

Hon Alannah MacTiernan: I think the essential element of the amounts that were involved has been set out. If you want the number of charges specified, we will add that.

The DEPUTY CHAIR: Minister, did you want to seek the call?

Hon ALANNAH MacTIERNAN: We will add to the settlement agents figures the number of charges for each of those two cases.

Hon MICHAEL MISCHIN: I was hoping we would not have to spend more time on this, but on the last occasion, I asked for the dates of offences, the number of charges and the outcome of each of them. I wanted sufficient information to get an idea of the circumstances of each of those cases so that I could assess for myself the gravity of them and how they came about. All I am seeking is similar information about the Settlement Agents Act. It is not simply the amount involved, the fines that have been imposed and how many charges; I want to have enough detail to understand the prosecutions and decide whether, to my way of thinking, they were serious enough for the police to investigate. I am not trying to waste time by going through all of this in detail. I was hoping, having asked for it last Tuesday—Tuesday a week ago—that the work was in progress and I could get that material. All I am asking for is similar information to be provided about any prosecutions under this act over, say, the last three or four years. It does not have to be now, but hopefully I can get enough information to know more than simply the bald details the minister has given me so far. If the minister can tell me that she will do it or get the departments to do it, I will be happy.

Hon ALANNAH MacTIERNAN: Quite honestly, I would have thought that the information we provided was adequate, really, to give the colour. We have indicated the sections that were involved and the fact that there was a misappropriation. We have given the amount of the fine that was imposed and we have given the date of the prosecution. If the member wants to add to that the number of charges that that constituted, we are happy to do that. These both resulted in convictions, and I think that is adequate information. We are going to seek to get the same information now for the real estate agents act. Apparently, it has been prepared, but the officers cannot quite put their hands on it.

Hon MICHAEL MISCHIN: What the minister has told me is helpful, but it is far from giving me a picture of the nature of these prosecutions. I do not know how many charges were involved. The minister has told me the date of the conviction and, presumably, the fine. I do not know whether it was by a plea of guilty or after a trial. I do not know whether any charges were discontinued and which ones were finally led to a conclusion. I do not know anything about the circumstances in which these defalcations took place—whether they were the person with the licence or someone with the person's authority. I would like to get a better idea of what went on that warranted charges and under which sections of these respective acts so that I can get a flavour of how serious these matters are. I am not trying to be difficult, but simply telling me, "I think you have got enough, because I have told you a date and a fine amount, and that should be enough", is not satisfactory to me. I would like some further information. We can do it the easy way or the hard way, but I am simply flagging that I would like the information in due course, and I have asked that the minister do the same thing for the Settlement Agents Act as I had hoped was being done for the Real Estate and Business Agents Act. If the minister can give me that assurance, I will be satisfied.

Hon ALANNAH MacTIERNAN: We will endeavour to get a range of information. Basically, it appears that the member wants the full transcript of the case. We would have thought that the sums, the sections under which the matter was prosecuted and the outcomes were the essence of what was required for these purposes. I am attempting to get this information. I am trying to get some response about this information with respect to the Real Estate and Business Agents Act. We will flesh this out. Frankly, I would have thought that what we have provided in relation to settlement agents would be good enough for the member's purposes. I am happy to table that document, but we will seek to get a bit more information.

Hon MICHAEL MISCHIN: I will make it easy for the minister. I would have thought that at the completion of each of these cases, a notation or briefing note would have been sent through to some more senior officer under the control of the Commissioner for Consumer Protection to tell them about the case—what had happened, what was involved in the department's prosecution of it, and whether it was successful and the like. That briefing note would provide enough detail so that the commissioner could, if necessary, brief the minister. The commissioner would not necessarily brief the minister, but would be able to. If the minister can provide that sort of information, I will be content. I will determine whether it is sufficient for my purposes, but my purposes go beyond simply saying that we should increase the penalty here. I am simply asking for information. We could do it the hard way and I could put the question on notice. All I want is an undertaking that the minister will provide me with sufficient information.

Hon ALANNAH MacTIERNAN: We will provide the member with more information. Whether the member will consider that to be sufficient, I am unable to judge at this point. But we are happy to provide further information. I will just check through this paper that has been given to me, before I hand it over, to make sure that it is in fact the right material. It does appear to have a detailed chart of matters involving real estate agents.

The DEPUTY CHAIR: Minister, are you seeking to table those documents?

