RESIDENTIAL TENANCIES AMENDMENT BILL 2011

Second Reading

Resumed from an earlier stage of the sitting.

HON LYNN MacLAREN (South Metropolitan) [5.07 pm]: Before the debate was interrupted for question time, I was noting the reasons why the Greens will oppose the antisocial behaviour clauses in the Residential Tenancies Amendment Bill. I read from the WA community sector letter, which called on all of us to review the choice that has been made to include this provision in this amendment bill, and to oppose it. The WA community sector is concerned that these amendments have the potential to produce unintended consequences that are at odds with most areas of state and federal policy. The relevant peak representative and service bodies—which I have read out to members—that signed the letter have been consulted on many of the amendments in the bill, but not on this amendment. They are concerned about the potential impacts of this amendment on their services and their clients.

They are concerned also that this particular part of the bill may run counter to the spirit of the guiding principles of the Commonwealth–State Housing Agreement 2003. It is timely to remind members of four of the guiding principles in the Commonwealth–State Housing Agreement. This is an agreement that enables the state to tap into commonwealth funding to build public housing. Those guiding principles are: to maintain a core social housing sector to assist people unable to access alternative suitable housing options; to develop and deliver affordable, appropriate, flexible and diverse housing assistance responses that provide people with choice and are tailored to their needs, local conditions and opportunities; to provide assistance in a manner that is non-discriminatory and has regard to consumer rights and responsibilities, including consumer participation; and to commit to improving housing outcomes for Indigenous people in urban, rural and remote areas, through specific initiatives that strengthen the Indigenous housing sector and the responsiveness and appropriateness of the full range of mainstream housing options.

Hon Simon O'Brien: We are doing all of that.

Hon LYNN MacLAREN: Even more, minister. The guiding principles are many, and these are just the few that I am concerned about in this case. I am concerned that the anti-disruptive behaviour policy part of this bill may be contrary to that. I am concerned about the impacts that it will have on the Aboriginal community and people who are in most desperate need of public housing. The changes mean that the Department of Housing will be able to apply to the Magistrates Court if a tenant has engaged in serious or sustained disruptive behaviour or used their home for illegal purposes without first having to issue the tenant with a notice of a breach of a tenancy agreement. That is a huge change. It was introduced to legitimise the three-strikes rule. We know that. It has been all over the papers and all over the radio. It will affect the most vulnerable in our society. There will be additional strain on the community sector, which is already flat out.

Hon Simon O'Brien: Who are the vulnerable—those who are terrorising their neighbours or the neighbours who are being terrorised? Who are the vulnerable ones?

Hon LYNN MacLAREN: That is true. They are both victims in this case. I am not saying that we should not deal with disruptive tenants. It is fair to say that the ALP said the same thing in its contribution to the debate. We should deal with disruptive tenants. Policies are in place to deal with disruptive tenants that I would suggest are not being implemented properly. I suggest that the Department of Housing is not adequately resourced to deal with problem tenants. Unfortunately, we are shifting that burden to the court system, which I do not believe is an appropriate system to deal with problem tenants in this case. The courts are there already. When something gets out of control and we have tried every other thing, the courts are there as a backstop. In this case we are going to go straight to the courts in a system in which people are already vulnerable. They may not be successful in other areas of their lives; they are potentially struggling already. To ask them to front up to the courts to defend their home, their sense of security and their sense of belonging is undermining them. I do not think it is fair to subject them to the policy that we are going to subject them to in the courts. I believe that disruptive tenants should be dealt with firmly. I believe that policies are already in place to deal with that.

The Department of Housing works with community service organisations that are already out there. We are talking about support for maintaining a tenancy, dealing with issues such as drug abuse or violent behaviour that we have heard about already or dealing with families that are out of control and need some assistance to be healthy and sustainable families again. We have those programs in place, but they are pilot programs. They are not fully resourced to the extent that they can deal with the problems that we have before us. That is why they have hit the radio waves. The shock jocks are all over this because it is a problem in Western Australia. We are saying that the people who are on the ground dealing with families and communities are saying that this is not

the way to go. This policy that the minister has lobbed into the Residential Tenancies Amendment Bill, which is otherwise quite robust and well tested and supported by this sector, does not fit. One of these things is not like the others. This thing which is shoved unceremoniously into this bill does not fit there. I predict that it will not solve the problems that we have.

I do not lightly oppose clauses to bills that departments have worked hard to put forward. I feel that we are on solid ground in opposing this clause. That is why I am going to the length of referring to some of the research that has been done so that the government can understand the foundation for our criticism. I will quote from a couple of other reports, but first I note that the Australian Council of Social Service report of 2009–10 found that 48 people needing social services were turned away each day by non-government welfare associations in Western Australia. The Australian Community Sector Survey of 2011 found that Western Australians were denied services on about 17 819 occasions in the 2009–10 year. This represents a 43 per cent increase from the year before in the number of people who were turned away. Unmet need is the most acute in the area of housing and homelessness—we know this; we have talked about this a lot—with 94 per cent of organisations identifying this as an area of high or medium need. At the round table discussion that I held with stakeholders everyone was in agreement that these clauses should be deleted. The housing advocates believe that other parts of the legislation and the departmental policy already deal with difficult tenants. If the housing managers want troublesome tenants out, they already have the tools to do that, but perhaps they are not supported in implementing or using those tools.

The policy officer from the Community Housing Coalition of WA observed, "We didn't ask for these powers and don't want them". That relates to the fact that we are extending the rules for public housing tenants into the social housing sector—the community housing sector—which houses 20 per cent of those tenants who are most in need. We will be holding up all the tenants in all the organisations. I know that it is by consent. I know those organisations have to sign up to this. They will have to uphold these very stringent laws that we are going to put in place. There do not seem to be penalties for not evicting problem tenants, so I guess we can thank someone for small favours. CHCWA is worried that the legislation will create the expectation within the community that community housing operators will be able to evict tenants. We do not want to put more people on the streets.

I refer to the Equal Opportunity Commission's recent report entitled "Finding a Place: Final Report for the Section 80 Implementation and Monitoring Committee of the Inquiry into the Existence of Discriminatory Practices in Relation to the Provision of Public Housing to Aboriginal People in Western Australia". The small chapter on the disruptive behaviour management strategy states —

> Where it is proposed to provide a legally enforceable means to terminate a tenancy as a result of anti-social behaviour the EOC believes this needs to be balanced against:
>
> 1. The rights of children and the Department's obligations as a result of the ratification of the *Convention on the Rights of the Child* by the Federal Government in 1990.

I acknowledge that the ALP has an amendment on the notice paper to try to address this. I flag that we will likely support that. Also, our own Standing Committee on Uniform Legislation and Statutes Review has looked into this. We have a letter from the Commissioner for Children and Young People also pointing us in this direction. We should be wise in the decisions that we make about what to include about the rights of the child in these evictions that we are about to legislate for. The report continues —

> The EOC believes it is unconscionable for any government agency to render children homeless as a result of anti-social behaviour of their parents or visitors to their household. Clearly the needs of children need to be addressed before any eviction occurs.
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> 2. The Department's special position as the houser of last resort.
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> The expenditure of public housing for the least advantaged in the community is premised in part on the unacceptability of families living in the streets, in cars, in the bush in a developed western democracy such as Australia.
>
> The Department needs to be cognizant of this to ensure that some alternative is always sought before a family or individual is evicted. This may require clearer liaison with nongovernment bodies which provide housing and other assistance to those in need in part as a result of public funding.

The system that is in place is that some alternative is always sought before a family or individual is evicted, but in this case we are sending them straight to the courts without even giving them a notice of eviction. I think we need to look carefully at that. The third point states —

> The difficulty faced by women in situations of domestic violence.
>
> Where partners are verbally and often physically abusive it may result in complaints of anti-social behaviour. The involvement of the police and possible transfer to alternate housing should be considered here.

That is another case in point. The victims of domestic violence are often women. I hope to see most members on the march tomorrow morning to acknowledge the victims of domestic violence in this state. It is at 10.30 am in Stirling Gardens. I hope that all members will be there, because escalating violence against women is one of the most abhorrent situations. In a time of apparent peace, tranquillity and wealth in Western Australia, we should not be faced with escalating violence against women. This is a case in point. A safe place to call home is fundamental. Women need that, especially if they are going to look after children. Men need that as well if they are going to look after children. These eviction clauses may in fact be disproportionately adverse for these people. Finally, the fourth point from the Equal Opportunity Commission states —

> Special consideration where anti-social behaviour may be attributable to intellectual disability or mental illness.
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> Families having one or more members with disabilities particularly mental disabilities which result in challenging behaviour are often subject to complaints of anti-social behaviour. The engagement with other specialist agencies is recommended here before any eviction occurs.

The Greens have a couple of amendments on the supplementary notice paper to try to address these matters. The amendments will force the Magistrates Court to take into consideration whether someone who is about to be evicted has a mental illness. I know that there is an amendment that provides that these people should be referred to organisations. I would definitely support that referral. But I also want the mental illness to be taken into consideration before the magistrate rules on an eviction. The briefing I had was very comprehensive in trying to allay our fears about this. It was indicated that the Magistrates Court may well look at matters such as these and that it is appropriate for courts, which are wise and considerate, to take these matters into consideration. But there would be no problem with being explicit in the bill that this should be taken into consideration. It would be a clear message from the Parliament of Western Australia, which is representative of its people. The courts would pay attention to that. We could allow the courts some discretion, but it is our mandate to set in stone certain things that the courts should take into consideration when they rule. There is nothing to be lost by being explicit in that regard.

The Equal Opportunity Commission's recommendations in "Finding a Place" are also borne out by the experience of the Tenants Advice Service of WA. I will quote briefly from the Tenants Advice Service of WA. The WA Tenancy Network, which is a very under-resourced but very effective network throughout Western Australia, produced a paper on destructive behaviour in social housing tenancies. It compiled case studies in August this year. Amongst those case studies is one from the Tenants Advice Service. In relation to the disruptive behaviour management strategy, it states —

> … it also has unintended consequences for vulnerable tenants. As illustrated by the following case studies, tenants who face domestic violence, suffer from mental health issues or who have children are the majority of tenants who are affected by the DBMS.

That is short for the disruptive behaviour management strategy —

> Tenants can be issued with a 'strike' under the DBMS for behaviour which may merely constitute a nuisance, a minor event, or events that are beyond their direct control. Some of the 'strikes' issued are also due to unsubstantiated complaints by neighbours. Indigenous tenancies are also unequally represented in the number of evictions by the Department Of Housing.
>
> Interestingly, most of the tenants who are evicted under the DBMS either end up homeless or are transferred to another social housing property. This supports the reality that social housing is a housing option of the last resort for these social housing tenants. Eviction is not a viable option for both social housing providers and social housing tenants. It is costly and time consuming for social housing providers, tenants and community support workers if there is an increase in terminations of the social housing tenancy agreements. The WA Tenancy Network is of the opinion that more intervention programs to assist tenants in sustaining their tenancies should be implemented. Removing a person or a family from a tenancy does not assist in any way with addressing the underlying causes of disruptive behavior and will instead often exacerbate such behavior.

Likewise, there is a much shorter quote from the National Shelter report by the National Association of Tenant Organisations called "A Better Lease on Life: Improving Australian Tenancy Law". The report came out in April 2010. It states —

> Legislation, policies or practices that place additional, unfair burdens on social housing tenants is opposed and it is recommended that residential tenancy law should not be used to enforce behaviour-management policies.
>
> Social housing providers should not give notices to leave without grounds, in particular, to deal with allegations of breach of tenancy agreement or disputes about behaviour. Social housing providers should always provide the tenant with grounds for termination, the particulars of the case against them and give the tenant an opportunity to respond to the allegations.

