

RESIDENTIAL TENANCIES LEGISLATION AMENDMENT (FAMILY VIOLENCE) BILL 2018

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Dr Steve Thomas) in the chair; Hon Alannah MacTiernan (Minister for Regional Development) in charge of the bill.

New clause 22A —

Progress was reported after the new clause had been partly considered.

Hon AARON STONEHOUSE: Once this bill receives royal assent are there regulations ready to be published in the *Government Gazette*?

Hon ALANNAH MacTIERNAN: We answered that earlier today, member. We said that Parliamentary Counsel cannot proceed to draft regulations until a bill is passed. This will happen once this bill is passed and they are expected to be ready late February or March.

Hon AARON STONEHOUSE: If new clause 22A is adopted, regulations will be drafted after the bill receives royal assent, but then once published in the *Government Gazette*, we will have to wait six months before the prescribed alterations—that is one of the aspects we are dealing with under prescription—can be made through regulation; is that correct?

Hon ALANNAH MacTIERNAN: That is certainly in relation to those two proposed sections. For the first one, proposed section 47, there will be a list of prescribed alterations that will already be in operation.

Hon Aaron Stonehouse: In proposed section 47(4).

Hon ALANNAH MacTIERNAN: That is right. That is what the member has been asking for, as part of the problem.

Hon AARON STONEHOUSE: Just to clarify, proposed section 47(4) requires prescription of alterations that a lessee or a tenant can make. The regulations have not been drafted. Once they are drafted, they will be published in the *Government Gazette*, but they will not come into effect until six months after they were published in the *Government Gazette*. That means for the first six months of the operation of the provisions of this new legislation, no alterations will be able to be made under proposed section 47(4) because none will have been prescribed. That will not happen until six months after they are published in the *Government Gazette*. Further to that, proposed section 71AB(2)—if I am reading it right—deals with prescribed officers. Some officers are listed already, I think, in the primary legislation, but if we need to expand that list by prescribing further officers, again, we will not be able to do that until six months after the regulations are published in the *Government Gazette*, which will not happen until at least next year.

We just debated clause 12 and there was a proposed amendment to that clause by Hon Rick Mazza. The proposed amendment was to remove the prescription of approved alterations that a tenant can make and instead prescribe specifically in the primary legislation which alterations could be made. That was argued against quite passionately by Hon Simon O'Brien and the minister, and a very good point was made that trying to prescribe approved alterations in the primary legislation can be very clunky—it is not very flexible—and alterations may be missed that have not been thought of. There may be new security technology in the future that needs to be quickly prescribed as an approved alteration. The argument was that defining approved alterations in primary legislation would be too slow, because it would require an amendment to the act; it would require a new bill to pass through both houses of Parliament to update the list. Instead, regulations that are fit for purpose can be tabled and amended quickly and do not take very long, whereas it would take too long to amend the act. New clause 22A states that regulations will not come into effect for six months. Not only does that make a major provision of this bill ineffective for the first six months of its operation, but six months, for a regulation, is longer than it would take to pass a bill through both houses of Parliament. I understand that there can be some gridlocks at times and it can take a while to get some bills through Parliament, but surely not six months for what would essentially be a list of approved alterations to a property or an expansion of the list of approved officers under proposed section 71AB(2). In order to try to streamline the process of expanding the list of approved alterations or officers, we are proposing a regime that would be slower than if we just passed an amendment to the act in a few months' time if we noticed the list was too short or not expansive enough.

Hon ALANNAH MacTIERNAN: I understand the point that the member is making. It is certainly not our preference. We did not want to go down this path. We believed that for all the reasons we have outlined it would be better to have the normal ability to make regulations. We are not particularly pleased. We are trying to get this legislation through. We have now come to a landing on this. Obviously, one of the things we would do is first draft the regulations for this provision and they would be able to be gazetted fairly quickly, so it is not going to be

Extract from Hansard

[COUNCIL — Thursday, 29 November 2018]

p8917e-8923a

Hon Aaron Stonehouse; Hon Alannah MacTiernan; Hon Nick Goiran; Hon Martin Aldridge; Hon Simon O'Brien; Hon Michael Mischin; Hon Rick Mazza; Deputy Chair

six months after February. There would be no reason that that particular set of regulations could not be expedited and put forward fairly quickly.

