RESIDENTIAL TENANCIES AMENDMENT BILL 2011

Committee

Resumed from 22 November. The Deputy Chairman of Committees (Hon Brian Ellis) in the chair; Hon Simon O'Brien (Minister for Commerce) in charge of the bill.

Clause 22: Part IV Division 1A inserted —

Progress was reported on the following amendment moved by Hon Lynn MacLaren —

Page 17, line 26 — To delete "as soon as practicable" and insert —

within 7 days

Hon LYNN MacLAREN: Just to get us moving this evening, perhaps I can recap that we are at the point at which the minister suggested we might change the wording to "as soon as practicable, but within 10 days". I believe that is where the negotiations had got to. No-one has moved that, but can we deal with the amendment of seven days first? Should I withdraw my amendment?

The DEPUTY CHAIRMAN: If the member wishes to withdraw the motion, she can or else we can delete the words and then someone move that the 10 days replace the seven days. If Hon Lynn MacLaren withdraws that amendment, we will move to the next amendment by the minister.

Hon ADELE FARINA: I suppose the issue is that if we withdraw that amendment, we do not have an indication from the minister whether he is thinking any differently today from what he put on the record yesterday. I think Hon Lynn MacLaren is seeking an indication from the minister whether the offer he mentioned in the negotiations when we were last considering this matter is still on the table.

Hon SIMON O'BRIEN: I think the best way ahead is to simply test the will of the chamber on this matter. It has been discussed at some length. To comply with the wishes of members who have just risen, I will indicate, firstly, that, although there is an understanding of and empathy with what the member has moved, I also ask members to take on board the matters I have laid before them; that is, what we are doing here is seeking to deal with a problem and achieve timely exit inspections. At the moment there is no provision for it and we are inserting that provision by this clause. The provision will deal with certain situations that people want dealt with when a tenant and a lessor do not have the cooperative aspect that most tenant–lessor relationships generate. They usually make an arrangement for an exit inspection when both parties are available, probably on the day the tenant vacates or shortly thereafter, or even sometimes in advance of it. They all sign off on the exit inspection; there is no problem and the bond is remitted as required and all the rest of it. This provision is for when there is a problematic situation, and we are therefore inserting a provision to make sure that there will be an exit inspection. What is more, a penalty of $5 000 will apply if an exit inspection is not carried out. That is some difference from the law as it currently stands.

The Standing Committee on Uniform Legislation and Statutes Review raised the concern about the meaning of the phrase "as soon as practicable". I know what "as soon as practicable" means and I suspect that most members of this place know what "as soon as practicable" means. It is a common phrase that is used in sundry statutes. The courts do not appear to have too much trouble interpreting the phrase. The phrase allows sufficient flexibility so that a court can weigh a situation and consider the merits of any dispute that is before it; whereas if there is an absolute definition of when the inspection must be carried out, it does not leave that discretion to the court and it may result in people failing to carry out an exit inspection within seven days. It would become an absolute offence. There may be perfectly good reasons why the inspection could not take place, possibly agreed to by both parties, yet notionally an offence would be committed. We therefore do not want to generate that situation if we can avoid it. That is why I am suggesting, with the greatest of respect, that we need to leave in the phrase "as soon as practicable". However, I note that a bipartisan committee has considered this matter and it believes, however, that we need some sort of limit on it. I think that if we are to talk about a limit, it must be a little longer than seven days.

The other matter that was discussed at considerable length last night was the meaning of "days". Unfortunately, Hon Linda Savage is not in the chamber at the moment and is on urgent business elsewhere. However, it was put to me that there is an interpretation of "days" which refers to working days. I am not sure exactly what the phrase "working days" means. Perhaps it means Monday to Friday. Examination of the Interpretation Act in fact indicates that, unless there is some specific reference to some other method of computation, "days" means simply calendar days. That is not what some members were thinking last night.

Hon Kate Doust: We were asking for clarification.

Hon SIMON O'BRIEN: I have now given that clarification, having been able to check it. If the provision is for seven calendar days, I can foresee all sorts of situations with people leaving at or around Christmas or terminating a tenancy at or around Easter when there would be a range of days on which it would be problematic for one party or the other, or an agent acting on their behalf, to complete the requirement for an inspection to take place. For that reason, I suggest, with the greatest of respect, that the best way ahead is what Hon Lynn MacLaren referred to, what seems like a hundred years ago—it was last night—and that is to try to get the best of both of these amendments. She is prepared to acknowledge the need for "as soon as practicable", and I will acknowledge that we need to insert some sort of limit. But I will do it with the following understanding, also in good faith. Firstly, I indicate to members that at the moment we do not have these limits anyway, so it is an improvement. If we find in due course that the provision of 14 days does not work—for instance, if we find that we suddenly have an epidemic of people doing 12-day inspections and losing the bond because the lawn has not been weeded—we will come back and change it. That is what we need to do. However, members can take comfort from the fact that since 1 July last year about 170 complaints were received about bonds, and three of the 170 have been about the timeliness of the completion of exit interview. They probably took less time than we have spent discussing this clause now. But I think it has been a good discussion, and I thank members for helping us all to work our way through it. I am proposing that we do not adopt the first amendment that is before us, and we consider the other one. If we cannot agree on that, we will just have to go with the clause as printed.