I am concerned that decisions regarding whether to evict problem tenants will be left in the hands of the courts—I have said this before—which may not understand these complex needs in the way that housing providers and community service organisations do, and even in the way that a skilled workforce within the Department of Housing does. I am also concerned that forcing tenants to front up to the courts without the safety net to catch the vulnerable ones who are struggling to maintain the tenancy, and without sufficient supported accommodation services, will force more vulnerable people into homelessness. Therefore, in committee, I will oppose clause 95 of the bill.

In its submission to the review of the Residential Tenancies Act, Shelter WA identified some additional aspects of the Residential Tenancies Amendment Bill that are problematic. There is a lack of consumer protections for boarders and lodgers, and I have mentioned that before. The RTA is silent. I am sure that we are going to deal with boarders and lodgers in another place, but I am just flagging it again. There is a lack of consumer protections over excessive rent increases and the practice by real estate agents of levying option fees on rental applicants to validate their expression of interest for entering into a residential tenancy agreement over a rental property. That is a quote from Shelter WA's submission. As currently drafted, the Residential Tenancies Amendment Bill allows lessors to charge tenants an option fee to enter into a residential tenancy agreement. The fee is to be refunded or applied towards the rent under the agreement upon the option being exercised. If the option is not used, the amount is refunded to the tenant in cash, by electronic means or in any other prescribed way. We know how option fees work, but did members know that in the Australian Capital Territory and the Northern Territory they are not permitted? That is what I would like to happen in Western Australia, and that is what we tried to do way back when Hon Michelle Roberts was the minister. We tried to get her to abolish option fees.

Hon Simon O'Brien: What was her response?

Hon LYNN MacLAREN: She was sympathetic to our views but failed to act.

The amendments standing in my name on the supplementary notice paper are to remove the exemption. The clause actually states that people cannot ask for any other additional fee. It then states that they can do a little option-fee thing. My amendment is to delete the exemption in the clause that states that people cannot ask for any other fee. This makes sense to us because tenants have told us time and again that after they have applied to lease a rental property, it takes a long time to get back their option fee. They may not have buckets of money available to apply for a few tenancies. The market is tight and they have to get out there because a place could go within an hour. These are not times when they can sit back and wait. This market is a hot, tight market. We must give people an opportunity to compete in the market. If we do not give people the ability to get back their option fee quickly, we must abolish option fees because it takes too long for people to get back those option fees and they are unable to compete in the rental market. I have therefore put a couple of amendments on the supplementary notice paper. In the best-case scenario we would get rid of option fees. The fallback position is setting a limit of seven days for people to make a decision on whether they will give the option to rent to the applicant or to return the fee. The department has proposed something similar such as returning the fee within a reasonable time frame or something vague like that. I am trying to pin it down. I know that in practice it is returned quicker but, again, why do we not stipulate it and say that the fee must be returned and in their hot little hand within seven days? If it is returned in two or three days or within 24 hours, that is great. In fact, if the minister thinks that is a better option, I suggest he try to amend my amendment to make it a bit quicker so that people can be competitive in the tight rental market.

I remind the minister that, according to the department, the current market practice is to charge one week's rent as an option fee. It is intended to cover the cost of finding another tenant if the prospective tenant dips out or finds another rental. I can understand that. According to the Real Estate Institute of Western Australia, the current median rent in Perth is $395 a week. Option fees, therefore, clearly represent a much greater burden on prospective tenants than the administrative costs that a lessor is likely to incur as a result of a tenant turning

down a property. The minister may wish to deal with that in detail and tell us how much the administrative cost is when an option is not exercised. However, really, we should deal with the fundamental issue, which is that the return of option fees is slowing down tenants' ability to find a place in which to live.

The Standing Committee on Uniform Legislation and Statutes Review argued in its report, based on evidence, that the requirement for an option amount will have an impact on lower socioeconomic prospective tenants and that it is not supported. The committee therefore itself did not support it. The committee did not put forward amendments, but I have put forward some amendments and I hope that I can get some support for those. I have therefore explained in detail that I have a total of 10 amendments on the supplementary notice paper, which deal with option fees, time limits for returning option fees and decisions on whether or not an option is exercised. I have mentioned the amendments that I have on the supplementary notice paper on the antisocial behaviour policy. Finally, I have an amendment to deal with minors on the residential tenancy database because I believe that minors are at particular risk of homelessness. We have batted around the notion of whether when they turn 18 years of age their record will be expunged—such as, "Now you're an adult and you have to behave." What we could do, if there is a minor on that database, is make their record clean in a year rather than in three years. That would get away from the problem that was identified. If we use turning 18 years old the gate, we would have landlords potentially looking at 18-year-old tenants a bit differently from other tenants. But if instead we have a one-year clause so that a minor could be on the database for only one year—irrespective of how close they are to the age of 18—we would not have that problem of discriminating against people who are 18 or turning 18. That might help to reduce the incidence of homelessness amongst minors and perhaps keep them in a tenancy. If they have somehow been listed on the database, it would also give them a second chance, recognising that when we are young we sometimes make mistakes but as we get older we get a bit more circumspect about the consequences of our mistakes. I am suggesting that we have a one-year period instead of the three-year period that is already in the bill. I support the three-year period for adults, certainly.

As I said, most of the amendments before us are a very good way forward; they dramatically improve tenants' rights in Western Australia and we support them wholeheartedly. But in these few instances where I believe that we have been very careful to find different and more positive ways forward, I would ask members on both sides of the chamber to give me their support for changing the bill before us to make it an even better and more effective bill for maintaining tenancies in Western Australia. With those final comments, I will say that the Greens support this amendment.

HON LJILJANNA RAVLICH (East Metropolitan) [5.34 pm]: I too want to make some comments in support of this legislation and to also put on the public record some of the concerns that I have with it. I just want to say that owning one's own home is becoming increasingly difficult—there is no doubt about that. The Australian dream of young people being able to have a quarter-acre block of land and building a house to their requirements is something that is becoming increasingly difficult to attain. Consequently there is no doubt that this is reflected in the pressure it puts on rentals and the pressure it puts on young people to move into rental properties and perhaps stay in those rental properties for extended periods because it takes considerably longer to get the money together to move towards that dream. When we add them in together with people who for one reason or another have to rent—be it someone with a disability, a mental illness or long-term unemployed and so on and so forth—there is no doubt that increasingly many people rely on a rental market. There are also people who make the economic decision, having weighed up the pros and cons and not wanting the responsibility of owning a house, and choose to be renters without those responsibilities.

We know that there are almost 20 000 dwellings in WA that are rental properties. Sometimes the relationships between the respective landlords and tenants are not as they should be. There is no doubt that there are all sorts of issues when it comes to the matter of renting. I do not intend spending my time going in to the breadth of those issues. Suffice to say that it is very important that they be managed as effectively as they can because they can lead to considerable disharmony. In extreme cases they can end up in the court system and be a major financial burden on either of the parties and so on and so forth. When we see legislation brought into this place that aims to improve the relationship and the commercial arrangements between a landlord and a tenant, we have to say that it is legislation that we can support.

This morning I was listening to one of the radio stations as I was driving into work. A housing agent was giving an interview on landlords and how they sometimes do not meet their obligations on the standard of accommodation that they put out there on the rental market. One of the points she was making was that because of the current pressure on the rental market, some landlords are getting away with renting out substandard accommodation, and people are still being forced into those rental properties purely and simply because of the lack of choice and alternatives. She was citing the case of young people having to pay $350 for a two-bedroom unit that was not particularly well located and often in pretty bad disrepair, yet that was what some landlords could get away with charging given the current pressures. I think it is important that there be protections for

landlords and tenants; in particular, I think tenants need the protections because just as I know that not every tenant is a good tenant, I know that not every landlord is a good landlord. We should aspire to ensure that we get the best out of both.

This legislation concerns me from a public housing point of view. I recognise its aim around the competitive commercial market, and I do not have a problem with that in essence. But I am interested in it from the point of view of public housing, what is happening in public housing, and the relationship between the housing authority in Western Australia and the people who rent its properties. We know that there is incredible pressure on public housing, and I will put some figures on the record to demonstrate just how great that pressure is. The 2010–11 housing authority annual report shows that in 2008–09 there were 21 728 people on the public housing rental waiting list; there are now 23 411 people on the rental waiting list. They are huge numbers. I do not know where these people live while they are waiting.

Hon Adele Farina: In caravans.

Hon LJILJANNA RAVLICH: Sorry?

Hon Adele Farina: Caravans, cars, family, on the street.

Hon LJILJANNA RAVLICH: Caravan parks, with family—wherever they can. Every so often in the newspaper we see stories of desperation about families who cannot find a caravan park rental, cannot afford a caravan park rental, do not have family or friends they can stay with and so on and so forth, and they end up living out of cars. I have to say that it is hard to believe that we have these stories in this country, particularly in a state as wealthy as Western Australia. Not long ago there was a young mother who parked, with her child, out the front of Parliament House, and she just had nowhere to go. She was so desperate that she did not know what she could do, and so she just waited and waited and waited at the front of Parliament House; I am not sure how that ended. I have to say that it is a sad reflection on this state that these situations occur, but clearly they do.

I want to quickly touch on the waiting times for accommodation, which are just simply incomprehensible. In 2010–11 the target waiting time for housing was 103 weeks, but the actual was 113 weeks. That is more than two years. Many, many people—24 000 of them—are living in possibly very unsuitable accommodation and waiting for more than two years to be housed by the housing authority in this state.

Although the Residential Tenancies Amendment Bill 2011 looks at the regulatory environment around landlords and tenants and tries to make it fair and efficient, for some consumers of the services of the housing authority it is not particularly efficient at all. I am talking about the amendments in this legislation that are aimed at addressing serious and sustained antisocial behaviour in social housing. I do not support antisocial behaviour, and if I lived in social housing, I would be very peeved off if I had to put up with antisocial behaviour, so I can understand people reacting to it. I would not accept it either. Having said that, there exists a group within our community for whom antisocial behaviour is not a choice; it is not something that they choose to do. I fear for this group of people because they are indeed victims. I really fear that the provisions in this legislation around serious and sustained antisocial behaviour in social housing are going to impact on this group of people more so than any other. I am referring to people who have serious mental illnesses and who, through no fault of their own but because they are seriously mentally ill in some cases, risk being evicted from their homes.

Members may remember that I brought to this house's attention the case of a young man who was discharged from hospital to his Homeswest house and who was presented with an eviction notice after two weeks. This was a gentleman who had a psychotic experience and, as part of that, exhibited antisocial behaviour, and he was subsequently evicted from his home. That has been replicated in many cases throughout the state. I asked questions in the estimates committee hearings about what the housing authority is doing to ensure that there is some consideration of the living arrangements of Homeswest tenants with mental illness. I was advised that an interdepartmental working group was looking at this issue, and that there were some complexities surrounding security of information about individual tenants and so on and so forth, but that progress was being made. One of the things I would like the minister—if he is listening to me, and I am sure he is —

Hon Simon O'Brien: That is why I am getting paid. I have to.

Hon LJILJANNA RAVLICH: One of the things I would like the minister to respond to is whether he can provide us with the details of the outcomes of the interdepartmental working group that is looking at the issue of Homeswest tenants who have a mental illness and how —

Hon Simon O'Brien: What does that have to do with this bill?

Hon LJILJANNA RAVLICH: They are tenants of the housing authority, are they not? The disruptive behaviour provisions apply to them. Many of these people exhibit disruptive behaviours because of their illness, not because they intend being unruly. I understand that the Department of Housing has provided input into the

Residential Tenancies Amendment Bill 2011, in line with the government's policy, and that the authority has worked with the Department of Commerce and Parliamentary Counsel to introduce provisions that might provide some safeguards for people with a mental illness. I am particularly concerned that the provisions that could make it easier to terminate a residency because of disruptive behaviour may capture people with a mental illness, and I want to safeguard them from that. If the minister could provide in his response to me some feedback on the outcome of the work of that committee, that would be very helpful.