Hon AARON STONEHOUSE: I appreciate that, minister. I understand that the minister is trying to reach a compromise with this and I appreciate that. I am just highlighting the absurdity of it. If we had merely adopted Hon Rick Mazza's amendments back in the debate on clause 12, we would have a system that would probably be a lot smoother than that being proposed in new clause 22A. Looking at the impracticality of this new clause 22A, with a six-month wait time, I wonder whether it might be easier just to adopt the recommendation of Hon Nick Goiran. I do not know whether he has an amendment ready to put on the supplementary notice paper, but I am referring to the idea of tabling or publishing the regulations and then having both houses quickly approve them. I do not know whether there is a precedent for that, but it would certainly be quicker than waiting six months from the regulations being published in the *Government Gazette*. I am sure Hon Nick Goiran will address that now.

Hon NICK GOIRAN: From my perspective, what is being proposed here is not ideal either. I have to say I was far more wedded to the idea of the Foss amendment the minister had talked about the possibility of. I had originally understood that we would have a regulation-making power that would come into operation upon resolution of both houses of Parliament. That would certainly be more expedient and it would also address the very concern outlined by Hon Rick Mazza, which was to make sure that it is brought to our attention. Nevertheless, the government has decided that this is the way things are going to be.

I have two questions for the minister. The minister will see that new clause 22A refers to proposed section 46(6)(b) in the second line of proposed section 88(3). I point to the minister's attention that the chamber has deleted proposed section 46(6)(b) from the bill and it was done unanimously because of a committee recommendation moved by the Chair. At the very least, I suggest that that should be amended. There is a second thing I would like the minister to clarify. I am reliably informed by my colleagues from the other place that everything we are doing right now is a complete waste of time because I understand that Minister Templeman has indicated that the government will not be accepting any amendments anyway. Is there a purpose to what we are doing right now?

Hon ALANNAH MacTIERNAN: My understanding is that the amendments we have agreed to will be proceeded with. I am relying on Parliamentary Counsel. I am relying on the drafting we are getting here. We will delete that reference to proposed section 46(6)(b). Therefore, I move —

To delete "or (6)(b)".

The DEPUTY CHAIR: Members, we will have copies of that amendment directly, but it is a fairly simple amendment to the amendment.

Hon MARTIN ALDRIDGE: I wanted to clarify the deletion of "(6)(b)". It has taken me a little while to catch up. I have a copy of the act incorporating the proposed amendments. I think the minister's amendment is referring to section 6(b) of the act and not proposed section 47(6)(b), as outlined in the bill. Section 6 of the act is headed "Modification of application of Act by regulation", with paragraph (b) being "any premises or class of premises", to which, I assume, the act applies. I want clarification of whether we are indeed dealing with section 6(b) of the Residential Tenancies Act 1987, on page 6 of the blue bill, or whether we are dealing with proposed section 47(6)(b).

Hon ALANNAH MacTIERNAN: My advice is that proposed section 47(6)(b) was actually removed under an amendment that came through a committee recommendation. The amendment refers to proposed section 47(6)(b), which was deleted. I refer to amendment 12/12 on the supplementary notice paper, which at page 11, lines 3 to 7, deletes the lines, referring to subsection (4) not applying to premises entered into the register under the Heritage Act. Our advice is that proposed section 47(6)(b) referred to the primary act.

Amendment on new clause put and passed.

Hon SIMON O'BRIEN: For the record, I have been uncomfortable about some of the processes that have perforce been employed this afternoon to meet a hurried agenda, not the least of these being rushed amendments introduced by the government almost with a sense of darting at shadows. Back in debate on clause 1, I referred to the availability of report 38 of the Standing Committee on Legislation, commended its contents to the chamber and offered the advice that this would be a useful body of information to help inform members as they work their way through this very important issue. I think I was actually on my feet on an earlier clause, advising the chamber, successfully, that it should not pursue a certain misconceived course of action, when this new clause 22A, or the version of it that then existed, was thrust into my hands. That was the first we knew about it. That new clause has subsequently been amended on the run. I want members to briefly contemplate that maybe this is not the best way of constructing a statute that actually implements a very commendable policy. In so doing, I note that this proposed new clause about regulations made under a couple of provisions, which are quite different in this bill, receives a treatment or a form of application that, if not unique, is certainly pretty unusual in the statute book of Western Australia.