Hon SALLY TALBOT: That was the most extraordinarily long speech about absolutely nothing. With the greatest of respect, minister, we are all in furious agreement here. There is one question that we have to ask the minister: what is the number that he wants in this amendment, because last night he said 10?

Hon Simon O'Brien: Fourteen; I told members that.

Hon SALLY TALBOT: But last night you offered 10.

Hon Simon O'Brien: That was in the context of how many working days, because that was the proposition that had been raised.

Hon SALLY TALBOT: That was definitely not understood on this side of the chamber.

Hon Simon O'Brien: I have just explained it, and that is why I took some time to explain it.

Hon SALLY TALBOT: The minister is now proposing that the amendment standing in his name is the amendment that he is prepared to support.

Hon Simon O'Brien: Yes.

Hon SALLY TALBOT: He is not prepared to change the 14 to 10.

Hon Simon O'Brien: No.

Hon LIZ BEHJAT: I do not want to prolong this discussion any further than we have to, but I just want to ensure that things are correct. I sought some clarification from the minister last night, but prior to the minister being able to respond to my question Hon Linda Savage also asked a question. The minister may have answered her points of clarification but not mine. The point I wanted the minister to clarify, which may add weight to the fact that we may need the 14 days, is whether I am right in saying that, as soon as practicable after the termination of a tenancy, a lessor must —

(a) conduct an inspection of the residential premises; and

(b) prepare a final report describing the condition of the premises; and

(c) provide a copy of the report to the tenant.

So there are actually three steps that must be gone through within that period of time. As I asked last night, would that indicate that there could be some time delays? For example, the tenants may not be available to receive that final report once the inspection has taken place, and the report will have to be taken back to the agent's office to compare photographs from the pre-condition report with those from the post-condition report. That will take some time. Then there is the final preparation of the report and getting that back to the tenant. If I am right in reading the legislation that way, I think a person might need the 14 days.

Hon SIMON O'BRIEN: Mr Deputy Chairman, I think the points that are made are valid, as are other points that members have made, but Hon Liz Behjat properly draws attention to proposed section 27C(4), which sets out the steps that have to be taken. Indeed, that takes some time but—this is becoming a recurring theme—it does not take much to reduce the time available virtually to zero if other matters come into play. The provision requires that not only the inspection be conducted but also the tenant be given a reasonable opportunity to be present. That indicates choosing a day of mutual convenience and each one of the seven days may not be available for

mutual convenience. A report has to be prepared. That should not be overly time-consuming but it might be, and it might be done in the context of a whole lot of reports that are being done, perhaps, by some agent, possibly even of Homeswest, having to travel and do a range of reports and inspections in the space of several days. It is about providing a copy of the report to the tenant, so a delivery is required, perhaps by post, and it might take one, two or three days, depending on how far the letter has to go. If there were any other interruptions, we soon see that there would not be much change out of seven days. Therefore, what Hon Liz Behjat said does indeed help the case. As I say, if 14 days turns out to be too long for the three cases that we have had in the past 16 months, or however long it is, we can come back and change it. However, prudence indicates that when we introduce a provision—there is no provision at the moment—that we do so in such a way that it will not inconvenience normal activity. I thank Hon Liz Behjat for that supportive comment.

Amendment put and negatived.

Hon SIMON O'BRIEN: I move —

Page 17, line 26 — To insert after "practicable" —

, and in any event within 14 days,

Amendment put and passed.

Clause, as amended, put and passed.

Clause 23: Section 27 amended —

Hon LYNN MacLAREN: I move —

Page 18, line 21 to page 19, line 5 — To delete the lines and insert —

(2) Delete section 27(2)(a).

By way of explanation, the impact of this amendment is that option fees would be deleted; there would be no reference to option fees in the amended act. So clause 23 of the bill, which amends section 27(2) of the act, allows lessors to charge tenants any amount, not exceeding a prescribed amount, as an option to enter into the residential agreement. This option fee is to be refunded or applied towards the rent under the agreement upon the option being exercised, as we know. If the option is not used, the amount is refunded in cash, by electronic means or by any other prescribed way, to the tenant. I note that the Standing Committee on Uniform Legislation and Statutes Review recommended that the minister explain why the Legislative Council should adopt the proposed provision in the absence of evidence in support of the provision and evidence of the impact of such a provision on lower socioeconomic prospective tenants.