Homeswest matters are some of the most recurring issues in my electorate office. People inquire about leasing a house from the housing authority and about the work needed to be undertaken on their property, and they complain that the property is substandard and that it takes way too long for remedial work to be done on the property. Any member of Parliament who is asked which issues take up a lot of the member's time and effort as a local member will no doubt say that the provision of housing, trying to get on the Homeswest waiting list and trying to get remedial work done to a property tend to be right up there. I sometimes get the sense that people in the Department of Housing hold the view that because someone is a social tenant, the standard of service delivery should not be quite as good. I can see the minister shaking his head, but I have had constituents who have waited for weeks and weeks for maintenance to be done.

Hon Adele Farina: Months and months.

Hon LJILJANNA RAVLICH: Yes, months and months. There is no reduction at all in their rent in the meantime. They still pay the same amount of rent that they have always paid even though the stove is not working, the plumbing is shot or whatever. I do not think that is good enough. It would be interesting if the minister can provide us —

Hon Simon O'Brien: Have you just thought of something else off the top of your head? You were in the paper saying that the police commissioner does not do his homework before he comes to your committee. Why don't you do your homework before you come in here and take up the time of the house in debate?

Hon LJILJANNA RAVLICH: Can I just point out that the Commissioner of Police is totally irrelevant to the Residential Tenancies Amendment Bill 2011.

Hon Simon O'Brien: You were offered a briefing. Did you turn up to it?

The DEPUTY PRESIDENT: Order!

Hon LJILJANNA RAVLICH: I was offered a briefing on this.

Hon Simon O'Brien: Why didn't you ask these questions then?

The DEPUTY PRESIDENT: Order! Hon Ljiljanna Ravlich has the call.

Hon LJILJANNA RAVLICH: It is fair to ask about the maintenance backlog of Homeswest accommodation.

Hon Simon O'Brien: Your lead speaker has just talked about how long this bill has been sitting on the notice paper and about all the good briefings she has had. There has been a committee inquiry and now you have decided that you are going to dream up some other questions.

The DEPUTY PRESIDENT: Order, members! Hon Ljiljanna Ravlich will continue her second reading remarks.

Hon LJILJANNA RAVLICH: I just want to know that social housing tenants are getting value for money. It is a reasonable enough question. I am not going to be difficult about this. I am not saying that I will in any way slow down this bill, because I recognise that it has some very good aspects to it. However, I am saying that it would be really helpful if the minister could provide information about the backlog of maintenance works in the Department of Housing. I do not think that is a particularly big ask and I do not think that the minister should be afraid of the question.

Hon Simon O'Brien: I'm not afraid of your question; I am just offended by your stupid attitude.

Hon LJILJANNA RAVLICH: I am absolutely gobsmacked that the minister has responded in the way he has.

This bill provides some good provisions in the broad range of amendments that arose from the comprehensive statutory review of the Residential Tenancies Act. It also deals with the issue of addressing serious and sustained antisocial behaviour in social housing, which is of some considerable concern, particularly as it applies to people with a mental illness and the unintended consequences it will have for those individuals. In the case that I cited in this place some months ago, I was told that the matter had been attended to because the person was given support to get into private rental accommodation. The only problem with that is that if the person has an episode and is kicked out of the private rental accommodation, there will be no other place for that person to go. The chances are that that person will no longer have a safety net and will eventually end up being homeless. That is

not what we want for people with a mental illness. I am sure that the Minister for Mental Health would not want that for people with a mental illness.

While I am making this point, I remind the house that the minister never came back with any information about what this interagency committee had been working on and what decisions had been made about public housing and people with a mental illness.

Hon Simon O'Brien: You only asked me a couple of minutes ago.

Hon LJILJANNA RAVLICH: I am referring to the Minister for Mental Health. I had asked the Minister for Mental Health about this and she promised me that she would look into it and do something about it.

Hon Helen Morton: I have looked at it.

Hon LJILJANNA RAVLICH: The minister never reported to the house on it.

Hon Helen Morton: I don't need to report to the house on it. What do I need to report to the house on it for if I am doing it?

Hon LJILJANNA RAVLICH: If the minister does not report to the house, she risks me making these points all over again.

Hon Helen Morton: Do you need me to report on every single thing I am doing, do you?

Hon LJILJANNA RAVLICH: I did not ask the minister to report on every single thing she is doing; I asked her to report on what she gave a commitment to report on.

Hon Helen Morton: I didn't give a commitment to report on it.

The DEPUTY PRESIDENT: Order members! One person has the call. It is lot easier for Hansard to hear that one person speak if other members do not.

Hon LJILJANNA RAVLICH: I was just making a straightforward point that it would have been nice of the minister to inform the house of the progress of what the interagency group was doing about the protection of people in public housing who have a mental health issue. Having said that, overall, I think that there are some positive features of this bill. Although the provision to regulate the use of residential tenancy databases sounds as though it could have some advantages, we want to make sure that there are no disadvantages with the establishment of such databases and that checks and balances are put place to make sure that those databases cannot be used for a purpose other than the purpose for which they were intended to be used.

Sitting suspended from 6.00 to 7.30 pm

HON MAX TRENORDEN (Agricultural) [7.30 pm]: I wish to make a few comments on the Residential Tenancies Amendment Bill 2011. A fair bit has been said in the press, and, like others, I received a piece of correspondence from a group of individuals who have had a lot to do over the years and who have an interest in the welfare of those people who struggle. I heavily respect those people, but I want to make the point that it is not all a one-way street.

When this bill was first announced, I went public in my community of Northam, saying how strongly I supported the provisions for the eviction of people who misbehave in public housing. In the town of Northam and its surrounds, the ratio of tenants in public housing tends to be almost 50–50 Aboriginal and white; in fact, it is just marginally more Aboriginal than white, but not much, and the range of behaviour is not that significantly different. However, when I made those comments, I had visits to my electorate office from at least six different Aboriginal groups who strongly support the policy, thanking me for my stance. Part of the reason they strongly support the policy is those people who go out of their way to obey the rules of their tenancy are penalised by those who do not—whether white or Aboriginal—in a country community. It is a sad fact, whether members want to consider it racism, intolerance or whatever term they want to put to it, that people are tarnished with a similar brush. In my community, there are over 200 Aboriginal families, the vast majority of which are decent, law-abiding people—those who are in public housing, because not all of them are—who run their tenancies well.

In looking at this bill, the matters I considered are not whether they are paying their rent on time or even whether they have an occasional party on a Friday or Saturday night, or those sorts of issues. The issues that I take strong offence to is going into the next door neighbour's house and, for example, strangling all the chooks, or, as in a recent case, going into the next door neighbour's house and throwing all the fish out of the pond onto the path and letting them die. There are issues such as stoning the next-door neighbour, which is not that uncommon. I have to say that it is not that uncommon! There have been issues such as defecating on the church altar. Those sorts of issues are totally unacceptable. It does not matter whether they are Aboriginal or white; it makes no

difference. The point these people made to me is that unless there is a penalty, why should these people change their way?

Very, very recently a family moved into Northam—I am not saying this because of the events of Friday night in Northam—which has completely brought upheaval because it is an aggressive family that has been bouncing around Western Australia causing disruption wherever it goes. The reality is that the family applied for a state house in Northam and did not get one, but one of the private lessors of housing let them a house. Since that time there have been assaults, burglaries and the like—a lot of serious social disruption—which goes to the second or third point of the bill about the databases. I feel aggrieved for people. The whole problem of the internet is that people can say whatever they like and do not have to, in particular, back it up. Therefore, I support the issues in this bill and I say that some balance is needed whereby people are named in a database. On the other hand, there is no reason why a family that goes from community to community causing nothing but mayhem should not be on a database and the community know all about it. Some time in the next few days—next week or maybe in the new year—we will be discussing the issue about sex offenders and databases. There are numerous databases out there right now that people could be named on. People may be guilty, but the chances are that they are, in all likelihood, innocent.

The other issue that should not be scoffed at—an opposition member jumped down my throat on one of the last sitting days when I made this point—is that a small proportion of people are seeking a state house because they are smart. From looking at my own retirement, the situation in Europe and America and the state of the housing industry in Australia, the reality is that many indicators are showing that Australian property is about 50 per cent overvalued. If that is the case—even if it is only 10 per cent or 20 per cent overvalued—renting is a particularly good option. Given the standard of quite a few of the new houses in the government system, renting one of those is not a bad idea. Those people who doubt it can have a look, but some people have worked that out. If a person really wants to make sure their salary or their fixed-income pension goes as far as it can, the safest place to be is in a quality state house. I think that is a good thing; it is the whole point of having state houses.

The social issues in the area I live in are serious—the matters of people who refuse to behave. There seems to have been some implication in speeches that I have heard that some people just cannot behave, but I just do not understand that. A penalty is needed for those people who make life miserable for others. One of those penalties should be that those who put their tenancy in a state-controlled house at risk do so at their own peril. That will, without question, improve the living standards for the other people in those houses who do live by the rules of the system.

Hon Ljiljanna Ravlich talked about mental illness. I do not believe that mental illness is an issue here at all, but I can talk about that only as a country member. Even in a town as large as Northam—which is not that large—we know who has problems. We know, and basically the whole community knows, who has difficulties, even if only with things such as drugs and alcohol. So there is a tolerance in the community to those events. There is no question that we have our fair share of people who have been unfortunate enough to be struck by mental illness in our community and in the wider Wheatbelt, and they are quite rightly tolerated. People quite rightly attempt to look after those people. I do not believe there is an issue with people with mental health problems or other disabilities, even if some of those disabilities are social, having difficulties living within the community. The section about social behaviour relates to those people who refuse to conform. It is very important for everyone out there who is trying to do the right thing. When I refer to people not doing the right thing, I do not mean just those who are not paying the rent or who are having too many parties—they are not the measures. The measure is that if someone is not prepared to be even marginally decent to the people surrounding them, they do not deserve a state house.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [7.41 pm]: I want to make a few comments about the Residential Tenancies Amendment Bill 2011. Our lead speaker has indicated that we will be supporting the bill. All members in their electorate offices will have experienced from both sides the issue that is dealt with in part 3 of this bill—that is, mechanisms to deal with antisocial behaviour in social housing. Certainly in my electorate I have people who are terribly distressed about the circumstances in which they find themselves when their neighbours constantly disrupt the street and the neighbourhood and make their life a merry hell. I have also been contacted by people who are concerned that the three-strikes policy will have a consequence for those tenants who call the police to deal with a situation at their house and find themselves in a position in which they are unable to deal with the issue that Hon Max Trenorden said this bill is designed to address—that is, people who refuse to conform. I will talk about that in a minute.

The provisions that I want to talk about are in part 3; specifically, clause 95, which proposes to insert proposed new section 75A into the legislation. It provides the Department of Housing with alternative mechanisms for applying to the Magistrates Court to terminate a tenancy in which that tenant is engaged in serious and ongoing

disruptive behaviour or where the tenant is using the premises for illegal purposes. I have absolutely no issue with the second part. No-one in the house is going to say that we need to support people who are using a house for illegal purposes; however, the application and measures that are put in place to assist people who find themselves in a situation where serious and ongoing disruptive behaviour is happening in their house, and whether they as the tenant are able to stop it, is another question.

When the bill was first introduced in the other place, I, perhaps like other members, was contacted by women who work in women's refuges. They were concerned that when this bill is read in conjunction with the three-strikes policy—that is, the disruptive behaviour management strategy—there is the potential, which has occurred subsequent to the disruptive behaviour management strategy being introduced, for a range of prospects. The example that these women gave was when domestic and family violence occurs and the victims call the police. If the Department of Housing considers that calling of the police constitutes a strike, that puts the person who is the victim of violence in an invidious position. If that person who is the victim of the violence has children, for example, they are having to make a choice between calling the police to physically protect themselves and their children from the violence and taking the risk that that might be counted as a strike against them, which could end up making them homeless. On the other hand, they could not call the police and try to survive through the violence that might be occurring at any time. I did not make that up. Women's refuges have raised that issue, and I know that one of my colleagues in the other place has two families —

Hon Simon O'Brien: It is a fair point, if you don't mind me interjecting. I will seek to address it in my remarks in response.