Regulations are meant to come into force when they are gazetted. They go through a process, which is not just someone with a good idea at some desk somewhere thinking, “Let’s have a regulation about such and such.” Unless I am gravely mistaken, that is not what happens—it is certainly not what has happened in terms of what I have observed. No; regulations are made by a process. They are approved by Executive Council. Typically, they come into force on the day they are gazetted unless, for some reason, there is some other commencement date, which also comes into force on the date it is gazetted. Then we have some processes set out for the review of subsidiary legislation. We all know about that and the processes of disallowance. I have spoken about the inadequacies of that process in the past. Be that as it may, what we are talking about today is an almost unique restriction being put on any regulations made under this proposed part of the act. For the record, I do not believe that this is the right way to go. If I am the only member who votes against what we are about to vote for, I will be quite comfortable about that. But I am telling members now that, in my view, regulations that are meant to come in, as this was drafted, after a period of disallowance is not the way to go about it.

Between this document being thrust into my hands and this new clause as it now appears before us, it has been amended to something else, which I think is almost the question before the Chair now, about six months. Why not five months? Why not 7.2 months? Why not get a bit *Ivanhoe* and talk about a year and a day? What the dickens is going on here? The idea of it being six months is apparently because at least it is a precise, finite time, whereas the period in which regulations might be subject to disallowance could be anything, depending upon a number of variables to do with the sitting pattern of the house. I do not know what would happen if the house were prorogued or dissolved for a period of time, or the other house were perhaps dissolved. Then we also had speculation about maybe making it better by saying that it should be the subject of a positive resolution passed by both houses. That is less bad than what we have before us. But, seriously, are we going to move on from a debate in which we say, “Well, it could be better if we did something different”, as described by Hon Aaron Stonehouse? Are we now about to proceed and say, “Yes, blow that—let’s not improve it. Let’s stick with this cack-handed, third-generation, last-minute government amendment”, that I am condemning in the terms I have just used?

I could go on about a number of other things that are wrong about this. For the record, I do not like this new provision and I will be voting against it in whatever form it might twist and turn in the 30 seconds or so after I sit down. If other members want to go along with it, so be it. There is no provision in the Western Australian Constitution that says anything that comes out of this place has to actually make sense! There is no such provision. But I prefer to produce and participate in the production of legislation that is coherent, sensible, defensible and about which we can be justifiably proud. The current product before the Chair does not meet any of those criteria, so I will be voting against it.

Hon ALANNAH MacTIERNAN: Much of what Hon Simon O’Brien says is correct. We are moving this to try to resolve the issue and get the bulk of this legislation through, so that all the other parts of the legislation can proceed. At some subsequent stage maybe we can come back and talk about this again. Our intention here was to try to get this through. We were told that the Liberal Party would oppose us having any ability to prescribe.

New clause, as amended, put and passed.

Clauses 23 to 28 put and passed.

Clause 29: Part 3 Division 4A inserted —

Hon ALANNAH MacTIERNAN: I move —

Page 26, line 4 — To delete “not less than” and substitute —
within

Amendment put and passed.

The DEPUTY CHAIR: We are still on clause 29. Minister, we are up to your proposed amendment to page 26, after line 10. Would you like to formally move that?

Hon MICHAEL MISCHIN: If I might just make a comment. This is another raft of three review clauses—different versions. There is the version proposed by the minister, the one by Hon Rick Mazza at 27/29, and the one in my name at 40/29. I understand, as with the previous review clause, the government will accede to my version, and that Hon Rick Mazza likewise is content with my version. If that is the case, perhaps the minister and the honourable member can indicate whether they intend to proceed with theirs. If not, I will put the motion standing in my name at 40/29.

Hon ALANNAH MacTIERNAN: I withdraw the amendment standing in my name at 5/29.

The DEPUTY CHAIR: You do not need to withdraw it because it has not yet been moved. That amendment will not be proceeded with. And is Hon Rick Mazza not proceeding with his amendment?

Hon RICK MAZZA: No.