First of all, it would be nice to have that explanation, but, in the absence of that, I would like to amend the clause to actually prohibit the charging of option fees, since there is no evidence in support of the provision, and there are concerns about the impact of such a provision on lower socioeconomic prospective tenants. I remind members that in my contribution to the second reading debate I advised the house that option fees are not charged in the Northern Territory or the Australian Capital Territory under their respective equivalent legislation. In particular, in a market such as we have in Western Australia, in which there is no shortage of people applying for rental accommodation, option fees do not seem to make very much sense, and as they seem to impact disproportionately on vulnerable people, there is even more reason for us to abolish them at this time.

Hon SIMON O'BRIEN: Hon Lynn MacLaren is very well motivated in this matter, and I think I acknowledged that in my second reading response. I have a lot of sympathy with what she is saying and what she is proposing, and that is why we have the provision that is already in the bill. Let me just explain a few things.

Firstly, I acknowledge that the option fees can create a barrier for many people seeking to obtain a rental property in both the amount that is sought as an option fee and the length of time it can take for the option fee to be returned to an unsuccessful applicant. We discussed during debate yesterday situations in which people might even be required to pay a couple of option fees on different properties at the same time; perhaps waiting for one fee to be refunded while they place another on another property when in search of a home. That is acknowledged. I also acknowledge that industry stakeholders advocate that the payment of an option fee by a tenant is important because it is a show of good faith—as they tend to call it—that the tenant is genuinely interested in renting the property and not wasting the time of the person or landlord the estate agent represents. The comment was made by a member during debate that, at times of high demand, that is less of a risk; nonetheless, these charges have been a feature of the industry. They can be charged under the act as it currently stands, and that is one of the reasons why we are proposing an amendment.

At the moment, landlords and property managers are required to refund in full to all unsuccessful applicants any fee that has been paid, whereas a fee received from the successful applicant is simply applied to the rent. A landlord or a property manager should retain an option fee only if the successful applicant does not proceed with the tenancy agreement. The intention of the option fee is to reimburse a landlord or a property manager for reasonable expenses incurred in assessing and processing the application. I understand that when consultation was done on this matter some years ago—I think Hon Sally Talbot pointed out that this bill had been some years in the making—the recommendation was that the option fee be got rid of; that is what I am advised. The interests representing landlords—the Real Estate Institute of WA, property managers and so on—objected to that and I understand that the minister of the day, who I think was Hon Sheila McHale, decided not to proceed with such an amendment at that time. But we acknowledge, Hon Lynn MacLaren, the potential impact of an option fee on low-income earners. I agree with Hon Sheila McHale at length that there is a case for permitting them, but we will seek via this amendment in the bill to place a cap on the amount that can be charged and to require that the option fee be refunded in either cash or by electronic transfer to avoid delays in the refund becoming available. I think that is a very considerable improvement on the current situation and therefore deserves support. I also think that it is a proposal that deserves support because it strikes a fair balance between the needs of tenants and of property managers and those they represent. The amount of the cap will be developed in consultation—I think I indicated this during the second reading debate yesterday—and although the median rent, which is generally the sort of amount that an option would be struck at, is about $350 to $390, we would envisage a prescribed amount of this cap of rather less than that. It might be $100, or it could be $50 even; therefore, there is a very significant difference. That in turn should relieve a great deal of the pressure. Therefore, I think we have gone a long way towards addressing some of the concerns behind this latest amendment and I would ask that we keep the clause as it is now, because it has been consulted on with parties and so on. That is our proposal and the rationale behind it. I point out that both Victoria and South Australia allow the use of option fees, in this case without cap, but I think Western Australia should show the way and apply such a cap.

Hon ADELE FARINA: I appreciate what the minister has said. I suppose my concern is that we are again in a situation in which we are asking the Parliament to approve something, but we have no idea what the prescribed amount is. Given all the policy arguments around the issue of whether we should have an option fee, it would seem to me reasonable that if the government were proposing to impose a cap, it would have already had those discussions as part of the formulation of the bill and it would have some idea of what that cap might be. It raises an issue for us, because the reality is that some members in this place have expressed concern about the quantum of that option fee. It may be the case that if it were set at $50, a number of those members who expressed concern may no longer hold that concern because they might consider that $50 is not an unreasonable amount. Although the legislation states that the amount needs to be prescribed, the reality is that when the matter is prescribed by regulations, the delegated legislation committee merely looks at whether there is a power in the bill to prescribe an amount. It does not give any consideration to whether the amount is appropriate. The issue I have is that the Parliament does not get to scrutinise what that amount will be. Given the considerable issue in the community with the number of homeless people, and the number of people who are struggling to find rental accommodation, and the impost that the option fee is placing on their ability, in a very tight rental market, to find rental premises, I do not think it is unreasonable for the Parliament to expect some greater direction from government about the sort of prescribed fee the government is considering. The Parliament will not get another opportunity to review this matter, because if it is done by way of regulation, we will not get to see it; and, also, it will not be disallowable, because it will comply with the head of power in the act.

Hon Simon O'Brien: Because it is not a fee or a charge or a tax, yes.