Hon SUE ELLERY: It is an important issue, because it could be that it is the neighbours who are calling the police, quite legitimately, as they are concerned about what they are hearing happening next door. If they hear sounds of violence, sounds of people being hurt, it is quite legitimate that they would want to call the police. However, if the call to police is to be counted as a strike, we are really putting people in an invidious position.

I have a couple of questions that I hope the minister will be able to provide answers to. How many tenants have been subject to one strike since May 2011? The minister might correct me if I am wrong, but I think that is when the renewed vigour in terms of the disruptive behaviour management strategy was put in place.

Hon Simon O'Brien: So how many have been subject to one strike.

Hon SUE ELLERY: Yes. For each of these questions, since May 2011—the minister may tell me if I have the month wrong, but I think it was May—how many tenants have been subject to one strike? How many of those with one strike have had a second strike since then? How many of those with two strikes have had a third? And how many of those tenants had children? I think it is important that measures are put in place to take action to address the circumstances in which it is not about people being victims but is about people being out of control. I think that is perfectly reasonable. I am not satisfied that enough supports are in place between the Department for Child Protection and the Department of Housing to ensure that interventions take place at the point of the first strike and subsequently. The reason I am not convinced is that during the estimates hearings in this place I asked both the Department of Housing and the Department for Child Protection about the mechanisms that were in place to provide support and to make sure the Department for Child Protection was engaged in supporting families. I asked that question because there is no point evicting families with children because they will end up in another government agency—that is, the Department for Child Protection. If we are just passing one difficult family from one government agency to another government agency, we are not doing anything to fix the problem.

I asked the Director General of the Department of Housing and the Director General of the Department for Child Protection what was in place. The Department for Child Protection advised that a new memorandum had been put in place between the two agencies and that they were putting in place a whole lot of new procedures and policies—I am paraphrasing him, but this is all on the *Hansard* of the estimates hearings—and the Department for Child Protection was confident that there would be supports put in place. I asked the same question of the respective officers of the Department of Housing. They said, "What new memorandum? We have had an old memorandum. It is nothing new. We have always worked with the Department for Child Protection. We don't know what you are talking about." I am paraphrasing both of them, but that was the gist of the information that was provided to the house. That is not very satisfactory. If it is business as usual, then nothing will be in place to intervene at the point that a family is about to be served with a strike notice, if I can call it that. Nothing will change, and we will end up doing exactly what I described before—kicking a family out of the Department of Housing and putting them on the streets, where we expect the Department for Child Protection to find them emergency housing that is obviously not within the Department of Housing stock. It has to be in a motel or a caravan park or a refuge, and it will only be for very short period of time. That is not a satisfactory policy outcome from the government's point of view. It is still going to be paying the price of accommodating that

family, but the family will be at risk of all of the things that can go wrong in the period between having to move out of a house and scrambling around to try to find some emergency alternative accommodation.

I would be interested in what the Department of Housing has to say now, some three or four months after we did the estimates committee hearings. I would be interested to hear what arrangements have been put in place—practical, on-the-ground arrangements; not memorandums of agreement signed between directors general—between Child Protection and the Department of Housing at district level to deal with these issues, because they are really serious. It is often the case, particularly in Indigenous families, but not always, that if one family is evicted from a Department of Housing property, rather than pursue assistance through the Department for Child Protection, they will rely on the cultural connections and lob on the doorstep of another family member, who is most likely in a Department of Housing social housing house. So, in that case, all that does is create a problem for the new family, which has met its cultural obligations by taking in its kin, but all the issues that went with the drugs, alcohol, violence or whatever it was that affected that family in its previous house just get shifted into another house where, instead of there being a family of only five, there is now a family of 12, with all the things that flow from that. If we do not get those interventions right at the local level before the strike policy is issued, we are asking for serious trouble. We are failing those children because we are not providing them with the kind of support they need. We are not fixing the problem at all; we are just shifting it. I would appreciate the minister being able to give us some examples of how at a local level, district to district, Child Protection and the Department of Housing might be working together to fix that.

I am sorry; my asthma is playing up so I am not going to speak for long tonight. However, other members have referred to the committee report and, in particular, the issues raised about social housing relating to the matters raised by the Commissioner for Equal Opportunity. In particular, I refer to the points that were made about elderly Aboriginal women, particularly grandmothers, taking responsibility for raising children, with a generation being skipped as the parents are affected by drugs and alcohol or whatever the issue is. This places those grandmothers under an awful lot of pressure. They feel the obligation and indeed the state needs them to take in their grandchildren. However, if we are throwing more of their grandchildren out onto the street, we are placing more of a load onto the grandmothers. So I will be interested to hear about how that is going to apply.

The connection between the disruptive behaviour management strategy and this bill, of course, is that this bill now enables the department to apply for an eviction notice without having to give notice to the tenant that a breach has occurred. If we add the application of the three-strikes policy to the new provision, which says that the department does not need to tell the tenant when it is taking court action in respect of a breach, I think the government is asking for more trouble. I am entirely sympathetic to a policy that is directed at ensuring that all Western Australians can live in a community without disruption. I am completely supportive of that, and I have had enough constituents in my office—bearing in mind that my electorate covers the southern metropolitan suburbs of Western Australia, so I have some hot spots within that area—to be entirely sympathetic to a policy approach that says we need to do something to address that. I am sympathetic to it and I support it. This is what those constituents who come into my office and ask for my assistance when they are just about at their wit's end need. However, if we do not have in place the proper practices at a local level, all we are doing with this policy is shifting the immediate responsibility for finding safe accommodation for those families from one government agency to another, and I do not think that achieves anything for anyone. I might leave my comments at that point before I run out of the capacity to speak.

HON ALISON XAMON (East Metropolitan) [7.54 pm]: I rise to make a few comments on the Residential Tenancies Amendment Bill 2011. My colleague Hon Lynn MacLaren has outlined quite comprehensively the Greens' position on this bill. In essence, we support many of the provisions that are incorporated within this bill. It has been the subject of quite a lot of discussion for many years with a variety of stakeholders in order to make some important amendments. However, I share the concerns that have been raised by many of the people who have spoken about what appears to be a fairly last-minute inclusion of proposed section 75A, "Termination of social housing tenancy agreement due to objectionable behaviour". I would like to say a bit more about that.

As I said, I am aware that there are some important, and in fact welcome, provisions within the bill that ensure that tenants will have a bit more certainty in how tenancy agreements proceed. Particularly in the sort of housing market that we are witnessing at the moment, there is the potential for exploitation of some tenants to occur without appropriate protection because the housing market is very tight. As such, I support moves to enable more certainty for tenants, but also to enable landlords to have clearer guidelines on what is considered to be best practice. I want to make it clear also that in no way am I in the category of people who think that all landlords are bad. I understand that many people become landlords because it is for them a form of superannuation, or for a range of other reasons. Therefore, I think it is also important that we do not take simplistic views about the nature of landlords, and I am certainly not interested in characterising landlords as all being grubby or unscrupulous, because I think that is absolutely untrue. Nevertheless, it is important that we have very clear

legislation governing the way in which tenancy agreements are entered into, because we are talking about homes and we are talking about a need for shelter, and it is a fundamental human right to have somewhere to live. Therefore, it is important that we recognise the significance of that and afford appropriate protections.

It is on that note that I raise my concerns about the inclusion of the termination of social housing tenancy agreement due to objectionable behaviour provisions. This is an issue that I have spoken about previously in this place regarding what I believe to be the excessively harsh implementation of this policy for some Homeswest tenants, particularly those tenants who are subject to quite severe mental illness and who, because of that mental illness, may suffer, in particular, a one-off psychotic episode and lose their home as a result of that. I refer in particular to proposed section 75A(1)(b) and (c). I do not have so much of a problem with proposed paragraph (a), which states —

> (a) used the social housing premises, or caused or permitted the social housing premises to be used, for an illegal purpose;

The reason is that that proposed paragraph, of course, implies that there is some intent, and there would have to be some suggestion that people would be aware of the behaviours. However, proposed paragraph (b) refers to the tenant causing or permitting a nuisance, and proposed paragraph (c) refers to the tenant interfering with the reasonable peace, comfort or privacy of any person who resides in the immediate vicinity of the premises. On the face of it, that looks like a fairly reasonable provision. No-one should have to live next door to people who deliberately engage in antisocial behaviour. I actually live next door to a Homeswest house. My next-door neighbours are excellent Homeswest tenants; we are very happy with them. The family has lived next door to us for five or six years and they have been a perfectly lovely family to live next door to. I have also had the experience of very negative tenants in the past—not in that home—and those negative tenants were private tenants. They can make life pretty miserable, especially if they decide to have extremely loud parties all the time and to damage and break into properties. I do not by any stretch of the imagination say that it is okay for people to engage in that sort of conduct; of course it is not. I do not hear anyone saying that is okay.

I am particularly concerned that the way in which this policy has been employed by Homeswest, and I have seen it, has meant that people who engage in behaviour that can be described as being antisocial, even though there is no intent to be antisocial, have been picked up by these provisions and have lost their homes as a result.

I have spoken previously in this place about a gentleman who I assisted who had a psychotic episode, lost his house, ended up in Graylands Hospital for two months, recovered from that psychotic episode and then was unable to get bail because he had nowhere to live. He was well, so he could not stay in Graylands. Therefore, he ended up being shipped off to Hakea Prison. He stayed there until my office, not Homeswest, ended up ringing a range of private hostels and finally found a place for him to live. We contacted his lawyer and his lawyer was then able to make application for bail. That gentleman now lives in the community in a private hostel, but he lost his Homeswest house. That was a devastating experience for him and for his family. That is a real example of how these provisions have been employed by Homeswest. When I bring those sorts of realities to this chamber, I am very concerned to see these policies in a very similar form, although I recognise they are not identical, being enshrined in legislation, particularly when this legislation, before this provision was included, had effectively been drafted to provide additional protections to tenants. It really leaves a very bitter taste in my mouth that legislation that otherwise would have been broadly received by consensus has now effectively been altered to such an extent that it includes provisions that could potentially have quite a serious detrimental impact on some of the most vulnerable citizens in our community. I want to make a few other comments on that specifically.

I notice there has been a lot of talk about the inclusion of these provisions and I appreciate some of the members' discussions. I share the concerns expressed by others about the unintended, but very serious, impact that this may have on some Aboriginal families. The Equal Opportunity Commissioner has been quite up-front about expressing her concerns that these provisions may turn out to be indirect discrimination, particularly against Aboriginal grandmothers. I draw members' attention to the Equal Opportunity Commission's newsletter *Discrimination Matters* for August 2011. An article on the front page is titled "New Bill may leave most vulnerable homeless" and quotes comments made by the Equal Opportunity Commissioner. People should be very concerned about those sorts of comments. I am sure that when members opposite talked about this bill and put it together, that was not what people hoped to achieve by this. The Equal Opportunity Commissioner, Yvonne Henderson, refers to her concern about the inclusion of proposed section 75A. It all comes back to this particular provision. I note that we could have had quite a long debate in this place about the new reforms coming through, which are widely agreed on, and why they were valuable and the like. Certainly my colleague Hon Lynn MacLaren has done a good job in identifying some of the other gaps that could have been covered. It is, therefore, quite concerning that most of the debate has had to focus on the potential problems that could arise

as a result of the inclusion of new section 75A. To quote from *Discrimination Matters*, the Equal Opportunity Commissioner said —

> "People in social housing are there because they are in desperate need of shelter and this can include people from ethnic minorities, people with mental health issues and Aboriginal people."
>
> "It is unfair that a land lord should have the power to evict a woman over a domestic violence incident or a person with mental health issues for disturbing the peace once, when private tenants are more likely to be reported to the police or local council for noisy parties," she said.