Hon ALANNAH MacTIERNAN: I need to check the documents. Apropos the earlier matter about the Real Estate and Business Agents Act, since January 2018, Consumer Protection has commenced or completed eight prosecution matters in the Magistrates Court for various criminal matters. One of these matters related to a real estate agent stealing trust funds. In that matter, the company was convicted on 12 charges for trust account offences, fined $7 500

and ordered to pay costs of $1 237. Trust account defalcation does not always involve criminal activity such as fraud or stealing. I will check this chart during the afternoon tea break, and if it is in order, I am happy to table it.

Hon NICK GOIRAN: When we previously took a quick look at clause 83 under the umbrella of clause 72, when we started our consideration of part 10, the minister indicated that part of the reason for determining that the penalty be lifted from $3 000 to $25 000 was to ensure that it would be comparable with the penalties for the real estate industry. These penalties are of course associated with the administration of a trust account. Has any consideration been given to the penalties arising from the administration of trust accounts by lawyers and accountants; and, if so, is this penalty of $25 000 comparable?

Hon ALANNAH MacTIERNAN: We do not have any information about lawyers and accountants, but I imagine it is a lesser sum. It seems to be set at a lesser level. I do not think the charge-out rates for settlement agents are anything like the charge-out rates for lawyers and accountants. We have sought to add this option of imprisonment. Given the very low number of prosecutions of settlement agents, it is not seen to be a very big problem.

I have had an opportunity to scan through the information relating to the Real Estate and Business Agents Act, which provides more detail about the number of matters that have been prosecuted by the department since April 2011. It is a quite comprehensive document that will be provided in answer to the question by Hon Michael Mischin. I table those documents.

[See paper 3223.]

Hon NICK GOIRAN: I refer to the penalty for lawyers and accountants. I take the minister's point about the likely differential in charge-out rates, but I take the minister to the penalty of two years' imprisonment. If somebody maladministers a trust account, the term of imprisonment should be the same whether they are a lawyer, an accountant, a settlement agent or a real estate agent. The wrong that occurs in that instance is that people are misusing other people's money. I do not think that the remuneration level of the individual who performs that wrong should be taken into account. I would like to think that at least the maximum term of imprisonment would be set at the same level across those four industries. That is really what I am seeking confirmation of.

Hon ALANNAH MacTIERNAN: No work was done on comparing what happens with lawyers and accountants. Part of the reason that we feel it is appropriate to have a penalty of imprisonment, which is not currently available and obviously is available for lawyers and accountants, is that by the time the defalcation is discovered, the money may well have been spent. There may be a view that someone has some immunity because the worst they can face is a fine, and if they cannot pay the fine, they cannot pay the fine. I think the addition of the term of imprisonment, which is important, will bring this more in line with the situation for lawyers and accountants, for whom imprisonment is an appropriate penalty for matters at the serious end of defalcation. Although settlement agents apparently have not defaulted as often as real estate agents have, nevertheless they routinely hold very large sums of money—often much larger sums of money than real estate agents—so the concern was to make sure that there is rigour in the system so that there is knowledge that a two-year term of imprisonment is available.

Hon NICK GOIRAN: I agree with the minister. I think it is important that settlement agents are captured in this respect. We would like to think that rogue settlement agents are few in number, but there should be capacity to imprison those who misuse other people's money in these trust accounts in the worst cases. In order to make progress, it would assist if I could get the government's view on whether the maximum imprisonment penalty should be the same for all four industries that we have been speaking of; and, if that is the case, I am happy to move on, with the understanding that perhaps at a later stage someone within government could clarify that that is indeed the case. I suspect that that is probably what we all want. If that is the case, we can move forward.

Hon ALANNAH MacTIERNAN: I am advised that when this process started, the comparator was not made with the accountancy and legal professions and that they looked more internally within the property industry. It is important that we make progress and that we put in this penalty. Will we want a larger penalty at some point? Perhaps that can be a further consideration. As a practical matter, we have not seen a great deal of problems with settlement agents. As I said, there have been only two cases of trust account abuse in the last six years, so we are not dealing with a massive problem. Although the process that we are now trying to bring to a conclusion started in 2014, we may well take a further step in the next review. This represents a considerable step forward. The penalty that would be set was the subject of negotiation with the industry. The member knows that there was a little bit of resistance from the industry to it, perhaps because of a misconception about the liability that employers would have for the conduct of employees. It is important that we make progress. This is a new penalty and I think it will add some rigour to the situation.

Hon NICK GOIRAN: I understand that, minister. I am just trying to get confirmation that the view of the government is the same as mine—that the maximum term of imprisonment for the misuse of a trust account should be the same for real estate agents, settlement agents, accountants and lawyers. I accept that that information is not readily available to us. I am happy to make progress, but I am trying to get agreement on the principle that if someone

misuses a trust account and they go to prison, the maximum penalty should be the same for all four industries. I am just seeking confirmation on that.