Hon ADELE FARINA: That is the issue that I have.

Hon SIMON O'BRIEN: I thank the honourable member for offering me the opportunity to deal with some outstanding issues. Firstly, the very fact that I am bringing forward a bill containing this amendment—that is, to place a cap—shows that the government is concerned about the effect that Hon Lynn MacLaren has raised. That is the first thing. I am not about to undo that by allowing a system that will compound the ill that we are trying to address. If the member does not want to take my own sense of goodwill on that, just commonsense would indicate that that be so.

I point out also that option fees are not compulsory, and I do not know that they are always charged. I would think that they could be a point of difference between property managers in a competitive environment. So, the first point is that they are not compulsory. Secondly, they certainly are not government administered. Also, as Hon Adele Farina has pointed out, they are not a government tax or charge, or anything like that, so they would not be subject to rejection by the delegated legislation committee.

In relation to giving a better idea of what the prescribed amount is likely to be, I can tell the member this. The current industry practice is to charge the equivalent of one week's rent. That can be whatever; I do not know. I do not have enough experience in the field to know if there is a greater tendency to charge an option fee for a valuable property—a high-rent property—as opposed to a low-rent property. I do not know about that. But, in any case, I refer to a median rental figure in the order of $350. It can vary widely. Hon Lynn MacLaren gave a figure of about $390 as the average rent. That is the sort of figure that people might be looking at being hit for as an option fee. I am prepared to say that the cap would be significantly less than those figures that I am talking about. I advanced a view that it might be $100, or even $50. I do not know that we could go much below that, because then it would not be worth collecting. I mention that figure as indicative of the quantum of difference that we are looking to achieve between the current unregulated and uncapped amount, and what we might ultimately go for.

Having said that, I do not know what the full outcome would be, and I cannot know, because we have not been through that process. The reason we have not been through that process is that we do not yet have a head of power in the legislation to go through that process. But I am trying to introduce that head of power. I would fully expect the member to come back and complain to me, or raise the matter in the chamber, if the capped amount turned out to be $400 or $500 or something like that because it means that a whole lot of people would be no better off than they are now. So what has it all been for? As minister, I would not be prepared to sign off on that sort of figure. I do not think I can really quote a figure beyond that, but the indication is quite clear: we want to impose a cap and we want it to be well under the average weekly rent because the average weekly rent is quite onerous if it is required of so many people who aspire to become tenants. I am trying to get the right balance. They are all things members could support. For those reasons, I would prefer to leave our draft clause as it is and point out that it is a significant improvement on the current situation.

Amendment put and negatived.

Hon LYNN MacLAREN: I have an amendment. In the event I was unsuccessful in deleting option fees from this amending bill, I had some foresight to think that perhaps what we could do is require a time limit for that option fee to be returned. I move —

> Page 18, after line 26 — To insert —
>
> (i) the lessor either exercises or refuses the option within seven days of receipt of the amount;

I draw the committee's attention to the Tenants Advice Service submission on this amendment. It basically calls for a time limit of seven days to be prescribed for lessors to exercise or refuse the option to enter into a tenancy agreement. The amendment I have drafted in this first case is whether or not a lessor exercises or refuses the option, the amount is returned to them. The minister has taken great pains to explain that the amendment improves the use of option fees in capping it, even though we do not know what that cap is. We have had some indication it might be considerably less than people are now charging, but there is no time limit prescribed under proposed section 27(2) on how long the lessor can take to exercise the option. The Tenants Advice Service is concerned that this places tenants in a very disadvantageous position. The issues have been canvassed well in the debate thus far. I quote from the TAS paper —

> … tenants with lower-income may have financial difficulties in paying the option fees. No prescribed time limit to exercise the option or refund the option fee to the tenant places the tenants in a difficult position, as some tenants who face financial difficulties need their option fee returned before they can apply for another tenancy. It also allows unreasonable delay for the lessors to exercise the option for tenants to enter into a tenancy application, causing tenants to be at risk of homelessness.

For this reason TAS has recommended that seven days be prescribed.

Hon SIMON O'BRIEN: Hon Lynn MacLaren is going to find my next few remarks a bit like the curate's egg—excellent in parts. I will refer, if I may, Mr Deputy Chairman, to the three amendments 19/23, 20/23 and 21/23, because they relate to the same area of the clause and are all interrelated, as we shall see. The government will not support the first amendment—that is, the prospect that the lessor has to exercise or refuse an option within seven days of receipt—on the basis of practicality in the real world. There may be a situation in which a real estate agent receives numerous applications to rent, and that may involve a certain time to review the applications, meet or speak with short-listed tenants and so on. So the requirement for a seven-day limit is arbitrary and artificial and may be counterproductive to all concerned, bearing in mind, of course, that it is any agent's desire to get the property leased as soon as possible. So there is that impetus anyway.