I share the Equal Opportunity Commissioner's concerns about this. It is also important that when she talked about antisocial behaviour arising from someone with a mental illness, she made the point of saying that a person could be evicted for a one-off occurrence. I am not of the view that simply having a severe mental illness becomes an excuse for a person to engage in antisocial behaviour. Obviously, if somebody has a psychotic episode, they need to receive support and treatment to ensure that the behaviours arising from that mental illness do not reoccur. It is really important to acknowledge that people with a mental illness who may have a one-off psychotic episode are not always responsible for that occurring. We need to be very mindful of what will happen if we are led down a path that means that some of our most vulnerable citizens will become homeless or end up in jail, which is what happened to the gentleman who I assisted.

Again, I note that the Equal Opportunity Commissioner is not the only person who has expressed concerns; concerns have also been raised by a number of groups that have already been named in this place, including the Western Australian Council of Social Service, the Tenants Advice Service, the Community Housing Coalition of WA, Shelter WA, the Western Australian Association for Mental Health, Community Legal Centres Association and Street Law Centre WA. This is not an insignificant number of groups that are expressing concern about how this legislation might come into effect. It would be wise for all of us to be mindful that we should not support legislation that could potentially allow some of our most vulnerable citizens to effectively lose their homes.

I have also been very saddened by the comments made about the unforeseen impacts that this legislation could have, particularly on women who are subject to situations of domestic violence. It is really important to recognise that if people are to lose their tenancies, whether it is because of incidents arising from mental illness or because they look after family members who engage in antisocial behaviour, it could have the effect of penalising exactly the wrong people. I understand that the intention behind this proposed section is to evict those people within our community who are utterly indifferent to the wellbeing and safety of people around them and who make others' lives absolutely miserable. However, I would argue that there are already provisions to capture those people. I refer again to the Standing Committee on Uniform Legislation and Statutes Review report, which refers to the introduction of proposed section 75A. I note that paragraph 8.53 states —

> The genesis for clause 95 —

That is proposed section 75A —

> … polarised stakeholder submissions to this Inquiry,

I am not surprised it polarised people because it is highly controversial. The government took a perfectly sound bill and included a provision that will have a whole range of detrimental effects as it is being implemented now by Homeswest on some of the most vulnerable people within our community. The government is taking away the fundamental right of shelter from people who may not have any intention of engaging in antisocial behaviour. I am talking again about people with a mental illness who may have a one-off psychotic episode, who then get the assistance they need, but lose their house anyway; men who engage in antisocial behaviour and subject their wives or partners to domestic violence, but the women end up losing their homes; or elderly Aboriginal family members who take responsibility for housing their families, as a cultural obligation, but become homeless along with the rest of the family. I do not think that is okay at all. In the course of the inquiry, submission 12 from the Department of Housing on 5 October states —

> *Under the existing legislative framework, we are constrained from effectively terminating public housing tenancies that engage in serious and persistent disruptive behaviour by virtue of the operation of section 62(3) of the Act.*

That is the issue I really want to pick up on. Even though the Department of Housing says that it is including this provision because it is trying to address persistent behaviour issues, the legislation is drafted in such a way that a one-off incident can be captured. That means that the very people I am talking about, who should not be captured by this legislation, can potentially be captured by it. I am arguing that this provision does not reflect the ongoing problem described by the Department of Housing.

Hon Max Trenorden interjected.

Hon ALISON XAMON: In answer to the interjection by Hon Max Trenorden, I will reiterate my point. My issue is that the sorts of provisions that should capture antisocial behaviour are those that deal with people who deliberately engage in ongoing systemic bad behaviour. They are not the people I have described here tonight and they are not the people I am saying I am concerned will get captured by these provisions. That is where my concern lies. As I have said before, and I will say again, none of us wants to live next door to a bad tenant. For that matter, none of us wants to live next door to a bad neighbour even if they own their own home. We have a right to feel safe in our own home and to feel that our home is our haven whether we own it or rent it or whatever. I recognise that. But we also live in a community; we live in a community of diversity; we live in a community in which people sometimes have complex lives; and we live in a community in which people have very different needs. I am fine with that. Personally, I embrace that. I recognise it means that we need to be able to somehow address antisocial behaviour whether it is deliberate or not when it occurs. But I do not believe this provision will deal with that. I think it will do exactly what happens with Homeswest now and it will simply mean that some of the most vulnerable people within our community, who do not intend to engage in antisocial behaviour, will end up being made homeless. I am very concerned about that. I have spoken very strongly about that, but having said that, I am aware that, as I mentioned, other provisions in this legislation, which are long overdue, have been welcomed by a range of tenancy advocates. I think it is really unfortunate, if not a little bit cynical, that a provision like this is included within a bill that would otherwise have been, effectively, a consensus bill that people would see as a positive way forward. I will see how it is enacted and I will keep a very close eye on it myself.

With that in mind, I will say that, overall, the Greens will support the bill because there are some important provisions in it. But my concerns about this particular provision remain very strong.

HON ADELE FARINA (South West) [8.14 pm]: I rise to commend the work of the Standing Committee on Uniform Legislation and Statutes Review and, in particular, the members of the committee for the excellent work they put in analysing the Residential Tenancies Amendment Bill 2011 and providing very relevant comment, which appears to have been picked up by all those members who have spoken this evening. I would also like to put on the record my appreciation for the work provided by the staff to the committee, without whom we would be lost. I do not intend going through all the details in the report because I think most people who spoke to the report covered the issues. I simply say to members that I commend the report and I hope they read the report before we vote on this bill this evening.

However, there are three matters I would like to speak to and I will speak to that in my capacity as a member, not as the Chair, of the committee. The first is in relation to the option fee. A lot of representation has been made to my electorate office on this issue by people who are struggling financially and have lost their homes either because they have been unable to make their mortgage repayments or are unable to purchase a home because the cost was too high and need to consider renting. They are finding it extremely difficult at the moment to find rental properties. We live in a really tight rental market. On top of that, real estate agents have adopted the practice of requiring an option fee. This is having a huge impact on the ability of prospective tenants to put in an option and look for a place to rent, because each time they find a home they are interested in renting, they are required to pay a week's rent so that they can be presented as a prospective tenant to the lessor. Once paid, it often takes at least two weeks to get back that money. It restricts the ability of people who have limited means to apply for a rental home. They are not only dealing with very few properties being available due to a really tight rental market but also they are further restricted by their capacity to lay out a whole lot of option fees at any point in time and the delay of often two weeks in being paid back that option fee. I cannot see any justification whatsoever for the option fee, particularly when more people are looking to rent properties than there are properties available. It is not as though the landlord will miss out, because more people are looking to rent the property than there are properties to rent. I can see absolutely no justification for it. This is a huge additional impost on people who are struggling financially. I will be very disappointed if this Parliament endorses the provisions in this bill that will legitimise this option fee. I think we should be doing the opposite and outlawing it because there is absolutely no justification for it. Some real estate agents have made the argument that it covers their administrative costs. I would have thought, as Hon Lynn MacLaren indicated, that the costs of administering these option fees and paying them back would be just as onerous as processing the application. I would have thought that the landlord would pay for the processing of applications anyway, given the landlord has appointed an agent to manage the property. I have real issues with the option fee and would like an explanation from government for why we are contemplating legitimising the option fee when I think we should be outlawing it. It is a big issue in Bunbury and a lot of constituents have come to see me about this issue.

The other matter I want to raise is the frequency of the landlord inspecting a property. The bill proposes a limit on a landlord of not being able to inspect a property more than four times in any 12 months. While I generally

agree with the intent behind that provision—that is, tenants should be able to have quiet enjoyment of the property and should not be hounded by the landlord wanting to inspect a property more frequently than that—I have one small concern about the lack of flexibility in the legislation. If a person has a bad record as a tenant but has reformed their behaviour or their circumstances have changed, then a landlord may be prepared to rent a property to them if the landlord has the option of undertaking more frequent inspections than the limit of four. I am concerned that, as a result of eliminating that option for landlords, people in those circumstances who may be really struggling to get a rental property because of their bad record will be further discriminated against because a landlord is not likely to take the risk if they get only four inspections in the course of 12 months. I have been a landlord and I certainly would give someone a go, but at least in the initial stages—perhaps the first six months or so—I would have more inspections to ensure that the property was not being damaged. We have to ensure when we pass legislation that we provide scope for all sorts of circumstances. Although I accept that the intent of this provision is to provide for the tenant's quiet enjoyment of the home, I am worried that it may result in some prospective tenants being discriminated against because of their history, whereas if the legislation allowed for an extra couple of inspections, at least in the initial period, it might be easier for them to find a home. Given the rate of homelessness in our community at the moment and the long waiting list for Homeswest accommodation, I think that we should not pass legislation that further discriminates against prospective tenants unnecessarily.

The only other issues I want to raise were raised by the Commissioner for Equal Opportunity. The committee did not have time to investigate fully the issues raised by the Commissioner for Equal Opportunity, but other members have spoken quite extensively on her concerns. I am interested to hear the minister's views on those concerns expressed by the Commissioner for Equal Opportunity. The point I want to make is my concern about the ramifications of the antisocial behaviour provisions that the government proposed. I have had representations from constituents who live next door to tenants who engage in antisocial behaviour on a regular basis. Some of the stories that they tell me are horrendous and I sympathise with them and I can understand why they do not want that tenant living next door to them any more. I have also had constituents come to my office who are tenants who feel that they are being picked on by their neighbours for racial reasons and their neighbours are using those misbehaviour provisions to get the tenant out of the street. I can see the issue from both points of view. My concern is that the government's policy position removes the tenant who is misbehaving from the home but does not deal with what happens to that tenant once they have been evicted from the premises. In many cases, that tenant will go on to either move into another Homeswest rental of a family member, thereby creating another problem and a possible further eviction with more people being made homeless than was initially the case, or they end up on the streets, which raises a whole lot of other social issues that the government just chooses to ignore.

Although I have sympathy for those people who live next door to disruptive tenants, and we need to act and address that issue, my view is that simply evicting disruptive tenants onto the streets without any solution for what happens to those people and without any consideration of the social ramifications that result from them living on the streets—such as property damage and other disruptive behaviour that could occur because they are angry at being put in that situation—will only create a bigger problem in the community than it will solve. Although the government has put this policy in place, it needs to further evolve that policy to deal with the problem in full because it deals with only part of the problem; in fact, in many cases, it simply transfers the problem. Therefore, in addition to the concerns raised by the Commissioner for Equal Opportunity, I am interested in hearing how the government proposes to deal with the problem it will create through the eviction process, which could have greater social ramifications than we currently experience. I again stress that I have complete sympathy for those people who complain about disruptions and misbehaviour by neighbours because some of the cases that have been relayed to me are clearly horrendous and it would be extremely difficult to live under those circumstances on a day-to-day basis. My point is simply that the government's policy solution to this problem is half-baked and merely transfers the social problem onto the streets or elsewhere without addressing the problem. I want to know what the government is doing to address that problem.

HON LINDA SAVAGE (East Metropolitan) [8.25 pm]: I have decided to make a few comments, even though I was a member of the Standing Committee on Uniform Legislation and Statutes Review that presented the report to the Parliament and everyone has had the opportunity to read that report and many people have spoken before me and not only raised many of the concerns but also pointed out the challenge in developing policy and legislation that tries to balance the interests of both tenants and neighbours. I appreciate that is complex and difficult to do.