Hon ALANNAH MacTIERNAN: I would obviously have to speak to the Attorney General and the Minister for Commerce about that. Some might argue that a lawyer, as an officer of the court, has a higher level of obligation and duty, but I will certainly raise that concern with the Attorney.

Clause put and passed.

Clauses 84 to 88 put and passed.

Clause 89: Act amended —

Hon MICHAEL MISCHIN: Leaving aside an amended definition in clause 90, part 11 deals with the increase in penalties of rather derisory amounts of $40 and the like, up to several thousand dollars. Can the minister say whether prosecutions are initiated with any frequency under the Street Collections (Regulation) Act? How many have been prosecuted in, say, the last 10 years or some other convenient period for which she has figures available at the moment so that I can get an idea of whether there is enforcement of the provisions of this act or whether simply no-one breaches it?

Hon ALANNAH MacTIERNAN: We obviously have lots and lots of law-abiding citizens, because I am advised that there have been no prosecutions in this area. To a large extent, these provisions update the penalties. The penalties in some areas were established in 1965 and the penalties in other areas were established in 2003, so they are updating those penalties. They are not responding particularly to a perception that bad behaviour is going on. Certainly, those things have not been prosecuted.

Hon MICHAEL MISCHIN: I would like to think that this is at least one area in which people are law-abiding, but maybe they are not aware of the act and so they do not seek it out in order to breach it. Are there complaints about the sorts of things that are proscribed by the Street Collections (Regulation) Act 1940 that simply have not been prosecuted because it is not worth instituting a prosecution in order to get a maximum penalty of $40?

Hon ALANNAH MacTIERNAN: From to time we get complaints, sometimes from traders in particular who complain about the behaviour of street collectors. Generally, the department attends and seeks to educate collectors about the need for permits. Generally, it has not felt the need to issue infringement notices. We understand that City of Perth rangers regularly monitor unauthorised street collectors and ask them to move on. It seems that from time to time there are these local council problems, but generally the department's view is that it deals with this issue by educating the collectors about the need for permits. If the same groups reappear and reoffend, there may be a need to start imposing a proper fine. The view of the department is that it has not been a particular problem and it has focused on educating people rather than issuing infringements, although it does have the power to issue infringements under the current legislation. Obviously, the amount of the infringement will increase under this legislation.

Hon MICHAEL MISCHIN: So there is a facility to issue infringement notices at the moment under the Street Collections (Regulation) Act 1940.

Hon ALANNAH MacTIERNAN: In relation to one provision, which is collecting without a permit.

Hon MICHAEL MISCHIN: That would be section 3(1).

Hon Alannah MacTiernan: Yes, that's correct.

Hon MICHAEL MISCHIN: By education, I take it the minister means someone going and talking to the person about whom there is a complaint, filling them in on what the law requires and hoping that they will stop doing what they are doing and not require any further action by the department.

Hon ALANNAH MacTIERNAN: That appears to have been the general approach. Obviously, if there is a persistent problem, one would like to think that infringement notices would be issued.

Clause put and passed.

Clauses 90 to 94 put and passed.

Postponed clause 67: Section 47 amended —

The clause, as amended, was postponed on 24 September.

Hon NICK GOIRAN: I am fascinated about what has transpired with clause 67, because today I was delivered issue 8 of supplementary notice paper 96. In and of itself that would not necessarily provoke a reaction from me, or be anything I might describe as extraordinary, but this government's constant mismanagement of the legislative program annoys me. On Tuesday, I was accused of holding up the passage of this bill. I refute that accusation and indicate that it is the height of irony that the government has now issued another supplementary notice paper—

this is the eighth issue for this bill. Senior members of the government—I am not having a go at the minister with carriage of this bill—have lost their cool and suggested, quite wrongly, that the opposition is holding up the passage of this bill, which I note is, in effect, the equivalent of 10 bills. This bill looks to amend a number of pieces of legislation and every one of those amendments could have been a separate bill. This is a massive omnibus bill and it has taken some time, in both houses I might add, to get to the bottom of some of the issues raised. Thank goodness that we have taken that time, because a multitude of amendments have been passed. However, I will not stand for false accusations about the opposition from senior members of this government—I hasten to reiterate that I am not having a go at the minister with carriage of the bill in this house—when the government has to amend its own bill.