That leads me to the same logic that I will now apply to the other two amendments standing in Hon Lynn MacLaren's name. Firstly, amendment 20/23 seeks to insert a provision that when an option is exercised—that is, the person is awarded the tenancy—the amount is to be refunded within seven days. Of course, once the option is exercised or decided in the prospective tenant's favour, it goes ahead and happens, and the option money would automatically be applied to their credit as rent. In effect, we do not need that provision. But with the third amendment, which relates to the situation in which an option is refused, I think the member has a legitimate case to say that the option has to be paid back within seven days of the decision to refuse the option. I think that is quite legitimate. After discussing this with the industry, I understand that advisers are advised in turn that there is no reason why there should be any delay in refunding a refused option.

With all that in mind, if that makes sense, we would prefer not to go with the first two amendments, but we can certainly support the third amendment, which from this day forward, if it is successful, will be known as the MacLaren-O'Brien amendment!

Amendment put and negatived.

Hon LYNN MacLAREN: I move —

Page 18, line 27 — To insert after "exercised," —

and within seven days of the decision to exercise the option,

By way of explanation, I think we have had that discussion.

Amendment put and negatived.

Hon LYNN MacLAREN: I feel a change in the wind!

Hon Simon O'Brien: If at first you don't succeed!

Hon LYNN MacLAREN: I really feel that it will be third time lucky. I move —

Page 19, line 1 — To insert after "refused," —

and within seven days of the decision to refuse the option,

This amendment, which may forevermore be known as the MacLaren-O'Brien amendment, will mean that people who are applying for rental properties will have the option fee returned to their hot little hands within seven days. Then I will rest easy knowing that my work is done.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 24 to 26 put and passed.

Clause 27: Section 30 amended —

Hon SALLY TALBOT: I draw the minister's attention to the fact that in other states there are provisions to limit the proportion of rent increases, and specifically to a measure that came into force this year in the Australian Capital Territory under its Residential Tenancies Act 1997, which was amended to include definitions of rent increases that were excessive and therefore could be resisted under that provision. I note that measure is not included in this bill. It seems to be a very sensible thing to do, in that it is clearly in line with a lot of the provisions in our, albeit limited, income redistribution taxing and charging methodology that the more a person earns, the more they pay. In this case, the more rent a person pays now, the more rent they might pay in the future. While the minister is getting his head around this point, I will quote from the relevant sections of the ACT act. Section 68(2) provides —

(a) unless the tenant satisfies the Tribunal otherwise, a rental rate increase is not excessive if it is less than 20% greater than any increase in the Index number over the period since the last rental rate increase or since the beginning of the lease (whichever is later);

(b) unless the lessor —

That is, the landlord —

satisfies the Tribunal otherwise, a rental rate increase is excessive if it is more than 20% greater than any increase in the Index number over the period since the last rental rate increase or since the beginning of the lease (whichever is later).

That seems to leave open a fairly generous window of opportunity for rent increases over a given time. I would have thought it would appeal to the government in that the lower a person's rent, which would seem to denote

something about their economic circumstances, the more they are likely to be disadvantaged by a disproportionate increase in the rent, even if that increase is relatively small. To me, this ACT solution seems to have quite a simple elegance to it and obviously contains a very basic measure of equity when it comes to balancing the relationship between landlords and tenants.

Hon SIMON O'BRIEN: I will range over this clause and a couple of other subsequent clauses that are related, with your indulgence, Mr Deputy Chairman. I understand the review looked at the ACT model and others, but in comparing that with the Western Australian market, it found that generally the ACT market was a lot more homogenous and generic and less diverse in its nature, and of course in a restricted geographic location. By comparison, the Western Australian market is almost incredibly varied and complex, so the two did not bear a useful comparison.

Clause 27 amends section 30 of the Residential Tenancies Act. The amendments clarify that section 30 applies to a residential tenancy agreement under which the rent payable is calculated by reference to the tenant's income and require that a rent increase must be provided in a written notice in a form approved by the minister. Clause 27 amends section 30(2) to provide that the rent under a fixed-term tenancy may be increased during the term of the agreement only if the amount of the increase or the method of calculating the increase is set out in the tenancy agreement so that people know what the mechanism is. Consequently, it also provides a mechanism that is objectively measurable. Those comments are contained in the explanatory memorandum.

As members know, other clauses deal with the calculation of rent. In passing, and with your indulgence, Mr Deputy Chairman, I draw members' attention to clause 30, which will amend section 32 and, in effect, broadens the grounds on which a tenant may make an application to a court for an order that a rent increase is excessive. The tenant may apply to the court if there has been an increase in rent, a change in the method of calculating rent resulting in an increase, or a significant reduction in the chattels or facilities provided. This legislation affords protection for tenants against excessive rent increases, as there should be, but we have not gone down the path of the Australian Capital Territory model, although it is an interesting point for discussion.