The reason I make a few comments on the Residential Tenancies Amendment Bill 2011 is that the issue has been raised about how this legislation will affect women who are victims of domestic violence or threatened violence and whether that would result in an incident being noted or registered as antisocial behaviour because of what someone who may not be resident at the property does. I raise that issue because we know that domestic assault

is the one category of crime that continues to increase. We also know that one of the challenges in dealing with domestic violence is that women are often, for a number of reasons, reluctant to report abuse at the hands of their partner. That fear of reporting domestic violence can be because of the disruption that it will cause to themselves and their children and because of the shortage of places to go, such as refuges—any number of reasons. Given that we already know women can be very reluctant to report abuse, my concern is that an unintended consequence of this legislation is that that reluctance to report could be heightened because of the fear that by reporting and having the incident recorded against them as the tenant in the property, they could find themselves inadvertently part of a process in which, through no fault of their own, they face eviction. Therefore, I add my voice to the others who seek some clarification and assurances on that element of the bill before us. I am sure that would not be the government's intention, but anything that made women even more reticent to come forward and report domestic violence would be a retrograde step. That is all I want to add to the debate at this stage.

HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce) [8.29 pm] — in reply: I would like to commence my remarks in response by thanking members for their contributions to the debate. In the course of the debate general support was expressed for the Residential Tenancies Amendment Bill 2011, though moderated in one or two cases quite strongly about one or two specific provisions that members have problems with. Even those objections were countered by general support for most of the provisions of the bill, and so it should be, because this bill is about improving the current rental market situation for all stakeholders whether they be tenants, landlords, agents or whomever else is involved in a community activity that is used by hundreds of thousands of Western Australians as an accommodation option. As the rental market is such a large part of our community, it is also not surprising that each and every one of us has a collection of anecdotes we can refer to on occasions such as this about landlords who have had horror run-ins with tenants and about tenants who have been given the rough end of the pineapple by a landlord, including the state government if it was the landlord. We all have stories like that because so many transactions take place every single day in the rental market in Western Australia. But all in all, I think we have a system that is well established and that delivers most of what we would like it to deliver, but of course, like any other system, can be improved. That is what we seek to do by this bill.

As members observed, there are probably three main elements of design to this bill. The first springs primarily from my own Department of Commerce and the work it has done over a very long time in reviewing the principal act. Now I have the honour to bring that collection of amendments, all aimed at making life better and easier for both lessors and tenants in our rental market. I will come to those in detail shortly. The second element was one, from memory, that I approved to be added to this amending bill after initial drafting approval had been granted. It relates to elements of the residential tenancies database, which, as we have heard several times, reflects an intergovernmental agreement intended to provide a single reference point for all of the reasons I outlined in my second reading speech. That of course was the element that caused us to see the bill referred to the Standing Committee on Uniform Legislation and Statutes Review. The committee provided us with a quite comprehensive report. I thank them for that. I notice, too, that the minister not only got the information required into the committee within three days, but also he actually got it into the committee three months before they got the bill. That was obviously because he must have been stung by a bit of tardiness with the last bill that was referred to that committee! Hopefully, we have made amends there.

I will come to the committee's recommendations shortly. Members will then see that we have given a lot of thought to the committee's recommendations. Some recommendations ask me to respond to a few matters; others propose amendments. Whether we accept those amendments or not, we will talk them through. Speaking of amendments, we have a supplementary notice paper —

[Quorum formed.]

Hon SIMON O'BRIEN: I would like to thank my ministerial colleague for joining us. There is an old saying that we have cemeteries full of indispensable people. We could not do without him. He saved the day by giving us our quorum!

The third key element of the bill contains another matter that again came up later in the piece. It was convenient for government to include those amendments in this bill. It related specifically to social housing, to use the generic term used by other members. In each of those areas, matters of interest have been raised by several members who have spoken. I thank each for their contribution.

I want to now respond to some of the points raised by members. The first speaker was Hon Sally Talbot, who raised a number of very important issues—so important in fact that she wanted to make sure Hon Peter Collier was here to hear me talk about them now, so he is! I know he will enjoy this. There were some themes, too, which also thread their way through various members' speeches. Hon Sally Talbot raised a few matters that

require a specific response. I will do that now. I will also do that for other questions that were raised. There is a fairly extensive supplementary notice paper. There are matters, including matters in the committee report, that it might be more convenient to simply address during the committee stage to save them being visited twice. Hon Sally Talbot asked me to consider and respond to the proposition of the fairness of a situation in which a tenant might be evicted from public housing rather than an antisocial element, not being the tenant who actually caused the problems. I am advised, and I would have expected this to be the case—it has been discussed before when I have represented the Department of Housing at estimates committee hearings—that in relation to, say, the domestic violence scenario raised by Hon Sally Talbot, the Department of Housing does not seek to evict a tenant when they are the victim of the violence and not the perpetrator. That is how I would expect it to be out there in the real world. We can talk about it all we like, and people elsewhere in the public can talk about these things all they like—they can ring up radio stations and all the rest of it—but we have some dedicated officers in the Department of Housing who have to deal with these issues in a live situation every day. I think members will be relieved to know that the housing officers exhibit not only compassion but experience and good old-fashioned nous in applying existing policies. Hon Sally Talbot would be reassured, as I am, that the Department of Housing does not seek to evict the tenant when they are the victim and not the cause.

Hon Sally Talbot: If the minister will take an interjection: it was a little more complicated than that. I was talking about a situation in which the person was not the tenant. If a person is living in a de facto relationship with a violent partner against whom a violence restraining order has been taken out, my amendment addresses the situation if that person is living in the same house as the partner but is not, strictly speaking, the tenant.

Hon SIMON O'BRIEN: Look, if the member likes, I will come back to that point when we go into committee.

Hon Sally Talbot: I'm happy with that.

Hon SIMON O'BRIEN: But I think I can give the member a very similar answer in that the situation does arise. In fact, let me deal with this issue now. I have been advised about the situation that the member describes, in which a tenant is possibly to be evicted and yet there is some other blameless cohabiter there who is not officially the tenant, and the question of whether that cohabiter loses the roof over their head; that is the gist of what the member is saying. I can imagine a number of situations in which that happens and some of them actually come to my notice as a member, including when the official tenant dies, for example, or becomes infirm and has to leave the house for that reason. There is a capacity, as I understand it, for the cohabiter—not the official tenant—to take over the lease. It does not happen all the time, but there is provision for a court order to be obtained to commit that to happen. I will seek a bit more information about that and perhaps come back to the member a bit later on if that issue needs little bit more detail.

Hon Sally Talbot: It is amendment 14/56.

Hon SIMON O'BRIEN: That is the amendment that Hon Sally Talbot is proposing. We will get on and discuss that in due course.

Hon Sally Talbot also asked how having the Department of Commerce hold the bonds is better than the current system. The act currently allows for a bond either with a bond administrator, a bank or a real estate agent trust account. In the course of the review, there were examples, and I cannot give the member the numbers offhand, but there were certainly sufficient examples of situations in which private landlords had been depositing bonds in their own bank accounts to warrant the recommendation to government of this particular amendment. There have been occasions in which property managers or others with the custody of the cash in the bond have absconded.

Hon Sally Talbot: But they have acted illegally haven't they?

Hon SIMON O'BRIEN: Definitely they have, but the thing is that the bond —

Hon Sally Talbot: Has gone.

Hon SIMON O'BRIEN: — has gone, and that is the ill that we want to repair.

The member also asked about the regulation of the database. In answer to her question about how one checks if they are on the database and perhaps change the detail that appears on it, a person would apply directly to the database operator. Who else can check up on a person's details on the database? Only that person can access the information. Other people can only access a person's information if they have authorisation, and that could be as the prospective landlord of the person in question, for example. The reason for that restriction, of course, is that the database would be guarded by commonwealth privacy laws.

In relation to how these provisions would be expected to affect people in remote communities, the legislation applies if there is a housing management agreement in place; therefore the legislation is beneficial to tenants because it not only imposes obligations on them, it also gives them rights such as the right to urgent repairs, for

example, which is something else we discussed. The Department of Commerce is working to develop education strategies for these remote communities to ensure that tenants understand both their rights and their obligations.

In relation to the question about what research we have done into who is in public housing and what profound thinking we have applied to our approach, the government formed the social housing task force and then the affordable housing strategy in response to these questions. We are probably getting a bit beyond the scope of the bill there; that is maybe a discussion for another day, but I provide those examples as ones in which the government is applying conscious and deliberate thought to examining all aspects of social housing and seeking to find answers to the problems that go with the program.

In relation to clause 41, the member asked what "urgent repairs" meant, and I gave her a bit of an answer by way of interjection, which the member received. In addition to what I said, regulations will also give a bit more meat to the definition contained in the bill, which I read out, to include items such as sewerage and waste, water, electricity, gas, hot water systems, cooking appliances and a fridge or refrigeration, if supplied. They are the sorts of things that are essential elements of emergency repairs.

When I responded to Hon Sally Talbot's question about the residential tenancy database, I omitted to mention something else, and that is the current system that exists because, of course, there are retail tenancy databases out there. Currently the only option to amend the listing is to appeal to the operator or to the landlord or property manager who listed the tenant. If that is not successful, a person would have to seek assistance from the commonwealth Privacy Commissioner, who has very limited options to assist. Under this bill, of course, if those other avenues failed, a person would be able to obtain a court order to enforce. I think we have dealt with the other matters the member raised for now.

I would also like to acknowledge Hon Lynn MacLaren's broad support for the bill, together with her lateral thinking about the matters she raised. She referred in large part to the amendments that stand on the notice paper and we will come to those in a few minutes, I hope. I also note that member is generally opposed to the changes proposed in public housing. That is what a public debate is all about, and we will put those matters to this Council again in due course.

Hon Ljiljanna Ravlich also contributed to the debate and, in addition to offering her observations, she also asked a couple of specific questions, firstly relating to outcomes of a departmental working group looking at tenants with mental illness. This was a new subject to me because, of course, I am not the Minister for Housing; I act in a representative capacity. The reason I have carriage of this bill is that the principal act it amends is one of my acts. But this question touched on working groups with housing, with mental health and, probably, with others—but certainly between the housing authority and the Mental Health Commission. In relation to the first question, I can only tell members that there is a working group; I do not believe that I can tell members what outcomes have been achieved. That information is simply not available to me at this time. I take the question on board and perhaps we can provide that information when it becomes known.

The honourable member also asked to get some sort of sense about the maintenance or repairs backlog for public housing. The Department of Housing policy is to initiate repair work within three hours of receiving a report for urgent repairs, and 48 hours for priority repairs. Tenants are provided with an after-hours phone number to facilitate these processes. The Department of Housing is working with a head contractor to ensure compliance with provisions—legislative and contractual—and of course tenants can make a complaint to the Department of Commerce and the department will investigate if necessary. I regret that, during the course of the dinner break, information about the maintenance backlog or any outstanding amount that may be in train at the moment was not forthcoming. If the member wishes to pursue that matter, we can do so. I will seek to have some information about that for tomorrow's sitting. I have a feeling this matter might still be carrying on by then, so we will present it then.

Hon Max Trenorden gave us the benefit of some observations and I thank him for his contribution to the debate. For one moment there, I thought that he was actually having a go at the author of the bill, but it turned out that he was venting against the author of some offensive behaviour towards one or other of his constituents. I do not blame him for that because the things he described are the sorts of things that people should not have to put up with—that is, people jumping fences and strangling chickens and whatnot. However, I thank him for his support for the bill because we need people like him, with his long experience, to help guide us in these matters, particularly when we get to consideration of the clauses.

Hon Sue Ellery made a worthwhile contribution as usual. In particular, she wanted to discuss clause 95, its effects and how it might impact on the principal act. I acknowledge the things that she had to say. She also asked some specific questions that I think I can answer to some degree of satisfaction. The member was asking about the Housing policy introducing a system of three strikes, as it is colloquially known. She indicated that she thought it commenced in about May. The figures that I am about to provide are for the period from 3 May 2011

to 30 September 2011. I have been advised that the number of first strikes incurred in that period was 459. I am further advised that the number of those who subsequently incurred a second strike was 132, and that the number of those who then incurred a third strike was 45. I regret that I am unable to provide a breakdown on how many of those parties had children. I am sorry; that information was not available at this stage.