We were issued with issue 8 of supplementary notice paper 96 because the government's amendment 10/67 on issue 7 of supplementary notice paper 96 no longer appears to be satisfactory, so we now have amendment 11/67. I ask the minister with carriage of the bill, who has otherwise been quite patient in the progress of this matter, why issue 8 of supplementary notice paper 96 is now before us.

Hon ALANNAH MacTIERNAN: Quite simply, member, it is because we are trying to accommodate the aspirations of all members of this place. We understand that this is a house of review, that we do not have the numbers and that there has to be some give and take. In the process of that review, I like to think that members are earning their keep; they make points and they want those points addressed, and we, to the extent that we can and we think that it will not compromise the policy or the aspirations of the bill, work to accommodate those concerns. That is the whole point of this process. We are not saying that we think the bill is wrong, but members raised concerns—that is what a house of review does—and we have taken those concerns on board, and when we believe that they can be reasonably accommodated, we do that.

I am happy to go through the detail of this particular provision, but, as I understand it, we cannot do that. I must admit that I do not quite understand this arcane process, because I thought we were back on clause 67, but apparently we cannot go back to the part of clause 67 to be amended. I have been told that we have to report progress and then come back into Committee of the Whole House.

Members raised concerns about how much detail there would be in the request for consent. These things can go on forever, but our view was that it was quite clear within the structure of the legislation that a person would need to itemise the furniture and the walls in question, so to assuage members' concerns we decided to prescribe the form. Indeed, I think the amendment will make it easier for everyone, because there will be clear direction on what information is required to be provided by the tenants. We are listening, member. It is true that, occasionally, we do get a bit grumpy because some questions seem to be repetitive, but we do think that improvements to the bill come out of this process and, when we can, we accommodate that. We are not putting in this change because we think there is a failure in the legislation, but members raised concerns, and some of those concerns have merit, so we have sought to address them.

Hon RICK MAZZA: Thanks for that, minister. I do appreciate the background that was given on that. I need a little clarification on this, because in —

Hon Alannah MacTiernan: Can I just get some clarification on where we're at with the bill now?

The DEPUTY CHAIR (Hon Martin Aldridge): The question before the chair is that clause 67, as amended, be agreed, because the clause was amended prior to its postponement. The committee needs to pass clause 67 in its amended form, report the bill to the house and then the bill will need to be recommitted for the committee to consider amendment 11/67 on supplementary notice paper 96. Therefore, members who want to speak to the amendment on the supplementary notice paper need to wait for the bill to be recommitted by the minister, with the agreement of the house.

Hon RICK MAZZA: Thank you for that information, Deputy Chair. I gather from that that there is no point in going any further until the bill has been recommitted to the chamber so we can actually deal with this amendment.

Hon NICK GOIRAN: Thank you, Mr Deputy Chair. Can you clarify why that is necessary? It strikes me that the matter being considered by the committee is clause 67. It may not be in its original form—it is in an amended form at the moment, and that is fine. But I have not known it to be the case that we cannot have numerous amendments. Indeed, I remember on an earlier supplementary notice paper on this very bill an amendment was put on the notice paper on a position that we had already passed, and there was no problem dealing with that at that time. I cannot see the problem with us continuing to consider clause 67. We might amend it ad nauseam. I could well understand if clause 67 had already been passed, but perhaps the Deputy Chair could clarify that for the benefit of the committee.

The DEPUTY CHAIR: Clause 67 has not been passed; it was postponed by the committee. The issue, as I understand it, is that at line 14 on page 40 an amendment was already made so, procedurally, we cannot go back; we always have to move forward with amendments. Therefore, we are still considering clause 67, as amended. It

has not been approved by the committee at this point in time, and that is why the bill has to be recommitted for the consideration of the Minister for Regional Development's amendment, because we will be amending lines 13 to 18.

Postponed clause, as amended, put and passed.

Title put and passed.

Bill reported, with amendments.

Recommittal

On motion without notice by **Hon Alannah MacTiernan (Minister for Regional Development)**, resolved —

> That the Consumer Protection Legislation Amendment Bill 2018 be recommitted for the purposes of reconsidering clause 67.

Committee

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

Clause 67: Section 47 amended —

Hon RICK MAZZA: We learn something new every day! That is the first time I have seen that process take place.