Hon SALLY TALBOT: I was listening carefully to the minister and I want to check whether I understood what he said. I believe he is saying that the fixed-term agreements already spell out the terms by which rent can be increased. Would the same apply to periodic tenancy agreements?

Hon SIMON O'BRIEN: The direct answer to the question of whether the same applies to periodic rents is no. That is why I pointed out that there are powers in the bill—not in the clause we are dealing with but later on—to enable a tenant to appeal to the court in cases of excessive rent increases. Those protections will remain. I mentioned earlier that the review had found that the Western Australian market was very complex, which is why our legislation does not seek to provide a cap expressed as a percentage or some other term, on rent increases, because that would probably be counterproductive and fail to recognise the reality of the complexities and the variety of the Western Australian market.

Hon LYNN MacLAREN: I rise to support the words that Hon Sally Talbot has moved, and we, too, were looking at clause 27, which amends section 30, as a way of trying to put a rein on rent increases in Western Australia. It has been brought to our attention that quite unreasonable rent increases are occurring, and we know it is a tight market. Only yesterday I was speaking to one of the staffers in the house whose rent went from $400 to $520, which, to me, qualifies as an excessive rent increase. It is something that is possible under our legislation, and our stakeholders are asking us to pass laws to protect them from this type of excessive rent increase. What has been suggested is the workable solution that is used in the Australian Capital Territory, and for some years we have actually tried to work out how we could possibly do that in Western Australia. I think it is a very good solution, and it is very constructive that we are trying to address the problems our tenants are having.

It is one thing to compare the rental market in WA with the rental market in the ACT, but fact of the matter is that the tenants are pretty much same—everybody needs a place to live. Renters in the ACT are not dramatically different—they are not three headed or something—from the tenants in WA. They also have the issue of this boom-and-bust cyclical economy. I am hoping that the minister will look at this from a new perspective in that the WA market is not so different from the ACT rental market, and that it would be appropriate to put some caps on rent increases in place. This is not something that just the two parties on this side of the chamber are mentioning; it is something that a growing number of renters in Western Australia are demanding.

Hon SALLY TALBOT: I will just add a couple of comments in response to the minister's response to me.

I can understand that the minister wants to make the point that there are some fundamental differences between the rental market in the ACT and the rental market in Western Australia, but, first of all, to characterise those differences as some kind of difference in diversity does not quite seem to me to make sense. People either live in a house with a view of the sea or they do not; people are either renting a house with a view of the sea or they are

not. The minister's point about diversity might relate to the vast mass of the entire rental market in Western Australia, but when we look at particular areas, I would have thought it could come down to a degree of homogeneity where exactly the ACT principle was applicable.

The second point I wanted to make is by far the more grave. If the minister is suggesting that the Western Australian market is subject to more vagaries of circumstance than the ACT market, I can understand why. The ACT has some stability in the market because of the local employment situation and all that sort of thing. It is subject to the usual ups and downs of the economic cycle, but it is not subject to areas of huge industrial expansion or things like that. We are subject to those pressures in the Western Australia in, for instance, north west towns and isolated pockets. Only two or three years ago the area with the highest growth in the whole of Australia was Capel. Who would have thought that? Capel was in my electorate and I was still surprised to see that. Because it started with such a small base, it only needed an extra 50, 60 or 70 houses, or that many families to move into town, to, effectively, double the population of the place. I would have thought that in a place that has that added instability there would be even more reason to protect people renting in that market from sudden price hikes. If the minister wants a concrete example, what does he say to people renting in a place like Broome, if and when the LNG hub goes ahead in Broome and if the expected expansion in Broome goes ahead? What will happen to rents in Broome? This should be of particular concern to the minister because, of course, a huge part of the rental market in Broome is consumed by Government Regional Officers' Housing, so it can be a direct impost on the state government. I would have thought it is in all our interests to look at a measure. I am not moving an amendment here, the minister will have noticed; I am asking for some commentary before we decide whether we will move an amendment. I appreciate the point that the minister is taking this issue very seriously. In his first response to me, he conceded that the review had looked at a mechanism like the one in the ACT. I am asking now, in the light of that demonstrated—I do not want to call it instability—effect of the boom, I suppose it is, in Western Australia, whereby we see those unprecedented pressures on the rental market, whether the minister would be prepared to consider putting a mechanism into the act to provide a definition of excessive rent increases with a view to preventing excessive rent increases. I am not moving an amendment to suggest that 20 per cent is the figure we should go for. I am asking the minister to consider the principle; and, if he is prepared to do that, perhaps we can have a discussion about what the exact rate might be.

Hon SIMON O'BRIEN: The government rejects the principle. If the ALP wants to say this is what it is going to do, that is what it can do. Hon Lynn MacLaren suggested that both parties on that side of the house are in favour of prescribing limits on rent increases or on how much rent can be charged by people, despite the complexities and the variety of the Western Australian market, which is very, very different from the almost monoculture ACT market and very different in its variety. I think most Western Australians know that.