I can provide some other information in response to the member's further question about the arrangements now in place at district level between Housing and the Department for Child Protection. There are some memoranda of understanding and protocols that rely on that district level relationship working properly. The agreement at the director general level, in relation to strikes, is for DCP to take referrals at the first strike when a tenant has children. That is when that department gets involved. I understand that a former regime—prior to that protocol—was for DCP to have the matter referred to it when eviction was imminent. So I think it is an improvement that the first strike triggers the referral from Housing to DCP. I understand that is the standard thing that happens out there in the real world that I referred to earlier—at district level where people are dealing with real people. I am encouraged by that. It is what I would expect to happen and I am reassured to be told that that is what is happening.

Furthermore—I will just go back a bit to when Hon Sue Ellery and I were together on Tuesday, 14 June for the estimates hearing into the Department of Housing. This question was taken on notice and a response was subsequently given. To refresh the member's memory, and for the benefit of the house, the member asked —

> The protocol between the Department of Child Protection and the Department of Housing—is it a continuation of what was in place before or whether it is something new?

The answer given was that —

> The *Operational State-wide Memorandum of Understanding* between the Departments of Housing and Child Protection took effect in June 2010, as a strategic bilateral agreement that formalised new protocols and replaced earlier protocols established under the Tenant Referral Program.
>
> Under the new protocols, the Department of Housing will make referrals to the Department for Child Protection at the earliest stage possible where a household with children faces tenancy action that may lead to eviction.

Such as a first strike —

> The Department for Child Protection's role is to support families to prevent escalation of the issues to eviction.
>
> The Department of Housing has also committed to working closely with the Department for Child Protection to ensure a coordinated approach to the implementation of the Government's Disruptive Behaviour Management Strategy.

I hope that gives some clear response to the theme the member raised in her question in terms of what was put in place in June 2010, what we discussed again in June 2011, and what I am told as recently as this evening is actually what happens on the ground. The member was concerned that DCP was perhaps not taking the opportunity to intercede at the first sign of real strife —

Hon Sue Ellery: I don't know that I'd blame DCP. I just wanted to be convinced that both agencies were actually putting in place processes. If DCP doesn't know about it, DCP can't do anything about it. I hope that that is the case.

Hon SIMON O'BRIEN: Well, that is my advice. I know that the Minister for Child Protection, who is listening to the debate closely, will perhaps assist me in confirming that understanding from DCP's point of view.

Hon Robyn McSweeney: Yes, I can confirm that.

Hon SIMON O'BRIEN: That is what we are told.

I would like to thank Hon Alison Xamon for her contribution and also Hon Adele Farina, who referred to the committee report and raised several questions. The first question was in relation to option fees. Hon Adele Farina advised the house of the system of option fees. I would characterise it as almost a deposit—a gesture of goodwill extracted from a prospective tenant, whether they like it or not, to make sure agents have dinkum applications for tenancy that they take forward to the owners. The cases for and against that have been made, and opinions have been raised. The fact of the matter is that that is a feature of what is happening. What this bill proposes to do is to put a cap on it so that option fees are not going to be overly onerous.

In some cases it is the equivalent of one week's rent. I think Hon Lynn MacLaren said median rent was in the order of $395. If someone is looking at a figure in the vicinity of $350, I think that would be difficult for people to raise, particularly if they were making inquiries on several places at once in this particular market. I am not in

a position to say what the prescribed fee might be, but an option fee might be more like $100 or even $50. Please do not try to hold me to that, but the idea is that it would certainly be markedly less than the median rent, and that would reflect the interests of those who we are concerned about here. That is the first thing.

The second thing raised by Hon Adele Farina was the frequency of inspections and whether four inspections a year gives landlords enough opportunity to create the required confidence in their new tenant, particularly if they are a bit unsure about them. I guess there is a need to balance the interests of a landlord who is protecting their investment in the property against the natural entitlement and right of a tenant to the quiet enjoyment of the property that they inhabit. An option provided for in this bill is for landlords to perhaps take out a shorter fixed contract time of six months, for example, to give them a concentrated time to exercise their inspections and be satisfied that the tenant is honouring their obligations. A figure had to be arrived at, and a maximum of four inspections in 12 months, having weighed all the other submissions that were made, was seen as a reasonable balance between the two conflicting interests.

Finally, Hon Adele Farina, as did other members, raised questions of whether this bill presents a conflict with our obligations under either state or commonwealth equal opportunity legislation. My advice from the relevant department is that state solicitors have advised that there is no inconsistency or conflict between this bill and our requirements under equal opportunity legislation. I have taken a bit of time to respond, but I do so in response to quite a large number of members who have raised quite a large number of issues. I hope I have done them justice. As I indicated earlier, there are some other matters on the supplementary notice paper, so hopefully we will come to those in just a moment during the committee stage. But for now, I thank all members for their support for the second reading and commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chairman of Committees (Hon Col Holt) in the chair; Hon Simon O'Brien (Minister for Commerce) in charge of the bill.

Clauses 1 to 21 put and passed.

Clause 22: Part IV Division 1A inserted —

Hon LYNN MacLAREN: I have a question about clause 22 before we get to the amendment on the notice paper. It is about some of the concerns of the Tenants Advice Service. I want to make it clear yet again that we support proposed section 27A, which is in clause 22. However, there was some concern about whether the bill needed to include a provision that prohibits the lessor from presenting a tenant with a backdated residential tenancy agreement to sign. I note that in the other place there was mention of the Fair Trading Act. Parts of the Fair Trading Act could protect tenants and the means by which they can address concerns about backdating. I wonder whether the minister can advise us of what sections in the Fair Trading Act could prevent this.

Hon SIMON O'BRIEN: I thank the honourable member for her interest in this area. I have sought some advice. Perhaps if I just give this summary of advice in toto, it might deal with her question. Firstly, I make the observation that parties should be free to reach agreement as they see fit. There are some circumstances in which backdating the contract may be appropriate. For example, if a tenant needs to access accommodation urgently and is permitted to move into a house prior to the lease agreement being signed, it would be appropriate to date the contract from the date on which the tenant takes possession of the premises, which is not what the member is talking about, though. In other circumstances, however, it would not be appropriate for a contract to be backdated—for example, if a landlord is seeking to take advantage of a tenant by making them liable for damage that occurred before the tenant moved into the premises or if the landlord is adjusting the date to their own benefit for taxation purposes. I think that is the sort of thing the member is asking about; am I right?

Hon Lynn MacLaren: Exactly.

Hon SIMON O'BRIEN: There is existing legislation, including our Fair Trading Act 2010, that provides sufficient remedies and penalties in these circumstances, as the Fair Trading Act prohibits a person from engaging in either misleading or deceptive conduct, or unconscionable conduct. I do not have the exact sections here, but we can look them up if we need to. Therefore, the proposal that the backdating of residential tenancy contracts be prohibited is not supported, because we believe they already are, in effect, proscribed by the provisions that I have just referred to where appropriate. That is why this clause is, I think, silent on that particular matter, and I think that is how it should stay. I could provide an additional level of comfort, though.

Hon Lynn MacLaren: Could you, please?

Hon SIMON O'BRIEN: Apparently, I can. The department will consider inserting a note in the margin of the prescribed tenancy agreement to advise tenants that the start date for the contract should not be a date prior to the date on which the tenant was entitled to take possession; and, if they have concerns about this matter, they can contact the department for further advice.

Hon Lynn MacLaren: Very good, minister.

Hon SIMON O'BRIEN: I think that dots all the i's and crosses the t's for the member.

Hon Lynn MacLaren: Thank you very much.

Hon SALLY TALBOT: This is a very good start to the committee stage of the bill. The minister and his advisers are clearly very closely attuned to the mood of the chamber. I was just going to rise to point out that because we are moving to a prescribed form—I understood this was the basis of the point that the Tenants Advice Service was making—we can at least let people know what the circumstances might be.

Hon Simon O'Brien: Indeed.

Hon SALLY TALBOT: Like Hon Lynn MacLaren, I am happy that the minister has covered that in his response.

Hon Simon O'Brien: We are in furious agreement, Mr Deputy Chairman.

Hon SALLY TALBOT: Absolutely.

The DEPUTY CHAIRMAN (Hon Col Holt): Members, we are dealing with clause 22, and two amendments, 1/22 and 17/22, are listed on the supplementary notice paper. The second one is to be moved by the Minister for Commerce. Is anyone moving the first amendment listed on the supplementary notice paper, 1/22?

Hon LYNN MacLAREN: Does a member of the standing committee have to move that amendment or can anyone move that amendment?

The DEPUTY CHAIRMAN: Any member can move it.

Hon Simon O'Brien: Or do you want to wait for mine?

Hon LYNN MacLAREN: Can we not have them both?

Hon Simon O'Brien: This is the cake-and-eat-it-too argument, is it?

Hon LYNN MacLAREN: Yes. It is consistent at least.

The DEPUTY CHAIRMAN: Members, I point out that amendment 1/22 is to delete "as soon as practicable" and insert "within 7 days", and amendment 17/22 is to insert after "practicable" the words "and in any event within 14 days".

Hon LYNN MacLAREN: I move —

> Page 17, line 26 — To delete "as soon as practicable" and insert —
>
> within 7 days

I think it is fair enough for lessors to be able to inspect a property within that week so that tenants can conclude the termination of their tenancy. The committee made this recommendation in its report after careful consideration, and the Greens support the amendment.

Hon SIMON O'BRIEN: I want to find a way ahead on this, and a lot of work has been done about this out of session. What I propose is that we do not delete the term "as soon as practicable" in exchange for "within 7 days", but, instead, that we retain "as soon as practicable" and add the words "and in any event within 14 days". I think that this will strike the balance that we need. I must admit that I do not have a problem with "as soon as practicable", but I recognise that in practice a person possibly could. There might be a dispute about what one person might think it means and what another party or a court or someone else might think it means, because people do not always act with goodwill. We need people who are responsible for providing these reports to do so in a timely way, so that, for example, the ex-tenant can get their bond back. This was, I think, the motive behind the committee's thoughts that there needed to be some finite time for it. We have suggested that we go for 14 days rather than seven days because we can see all sorts of potential unintended consequences with seven days. It could artificially cut things unreasonably short for some lessors. I will not go into the detail unless people want me to, but I am sure that members can imagine how it could in certain circumstances be an unreasonable or, indeed, impractical time limit. But 14 days should be more than enough, and if we retain the term "as soon as practicable", that clearly invites the task to be completed well inside the 14 days if possible. I think that is the best of both worlds. I do not know what the committee thinks about that. What I propose we do

is dispose of this current amendment by voting against it now, and then I shall move the next amendment. That is the outcome that I think we should have.

Hon LYNN MacLAREN: As I noted in my second reading contribution, I recently entered into a new lease, so it is fresh in my mind what a person does when they move in and out of a property. When a person leaves a property, they need their bond, and they need their bond because they need to put it on to the next property. A person does not have two weeks' rent lying around, which they normally need to pay up-front when they are moving into a property. The practice is to have the inspection on the last day of a person's tenancy. The person is rushing around to try to get out of one place and get into the next one, because if the person has been paying a median rent, they do not have an extra $395 in their back pocket to cover rent for both places. It just makes sense that as a person leaves one tenancy, they start the next one. Part of leaving a tenancy is that final inspection. That is when a person's bond is released to them, and they then have it to put onto their next place. When I see "as soon as practicable", to me it means within 24 hours; it does not mean within two weeks. Therefore, further defining it to 7 days, as the standing committee has attempted to do, is a good way forward. However, to then fall back another week to 14 days, even though the minister is saying that it will be within that 14-day period, seems a bit extreme. I would be interested to hear what consultation the minister had that indicated that 14 days was necessary. I would like to see some evidence as to why 14 days is necessary, because I am sure the minister can understand that the financial impact on tenants is considerable if they are paying rent for two places, waiting for that final inspection.