This amendment has arisen from the fact that amendment 6/67, at line 14, inserts the words "has, in writing" to provide for the tenant to notify the landlord in writing—so there was some clarity around that. Then there was discussion about when the notice was served so that the days could start to be counted. Was the notice served so many days after posting? Was the notice served by email? The government then put forward supplementary notice paper 96, issue 7, which states that the notice is served four business days from posting, and there were a number of other matters around the serving of the notice. We then had issue 8, which provides for a prescribed form and provides for 14 days rather than seven days in which the landlord can object to the request. What I am unclear about—maybe the minister can help me here—is that issue 7 covered off the business days from posting et cetera so that the notice of service of notice is clear and we know when the clock starts to run. Issue 8 does not provide that. Therefore, is there another clause in the bill that takes care of service? Is that how we are handling this?

Hon ALANNAH MacTIERNAN: Again, we tried to be practical. We looked at the fact that the Australia Post times do change. Originally we had thought, on the basis of Australia Post times, that four days would cover most circumstances. There was some concern that those postal schedules might change in the future, so rather than do that, and to maximise the opportunity that there will not be an unfair lack of opportunity for the landlord or lessor to consider the matter, we thought that we would probably better accommodate it by saying 14 days, which is 14 days after which the lessor receives the request. We are providing a considerable expansion in the amount of time—probably more than I would have suggested—to accommodate members. Therefore, it was agreed to do that. Section 85(2) of the Residential Tenancies Act has a general provision that states —

> If a letter is sent in accordance with subsection (1)(b) the giving of the notice or document so sent is deemed to be effected at the time when the letter would have been delivered in the ordinary course of post.

That will vary, presumably. If people are trying to determine that, they will look at the Australia Post timings, which will vary from time to time, and I think I read many of those timings out the other day. Fundamentally, what we have done with this amendment is double the amount of time that is available to the lessor, to reduce the risk of situations when something might happen about which the lessor does not have notice. The change was proposed by the officers because they felt that, with the postage, we should stick with the general provision that exists in section 85(2), but recognising that we are pushing up against some barriers as the Australia Post service becomes less and less frequent, shall we say, by doubling the number of days that the lessor has to respond before the deeming provision kicks in.

Hon RICK MAZZA: Thank you for clarifying that, minister. Section 85 of the Residential Tenancies Act provides for the methods of service. I suppose that makes it consistent with any other notice that may be given under the Residential Tenancies Act, so that is fine. I have noted that the amendment to new section 47(2B)(a) refers to a prescribed form, which I imagine the commissioner at some point will put together, to provide the written notice that we agreed to earlier. When we considered this clause previously, there was discussion about damage that may be caused by the affixing of furniture or heavy items to the wall. The minister mentioned the ability to insure against that damage. My understanding of landlords' extra protection insurance is that, besides building insurance, a landlord can insure for loss of rent or malicious damage. I would be interested to hear the minister's views on whether a landlord could insure against a situation whereby a tenant affixes things to a wall, takes them out, pulling out a big chunk of the wall, and leaves a mess?

Hon ALANNAH MacTIERNAN: That would depend on the specific definition of the policy, but one would imagine that those policies adapt to the changing circumstances of the legislation and the potential liabilities and risks for a landlord. One would think, in the normal scheme of things, that if a tenant had an obligation to repair, they failed to repair, and that repair was not covered by the bond, that would be the sort of risk that a landlord would be insuring against. Landlord indemnity insurance presumably will evolve to accommodate this particular potential risk. We do not see this as something that will become a big risk, but we would anticipate that this, just as any other failure of the tenant to meet their obligations, would be something that is insurable under the landlord insurance. We would expect this to be included. We cannot say that it would be, as we do not have the policies before us, but on the logical basis that the landlord is insuring against the defalcation of the tenant, this would be an insurable item.

Hon NICK GOIRAN: I have a couple of questions on the amendment that is being proposed. The amendment refers to the tenant giving the lessor a request "in a form approved by the Commissioner". I am confident that what we all mean by that is a written form; we do not take it to mean "in a manner approved by the commissioner". Are we confident that it is not possible for the commissioner to prescribe that a verbal request is a form approved by him or her?

Hon ALANNAH MacTIERNAN: What is contemplated by this amendment is quite clearly a written form. The form is intended to be a document, which might be available electronically, but it is a document. There is no lack of clarity about this. This is designed to set out the way in which the request is to be made to the lessor. The word "form" is used for that purpose here and quite frequently throughout this legislation and elsewhere.