As I have already indicated, the review did consider other models, including the ACT model, so this is nothing new. We are not flying blind here. But I will say that the government rejects the notion that governments should be setting limits on how much private entities should be charging for rent in the marketplace. We prefer to assist Western Australian people looking for a tenancy with affordable housing strategies, of which there are several abroad at the moment, including those being implemented in the Pilbara. That is the positive way in which we can assist people to get into housing, not by encouraging investors to get out of the rental market by restricting the amount of return they can get in an open market on their properties. If that is the recipe of members opposite for providing better, more accessible and cheaper accommodation to people, particularly on low incomes, it is a fundamentally flawed policy in the view of this government. That is why we will not pursue it. I cannot be more explicit than that. If members opposite want to pursue it on another occasion, they should feel free to do so, but they will be opposed by us. The question before us is that clause 27 do stand as printed. I support that view. If anyone else does not, they should vote accordingly.

Hon SALLY TALBOT: I thank the minister. I just wanted to get on record the minister's principled position on this, or what we might be more inclined to call an unprincipled position. I am almost certain that he has deliberately misinterpreted what I was saying. I am not talking about government intervention in limiting what an investor can get by way of return on their property.

Hon Simon O'Brien: You yourself said, "Let's start with a percentage of 20 per cent, for argument's sake." If that does not sound like applying an actual cap, I do not know what does.

Hon SALLY TALBOT: Let me explain.

Hon Simon O'Brien: I'm not really that interested. I've made it quite clear what our position is.

Hon SALLY TALBOT: The minister is not really that interested?

Hon Simon O'Brien: Not in what you've got to say about this and however you want to spin it. You're just using up time.

Hon SALLY TALBOT: Sometimes the minister makes it so easy.

Hon Simon O'Brien: You do; and when you have had your jollies, we'll finish and go home.

Hon SALLY TALBOT: I remind the chamber that the principle we are canvassing here has nothing to do with limiting the amount of return that an investor can get on their investment. We are talking about a percentage restriction on the amount of increase that a landlord can impose on a tenant at any one time.

Hon Simon O'Brien: If that isn't capping a rent, I don't know what is.

Hon SALLY TALBOT: That increase would be linked to the consumer price index.

Hon Simon O'Brien: Oh, you've even got a formula for it!

Hon SALLY TALBOT: There is nothing radical about that. I read out the sections from the Australian Capital Territory act so that they are on the record. Anybody who wants to check whether the minister's interpretation is in line with what I put on the record can go back and read that section of *Hansard*.

Hon Simon O'Brien: What other jurisdiction caps rents?

Hon SALLY TALBOT: I think we can move on. We have the government on record saying that it will not even countenance looking at this basic principle that would protect people—not low-income people, not high-income people; just everybody in the rental market—from increases that are regarded by the perfectly simple measure of the CPI as excessive.

Hon SIMON O'BRIEN: This talk of being misrepresented is quite extraordinary. I have already explained to the chamber the measures that are in this bill—not ones that are not contemplated in the bill. I have already pointed out the extended provisions for tenants to go to court when they receive excessive rent increases. We have spoken already about the methods of calculating rent increases in fixed agreements. We have spoken about all those things. Members opposite, and probably some of their colleagues elsewhere, would be horrified to know that there is an advocacy here for rent increases to be capped—that is, for private arrangements to be capped by government according to some formula to be struck in this place. That seems to be the difference. I have been quite explicit about what our position is. I do not need anybody else to paraphrase it for us, so let us not try to put words into the government's mouth here.

Hon LYNN MacLAREN: I rise to speak to clause 27, which amends section 30. One amendment states —

> … the amount of the increase, or the method of calculating the amount of the increase, is set out in the agreement;

Certainly we support that. We are supportive of amending section 30. As has been described before, we would go further than this. We do not have an amendment now to take that further, but I just note that it is this government's responsibility to make laws for tenants as well as for landlords. It is not appropriate therefore to establish laws for only one part of the community. I think it is clear that this Residential Tenancies Amendment Bill before us now looks at balancing the rights of landlords and tenants. We are therefore not looking just at one side of the equation when we suggest that we want to set a formula so that tenants are not subjected to outrageous rent increases. That is a fair thing for a government to be doing. The way in which section 30 is being amended does help to restore some of those tenants' rights. All we are saying is that it does not go far enough. We know that the current system of setting rents has not delivered us affordable renting in Western Australia. Something must be done and one way to do it is to set that CPI formula. That does not mean we do not support what is going on now; we support clause 27. However, as I have said, we would go further.

Clause put and passed.

Clauses 28 to 40 put and passed.