Hon SIMON O'BRIEN: I do not want this to become a class war either about who is backing the tenants and who is backing the landlords or anything like that. I think what we need here is a balance struck that represents the rights of both parties. In this respect, we have to come up with a provision that is, as they say, one size fits all. That is why I am asking for a bit more latitude. Consider then, if members will, the situation in which, for argument's sake, a city-based lessor has a rural or remote area property, and they have to arrange to get up there to do the inspection. They may have a situation in which the tenant does indeed wish to exercise their option or their entitlement to be present. If we throw in a few public holidays, or it might be over Easter or something, seven days suddenly becomes very, very difficult to reasonably achieve. I ask members to also consider that a lessor, after having got one tenant out, wants to get on with it and get another tenant in or use the property for whatever other purpose. It is commonsense for someone to try to finish up a bit of unfinished business as soon as they can. If things take too long, as happens now, the Magistrates Court can be approached. We think it is a good idea to have this provision in the bill so that it at least puts some cap on it, in fact quite a strict cap on it, whereas currently it can sometimes be an ongoing problem, as I understand it, to get inspections and return of bonds done in a reasonable time. This should fix it.

Hon SALLY TALBOT: There is one other aspect of this that I think we need to consider. After all, this is about the timely wrapping up of a lease. The Tenants Advice Service points out that a certain cohort of tenants finds that they are not invited to the final inspection. That can cause any number of problems because the tenants have no chance to have input into that final inspection process. Therefore, they might find things on the final report that are simply not the case.

Hon Simon O'Brien: There is no current requirement for them to be present, but this bill will provide that they may be present.

Hon SALLY TALBOT: I acknowledge that and that is a good thing. However, if we want to encourage people to be present at the final inspection, even if it is only to protect their rights, I would have thought that it is perfectly appropriate to make the inspection within seven days of the end of the tenancy. If somebody was moving some distance away to live in a new area of the state or, indeed, in another state, they would have a much better chance of being at the final inspection if it took place within a couple of days of the tenancy ending than they would have after 14 days. The minister has addressed the basic argument raised by the committee. I can see why it could be "as soon as practicable", but if we want to put a time limit on it, why not seven days rather than 14 days?

Hon SIMON O'BRIEN: I remind members that we have come up with a one-size-fits-all solution. We will always find hypothetical cases that are on the fringe. I ask members to consider the situation of an outgoing tenant who is busy and wants to attend the exit inspection, but cannot make themselves available in the seven days because of their requirements to move elsewhere. It can cut both ways. I hope that in most cases there would be a decent relationship between a landlord and a tenant. I remember my experience many years ago was that I got on to the chap who was the owner of the property that I rented and indicated when we wanted to go. We gave him plenty of notice and in the course of that we arranged between ourselves for him to come over and do a final inspection. He had the bond in his back pocket and handed it over when he was satisfied with what he had seen. That is probably the reality. When we need a provision in law, this one probably strikes the balance

and will lead to fewer unwanted consequences when people cannot meet the seven days or it is inconvenient for both parties for that to be the limit.

Hon ADELE FARINA: I suppose I have difficulty with this because the normal practice is that the property inspection on exit is done on the last day of the tenancy—the day on which the tenant leaves the property. Therefore, I do not really understand why we need to allow 10 days. The tenant is required to leave the property in a good state of repair. In 10 days there could be quite a change to the state of repair of that property; there could be weeds and overgrown grass and even cobwebs inside the house. It may impact on the tenant's ability to meet the requirement to keep the property in a good state of repair.

Hon Simon O'Brien: My opening gambit is —

Hon ADELE FARINA: Can I finish, please, minister?

Hon Simon O'Brien: Sure.

Hon ADELE FARINA: Also, my concern is at what point the keys are handed over. Are they handed over when the tenant leaves the property even though the inspection may not be for another 10 days? If during that time the landlord allows people to come in to inspect the property and they trudge in with muddy shoes and leave marks all over the carpet that has just been dry-cleaned, whose responsibility is it to get the carpets dry-cleaned? If the property is damaged as a result of a burglary to the property during that 10-day period, who has the legal responsibility for any damage? The longer those premises are left unattended and uninhabited, the greater likelihood that some mishap will occur during that time. It is not clear to me, and it is certainly not clear in this bill, who has legal responsibility for any damage to that property during that 10-day period? At what point are the keys handed over? That would be a pretty critical factor in the courts determining who has responsibility. Seven days would be about the maximum time. I even have issues with the seven days, because the reality is the inspection is done on the day the tenant leaves the property because that is when they have the property in a good state of repair. The tenant leaves the property and hands over the keys; they should not be responsible for what might happen to the property over the next seven to 10 days when they are not even there. In this scenario proposed by the committee, it leaves a window of opportunity of seven days. I think that is wide enough. Extending it to 10 days creates a new range of legal issues that have not been addressed by the bill.

Hon SIMON O'BRIEN: It appears that I have been misled. I thought that this was what the committee wanted. The facts of the matter in response to the member are these: the tenants' liability for mud on the carpet, or whatever it might be, ends when the tenancy ends. The tenancy comes to an end when the tenant hands over the keys and departs the place. The bill reads "as soon as practicable". Yes, the member is right; the point when the keys are handed over and the people leave the property is when the owner would normally do an inspection. Of course they would. However, there may be some reasons why an inspection cannot be done at that stage, but it needs to be done soon. For all the reasons the member said, such as grass and weeds overgrowing, it should be done as soon as practicable. That is why the wording is what it is in the bill. Hon Adele Farina's committee did not like that. The committee wanted to substitute a number of days. I do not know why, but it wanted to do that. We have come up with a compromise that recognises the things that can arise. If the member is now telling me that compromise is not what she wants, fine; I will not move the amendment and we will stick with what we have in the bill.

Hon ADELE FARINA: I want to clarify the committee's reasoning for this. The committee does not seek to extend "as soon as practicable". The committee sought to reduce it through this proposed amendment, because during the hearing we were told—as an example to support why those words are in the bill rather than a specified period—that a landlord could live in another state, or another country, or in Perth and the property could be in the country. Therefore, it may take the landlord a number of weeks to free themselves up to go and inspect the property. We should not put any onus on the landlord to do it any faster than is practicable from that landlord's point of view. Our concern was to try to limit that. Officers from the department who gave evidence before the committee expressed the view of submissions they had received from landlords who wanted that open ended. The committee saw the downsides to that. But in trying to accommodate the views expressed by officers from the department, the committee came up with this proposal of seven days. That was the committee's attempt to be reasonable and to try to balance both views. All I am saying—I am entitled to a point of view separate from the committee's view because I am also a member of this house—is that my personal point of view is that would be the maximum amount of time we would give for all the reasons I have raised. Pushing the time out to 14 days brings into play all the issues I have raised and brings into sharper focus the issues Hon Lynn MacLaren raised about the bond. They also are valid reasons, particularly for people who are not cash rich and need quick access to the bond money so they can pay the bond on another property or pay the rent on the other property. I do not think it is reasonable for the minister to misinterpret what I said earlier to suggest that the committee was trying to expand "as soon as practicable" to a longer period. That was not the committee's intention.

Hon LYNN MacLAREN: I was listening intently to the different views expressed. The minister is obviously keen to progress this. I want to canvass with other members the idea of a third amendment, which would introduce the notion that it can be done immediately but also allow for that two-week period. If we change it by deleting "as soon as practicable" and insert "on the day of and in any event within 14 days", we would be clearly stating that in most cases we would expect it to be done on the day of the termination of the tenancy, but we would allow that 14-day period. That may address both of the concerns about the provision being explicit that it should be done quickly, but in the minister's case, allowing for the worst case scenario when someone comes in from Doha or somewhere.

Hon LIZ BEHJAT: I would like the minister to clarify something for me in relation to proposed subsection 27C(4). Although seven days might have been what the committee recommended, I do not think 14 days is unreasonable. The way I am reading clause 4 —

The DEPUTY CHAIRMAN (**Hon Col Holt**): Excuse me, member, we are on clause 22.

Hon LIZ BEHJAT: Line 26?

The DEPUTY CHAIRMAN: That is right. Sorry; continue.

Hon LIZ BEHJAT: Do not confuse me; do not do that. Sorry; I apologise I am not being rude to you, Mr Deputy Chairman, I thought I was on the right clause. From my reading of proposed subsection (4), it is not just proposed paragraph (a) that has to be conducted and completed as soon as practicable and, in any event, within 14 days, it is also proposed paragraph (b), prepare a final report describing the condition of the premises, and proposed paragraph (c), provide a copy of the report to the tenant. From my reading of the proposed section, all those things must be done within that period. If, for instance, at proposed subsection (5) the tenant is to be given a reasonable opportunity to be present but cannot be present at the time of the inspection because they are away, the inspection would take place, the details would then be taken back to the office and a report may be compiled. There may be photographs comparing the pre-condition with the post-condition. That report must be then given to the tenant who might be away, so I think that time will be needed to complete all the things set out in proposed subsection (4).

Hon LINDA SAVAGE: I wish to seek some clarification from the minister and to make one point. Was I correct when I heard the minister say that liability for the condition of the property ceased when the keys were handed back to the owner of the property? If I did hear that from the minister, I request that he confirm that. I am not sure that that is my understanding. I assume with regard to the condition of the property, that any liability for money that could be taken from the bond for damage or repairs, or perhaps carpet cleaning, which sometimes goes with a tenancy ending, would remain and could, as has been pointed out by another member, involve further costs if something happened in the period between the tenant leaving the property and handing over the keys and the time of the inspection.

Hon Simon O'Brien: I can do that.

Hon LINDA SAVAGE: I have one other point of clarification while I am on my feet, and that is on the actual term "seven days". I do not have the Interpretation Act in front of me, but I think that could mean seven working days and that may make a difference. The minister said earlier that one of his concerns was that there could be public holidays and weekends.

Hon SIMON O'BRIEN: The responsibility of the tenant for the condition of the property finishes when the tenancy agreement expires—when the tenant vacates and hands back the keys, to speak a little colloquially. Technically, when the contract ends is when the responsibility of the tenant for the condition of the property also concludes.

I propose a way forward and my proposal draws on what Hon Lynn MacLaren was wishing for. I suggest we keep the words "as soon as practicable" and insert the words "and, in any event, within 10 days", as a compromise. I think that will meet the needs of the various parties. There will be landlords and, more to the point, their representatives of all shapes and sizes in terms of the volume of work they have. There are different distances to be travelled, particularly those in remote areas. A classic example of a landlord having to travel a long distance is when state housing is in a remote area. The final answer to the member's question is that, in the absence of other advice, "days" in an act I believe would mean working days. That is why I suggest that we perhaps opt for an expression, in a moment, maybe of "10 working days". That might achieve a happy medium.

Hon LINDA SAVAGE: As I said, I did not have the Interpretation Act in front of me and I could not remember, but it could possibly be—certainly, that is what I was getting at—working days.

I am still not quite sure that I followed the minister in regard to the other matter I raised. Quite clearly, the tenancy comes to an end when the contract is finished, and obviously that is the case. I was not unhappy about that; I was talking about the liability. That is one of the issues that have been raised. Until the report is done on the condition of the property, the liability for the damage done and upgrades or maintenance that needs to be done remains with the now former tenant. That was the point Hon Adele Farina raised when she talked about the longer that period is, then the possibility could arise that something happens to the property that is beyond the control of the tenant who has left the property for what could be some days. The committee chose seven days because it seemed reasonable, given that usually when tenants go into a property the report has to be done almost immediately and certainly within a few days.

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