Hon NICK GOIRAN: I thank the minister, I agree, and I think it is good that we have that intention clear. My second question is on the proposed amendment to new section 47(2B)(b), which refers to time beginning to run after the day on which the lessor receives the request. This is interesting, because, of course, the original proposed section in the bill talked about it being after the day the tenant sought the lessor's consent. As we discussed previously, there could be a difference in time between the tenant seeking the consent and the lessor receiving the request for consent. In the case of an email, as we discussed previously, it is somewhat uncontroversial; I think the personal receipts are uncontroversial, and we have been through that exercise before. It is clear when the lessor receives the request. My first question is: in the case of an email, will it be taken as the time the email hits the inbox of the lessor or the time that it is read by the lessor? The second question that flows from that is: what is the situation when the written form is sent by post? We had a discussion previously about how long that might take, and there was an original amendment proposed for four business days and so on and so forth. My question is: what if the lessor never receives the request? If the tenant, in all good faith, posts the written form requesting the consent, but the lessor never receives it, it seems to me that time has never yet begun to run, and that is going to be a problem for both parties.

Hon ALANNAH MacTIERNAN: I refer the member again to section 85 of the Residential Tenancies Act, which are the service provisions that prevail throughout the act. Section 85(1)(b) states that a letter should be sent by post addressed to the person or to the person's last known address. Section 85(2) states —

> If a letter is sent in accordance with subsection (1)(b) the giving of the notice or document so sent is deemed to be effected at the time when the letter would have been delivered in the ordinary course of post.

That is a standard provision. All the other notices apply there. Theoretically, yes, there is a problem, but this is not an unusual provision. The right to use email as the form of communication comes through the residential tenancy agreement. If the lessor and the tenant agree that there can be email exchange, then all this documentation can take place through email. That also specifies that the issue of timing is then dealt with under the Electronic Transactions Act. Section 14 of the Electronic Transactions Act sets out the time of receipt. It states —

> … unless otherwise agreed …
>
> (a) the time of receipt of the electronic communication is the time when the electronic communication becomes capable of being retrieved by the addressee at an electronic address designated by the addressee; or
>
> (b) the time of receipt of the electronic communication at another electronic address of the addressee is the time when both —
>
> (i) the electronic communication has become capable of being retrieved by the addressee at that address; and
>
> (ii) the addressee has become aware that the electronic communication has been sent to that address.

They are quite extensive, but, again, standard provisions. These are not novel provisions. This is the standard way in which we establish whether documents have been sent and when it is reasonable to presume that a person has received them.

Hon NICK GOIRAN: The minister might remember that on the last occasion we discussed whether in the metropolitan region the time within which it was deemed to have been delivered was two or three days. I think the minister was going to take some advice and come back to us on that. The original amendment put it beyond doubt by making it clear that it would be four business days. This amendment obviously does not have that same certainty. We would then have to fall back to section 85 of the Residential Tenancies Act 1987, which indicates that it is —

> … deemed to be effected at the time when the letter would have been delivered in the ordinary course of post.

Earlier the minister took us to information from Australia Post that suggested that in the metropolitan area it would be two to three days. I would like to know what the court would say. Would it be two or three days?

Hon ALANNAH MacTIERNAN: We do not know precisely how the court would determine that, but we have gone for seven to 14 days to give a bigger margin for error and minimise the risk. I presume it has ever been thus, but it has probably become a little bit more so. It always has been the case that there would be not just one single time, but a range of times. The department says that it always encourages people to give the longer time. The website has information that says to allow two to six days, including from the day of service, and additional days for weekends. Do we know whether it is two or three days? The important thing that we are trying to do is to ensure that the lessor receives the document. Listening to the concerns that the member has raised about the growing range of times and which one we would expect from an Australia Post service, we thought that the easiest way to accommodate that was to provide for a 14-day period. That will minimise the risk of a landlord not receiving their notice or not being able to consider it.

We are concerned that this cannot go on forever. Tenants need to move forward, obviously, if they have purchased furniture. To settle in, they need to deal with it, but bearing in mind the concerns that were being raised about whether a lessor would get the material in time, we have extended it quite considerably. We have taken it from the time it would take in the normal course of business; that will vary, of course. If the lessor is in Geraldton and the tenant is in Albany, obviously, it might take four or five days to get there, but that is all properly accommodated, because on top of that service time, we have added 14 days. In many instances, there will now be 16 to 18 days from the time the tenant sends the letter. We hope that more and more people use email communication under those provisions in the Residential Tenancies Act. We would expect that that probably has become the standard way, so we are talking about probably a very small number of cases here because the vast majority of tenants and lessors would prefer to communicate via email.

Hon COLIN TINCKNELL: In the context of reasonable protections for both the tenant and the lessor, if a tenant wanted to drill holes in the wall with six weeks to go on the lease, would the lessor have grounds under reasonable circumstances to withhold consent?