Clause 41: Sections 42 to 46 replaced —

Hon SALLY TALBOT: I seek clarification of clause 41. This is a little confusing; it relates to proposed section 43, "Urgent repairs". The minister touched on this in his summing up of the debate on the second reading. Proposed section 43 introduces a new provision, as I understand it, that discriminates between urgent repairs and non-urgent repairs. I refer now to public housing, particularly in remote areas. I would assume that this new provision that effectively puts a time penalty on urgent repairs will incur some additional cost compared with those that exist at present, because I would assume that at present some contractors might wait until they had a volume of work in an area before they went in to complete that work, which will not be open to repairers or managers of maintenance contracts in the future, once new section 43 is put in place. Could I have the minister's comments on that?

Hon SIMON O'BRIEN: To the question of whether this will apply to all landlords and specifically to Homeswest, the answer is yes, it will. I think the member's specific question was around the possibilities of this incurring a greater cost on Homeswest. Hypothetically, a situation could be contrived in which a contractor who is employed to do maintenance may have cause to make an extra trip out to somewhere to do a job, so that is some incidental expense. But across the system I think the answer would clearly be no. The reason is that Homeswest already has a system for urgent or emergency types of repairs, which is actually at an even higher standard than what is being introduced here. I am advised that although we are talking here about essential services being carried out within 24 hours, for example, and other urgent repairs typically within 48 hours or some other time as prescribed by regulation, I understand that Homeswest has a standard service now for emergency repairs—a category that is not contemplated in the bill before us—of three hours and for priority repairs of 48 hours. Clearly, that is well in advance of what is in the bill. Although that is not a direct parallel, one level already exceeds those requirements and the other level is the same. If there is a circumstance in which the amended act exceeds those requirements, the higher standard will apply. However, basically the answer to the member's question is that I think Homeswest already meets or exceeds the level at which we will set the bar, so there should not be a blow-out in costs or anything like that.

Hon SALLY TALBOT: So the minister is telling the chamber that these two categories, let us call them essential and urgent, replace the current emergency and priority categories, with the priority exactly equivalent to the urgent and the new category—the essential service—21 hours longer.

Hon SIMON O'BRIEN: I am struggling to work out what it is that the member wants.

Hon SALLY TALBOT: I want to understand what is in proposed new section 43. It seems to me that we have two categories of repairs. They are in paragraphs (a) and (b) under the definition of "prescribed period". One set of repairs is classified as a repair to an essential service and it has to be done within 24 hours. The other is called urgent repairs and has to be done within 48 hours. I was just trying to summarise what I thought I had heard the minister say, which was that those two categories replace the existing categories of emergency and priority.

Hon Simon O'Brien: I did not say any such thing.

Hon SALLY TALBOT: The minister said that there would be no additional cost. I will let the minister talk to the advisers.

Hon SIMON O'BRIEN: What I explained was that Homeswest's policy for response is already at a higher level than this benchmark in the bill. Therefore, I cannot see —

Hon Sally Talbot: So it is not being replaced by —

Hon SIMON O'BRIEN: No.

Hon SALLY TALBOT: So that is a Homeswest internal policy?

Hon Simon O'Brien: Yes.

Hon SALLY TALBOT: Okay; so the minister's explanation still applies. Does "essential service — 24 hours" apply to the private rental market? Because currently, in the private rental market, there would be no existing provisions in relation to essential service repairs.

Hon Simon O'Brien: Yes, that is correct.

Hon SALLY TALBOT: I am correct; okay. Thank you for that, minister.

Hon Simon O'Brien: My pleasure.

Hon SALLY TALBOT: That was a genuine misunderstanding; I just had to get that clear. I move to page 31, proposed section 43(3)(b). This is a provision in relation to the repair or restoration of an essential service. If the owner or landlord cannot be contacted, the tenant can go ahead and arrange to have the repair done, pay for it, and then apply for reimbursement from the landlord.

Hon Simon O'Brien: Yes.

Hon SALLY TALBOT: I would just like to know where the definition is applied to the fact that it was an essential service. What troubles me is a situation in which a tenant may decide that the breaking down of equipment such as a stove or an air conditioner constitutes for them the loss of an "essential service" and they then try to contact the owner, perhaps through the agent. The owner cannot be contacted, so they go ahead on the assumption that the owner will reimburse them because the equipment is an essential service. I am worried about the point at which a dispute might occur between the tenant and the owner about whether the tenant should have gone ahead and authorised the repair off their own bat. If I am reading this clause correctly, the tenant would

think they were justified in doing so if, in their own minds, they were satisfied that the equipment constituted an essential service.

Hon SIMON O'BRIEN: The wording of this clause is indicative; it is couched in the terms "prescribed period". The services that are to be called "essential services" will be prescribed in regulations. There is currently a regulation in schedule 2 of the Residential Tenancies Regulations 1989, which is the current equivalent. It is there that the member will find the essential services that I think I referred to in my response to a question asked during the second reading debate on this matter. They are actually prescribed; the sorts of things covered might include a burst water service, a broken hot water service, a sewerage blockage, a serious roof leak or a gas leak, and other things like that. None of them are particularly surprising.

Progress reported and leave granted to sit again, pursuant to temporary orders.