Hon ALANNAH MacTIERNAN: The tenant still has the obligation to make good at the end of that period, so the tenant's obligations do not change because there are only six weeks to go. They have the same set of obligations. A tenant would not seek to do something like this within the last six weeks when they would have to fork out the cost of doing it and then incur the cost of restoring it. We have moved quite some way away from the original focus of this legislation, which was to ensure some protection for those children. We are becoming a bit more fanciful in the circumstances, with the what-ifs that we are dreaming up here. As I understand it, in the part of the bill that we have approved to date, we have adopted the principle. Now we are debating the mechanism. We are not debating the clause that we previously had considerable debate on, which concerns the circumstances in which a landlord can withhold it. What we are debating in this provision is very specific. It is the mechanism by which the tenant is to seek the approval of the landlord. I think that matter, member, has already been determined in the previous consideration of this provision, and, as we have been advised, we cannot go back and reconsider that because that has already been determined.

Hon COLIN TINCKNELL: I am looking at whether there any grounds at all under reasonable circumstances for consent being withheld. I am looking at protections here for both tenant and lessor.

Hon ALANNAH MacTIERNAN: We have already decided that. That is not what is before the chamber. What is before the chamber now in this recommittal is a very limited matter, and that is the matter of this clause. We have already considered the nature of those things that will constitute an exception. That having been determined already by the chamber, we are now considering the conditions, how the request is to be put forward to the lessor and what time frames determine that. We are not debating those other issues. We have had that debate.

The DEPUTY CHAIR (Hon Martin Aldridge): Members, before I give the call to Hon Colin Tincknell, the chamber has recommitted clause 67 in its entirety. We are dealing with clause 67 at the moment. The minister has not yet moved the amendment standing in her name on the supplementary notice paper. I have yet to establish whether Hon Colin Tincknell's question is going to other clauses, but if it is related to any part of clause 67, it is relevant, because the entire clause has been recommitted by the chamber.

Hon COLIN TINCKNELL: That is exactly right, Mr Deputy Chair. As far as I can see, it is related to clause 67. That is why I asked the question.

Hon ALANNAH MacTIERNAN: After I finish this, I would like to move the amendment standing in my name. We have specified three reasons. As we have described at length during this debate, we wanted to have a very confined range of things that could be considered by the landlord as reasons for withholding consent. They are that the building contains asbestos, it is heritage listed, or there are strata title implications. If issues arise subsequently that we have not thought of that need to be dealt with, we have a provision whereby we can subsequently prescribe provisions.

I move —

Page 40, lines 13 to 18 — To delete the lines and substitute —

subsection (2A)(a) if, and only if —

(a) the tenant has given the lessor a request, in a form approved by the Commissioner, seeking the lessor's consent to affix the item to the wall; and

(b) the lessor has not refused consent under subsection (2A)(b) within 14 days after the day on which the lessor receives the request.

Hon MICHAEL MISCHIN: I appreciate the minister having gone through the amendment and the efforts that have been undertaken by her and the department in addressing the concerns of members about the content of any request for a lessor's consent, given that the basis on which the lessor may refuse is limited. I thank her for also clarifying, if I understand it correctly, that although it is not specified that the request be in writing, as it was in the original amendment—it is simply a request in a form approved by the commissioner—it is implicit that it will be one that is in a documentary form of some kind.

Hon Alannah MacTiernan: A documentary form—it may be electronic or it may be paper.

Hon MICHAEL MISCHIN: It will set out the criteria specifically that the lessor will be entitled to know in order that consent can be deemed to have taken place after the time limit has expired. I want to put two examples to the minister. It will be helpful to know when a tenant is able to assume that, by operation of proposed subsection (2B)(b), consent has not been refused and they can, with confidence, do what they have advised the lessor they are going to do. We are not talking about seven days after the seeking of consent, but a deeming that a lessor has not refused consent after 14 days after the day on which there is receipt of the request. I do not have a problem with the formulation, but it requires the tenant to have some reasonable basis for knowing that the lessor has received this request and that they can count down the 14 days and, with some confidence, be able to say that because they have not heard anything from the lessor by operation of proposed section 47(2B)(b), they can now do what they said they were going to do.

I want to use two examples because they may be useful for guidance in the future. I will do that with reference to the 2019 calendar year for starters because there is an unusual feature in that. For example, in April, Friday, 19 April was a public holiday, the twentieth was a Saturday, the twenty-first was a Sunday, the twenty-second was Easter Monday, the twenty-third and twenty-fourth were business days, the twenty-fifth was Anzac Day, the twenty-sixth was a Friday—a business day—and then we had another weekend. Assuming that I am the tenant and I have dropped my request into the letterbox on 18 April, bearing in mind the public holidays and weekends, can the minister give some assistance about when I, as the tenant, having not heard from the lessor, can assume that consent has been provided in accordance with the act and I can do what I have set out to do? If it helps, I have a copy of the parliamentary sitting calendar for this year, which sets out the public holidays, that the minister and advisers can consider. If I put it into the letterbox on Thursday, 18 April and it is Good Friday the next day, when can I, with confidence, start bolting my bookcase to the wall?

Hon ALANNAH MacTIERNAN: One of the advantages of us having moved to having a form that needs to be approved is that it will enable us to ensure that we have proper information going to the tenant because the tenant will be accessing the form. We have some examples in which the department has looked at, for example—one of the member's favourite topics—the termination in an interest in a lease on the grounds of family and domestic violence, and another, which is the service of a breach notice other than for failure to pay rent. It is set out in diagrammatic form for the tenant how they need to calculate time. The member is quite right that there can be unusual circumstances, but we set out how the timing provision works and alert people that they have to take into account that it is normally two to three business days, so any public holidays or weekends will not be included in that. It is certainly the intention to make it clear, and we have already been doing that for other pieces of legislation. Because we will have a form that people will be directed to, this will give us the opportunity to provide a similar level of advice and understanding about how to calculate the time. I think it is a good point, but we have these examples from other areas in which we do this. We are now able to add to those and make sure there is clarity. We

would say that in the metropolitan area we allow three business days. Public holidays and weekends do not count as business days, and we can make sure we provide that information with the form.

Hon MICHAEL MISCHIN: I thank the minister for that. I am comforted by that. One of the advantages of being able to have a prescribed form is it will allow for that. Using that table, if I were to post the letter on 18 April 2019, just to apply what the minister has there, would she be able to say when I would be able to affix my bookcase to the wall with confidence? The other example I use is the always tricky one of the Christmas period. This year Christmas Day is on a Wednesday and Boxing Day, which is on 26 December, is on a Thursday. Friday does seem not to be a public holiday, but Wednesday, 1 January 2020, is. Could the minister please apply those guidelines so that I know when I could affix my bookcase to the wall with confidence if I dropped the form in the letterbox on Tuesday, 24 December, this year?

Hon ALANNAH MacTIERNAN: The person would need to ensure that it was a metropolitan delivery. In that case, they would need to allow for two to three days. They would have to exclude any public holidays or weekends during that period, so it would be public holidays and weekends plus three days. We will set that out. We will not necessarily be doing a ready reckoner, but we will make it very explicit to people that they will need to take this into account. I urge people to understand that the vast majority of parties to these agreements have email addresses, so the vast majority of these will be done electronically, although some will still be done by letter. The aim of the department is to reduce the dispute level and maximise clarity. We will make sure that the point about public holidays and weekends is made very explicit so that when people post the letter, the number of days have to be calculated as business days—that is, days that do not include weekends or public holidays.

Hon MICHAEL MISCHIN: I appreciate that. It seems that the minister is not able to give me a date using those two hypotheticals, but if that is the way it is —

Hon Alannah MacTiernan: But it would be three days.

Hon MICHAEL MISCHIN: Okay, but I want a practical answer so that someone can look at *Hansard*, work things through and understand. I understand. It is not a problem for me; it may be a problem for a tenant. I raise one other possibility that after business hours on Tuesday, 24 December, an email is sent, but of course the real estate agent managing the property on behalf of the lessor might have knocked off and will not be coming back until after the new year's break. Is that accommodated in any way by this situation?

Hon ALANNAH MacTIERNAN: One of the reasons that we have extended the period to 14 days is to minimise the opportunity of these things happening without contact. When there is a 14-day period, the risks are a lot less likely. A property manager has an obligation to their client to ensure that they have proper arrangements in place. All sorts of things can happen with tenancy arrangements. A property manager cannot have no-one available for a seven-day period, because, as anyone who has ever rented a property will know, if the sewerage blocks up, problems can emerge thick and fast. There is not likely to be such a situation, and if there was one, it would be a pretty irresponsible set of affairs, because there are things that a tenant needs their landlord's approval for, emergencies arise and people need to be contactable. Part of the reason we have extended the base period to 14 days is to minimise that risk of a landlord not being alerted. Even in this circumstance that the member has described, there will be someone checking the emails, because that is part of the obligation of a property manager.

Committee interrupted, pursuant to standing orders.

[Continued on page 7458.]

Sitting suspended from 4.15 to 4.30 pm