Hon MICHAEL MISCHIN: I move —

Page 26, after line 10 — To insert —

45C. Review of Division

- (1) The Minister must carry out a review of the operation and effectiveness of this Division, and prepare a report based on the review, as soon as practicable after the 3rd anniversary of the day on which this Division comes into operation.
- (2) Without limiting the scope of the review, the review must address the following —
 - (a) the effect of this Division on lessors' rights to recover debts owed by tenants;
 - (b) the effect of this Division on lessors' insurance policies;
 - (c) the effect of this Division on contractual certainty;
 - (d) the extent to which this Division affects contractual obligations upon lessors and co-tenants who are not perpetrators of family violence and the impact of those obligations;
 - (e) such other matters as appear to the Minister to be relevant.
- (3) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 3rd anniversary.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 30 put and passed.

Clause 31: Part 5 Division 3A inserted —

Hon RICK MAZZA: I move —

Page 30, line 17 — To delete “fundamental”.

This amendment is consistent with the deletion of “fundamental” earlier in the bill.

Amendment put and passed.

Hon MICHAEL MISCHIN: Consistent with other amendments dealing with the review elements of the legislation, I move —

Page 31, after line 6 — To insert —

74D. Review of Division

- (1) The Minister must carry out a review of the operation and effectiveness of this Division, and prepare a report based on the review, as soon as practicable after the 3rd anniversary of the day on which this Division comes into operation.
- (2) Without limiting the scope of the review, the review must address the following —
 - (a) the effect of this Division on lessors' rights to recover debts owed by tenants;
 - (b) the effect of this Division on lessors' insurance policies;
 - (c) the effect of this Division on contractual certainty;
 - (d) the extent to which this Division affects contractual obligations upon lessors and co-tenants who are not perpetrators of family violence and the impact of those obligations;
 - (e) such other matters as appear to the Minister to be relevant.
- (3) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 3rd anniversary.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 32 put and passed.

New clause 32A —

Hon ALANNAH MacTIERNAN: I move —

Extract from Hansard

[COUNCIL — Thursday, 29 November 2018]

p8917e-8923a

Hon Aaron Stonehouse; Hon Alannah MacTiernan; Hon Nick Goiran; Hon Martin Aldridge; Hon Simon O'Brien; Hon Michael Mischin; Hon Rick Mazza; Deputy Chair

Page 31, after line 18 — To insert —

32A. Section 95 amended

After section 95(3) insert:

- (4) Regulations made under subsection (1) for the purposes of section 45A(2)(d)(vi) or Schedule 1 clause 14(4) cannot come into operation earlier than 6 months after they are published in the *Gazette*.

This amendment is identical to the one that we moved before, which we had a debate on. This time it is for the residential parks legislation, but it is identical to the earlier provision.

The DEPUTY CHAIR: Before we progress, I am getting advice. Honourable members, the latest version of this proposed amendment is in draft 4. Minister, can you confirm that is the amendment you are moving?

Hon Alannah MacTiernan: That is correct.

The DEPUTY CHAIR: Thank you, minister.

New clause put and passed.

Clause 33: Schedule 1 clause 12 amended —

The DEPUTY CHAIR: Minister, there are a couple of amendments to clause 33 on the supplementary notice paper.

Hon ALANNAH MacTIERNAN: I move —

Page 32, line 18 — To insert after “park operator” —
in writing

Amendment put and passed.

The DEPUTY CHAIR (Hon Dr Steve Thomas): I move the committee recommendation —

Page 32, line 24 — To delete the line and substitute —
Penalty for this subclause: a fine of \$5 000.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 34 put and passed.

Clause 35: Schedule 1 clause 14 amended —

The DEPUTY CHAIR: Hon Rick Mazza, you have amendments on the supplementary notice paper; will you be continuing with them?

Hon RICK MAZZA: I will not move the amendments in my name from 30/35 to 35/35. I will move the amendment 36/35.

The DEPUTY CHAIR: The minister has an amendment on draft 4 at clause 35.

Hon ALANNAH MacTIERNAN: I move —

Page 34, after line 23 — To insert —

- (aa) the long-stay tenant must give written notice to the park operator of the tenant’s intention to make the prescribed alterations; and

Amendment put and passed.

Hon Alannah MacTiernan: We will not be proceeding with the next amendment.

Hon RICK MAZZA: I move —

Page 34, line 25 — To delete “tradesperson; and” and substitute —

tradesperson, a copy of whose invoice the long-stay tenant must provide to the park operator within 14 days of the alterations being completed; and

The amendment has been amended to provide for 14 days, for consistency with amendments that were passed earlier. The amended amendment has been signed and will be circulated shortly.

Extract from Hansard

[COUNCIL — Thursday, 29 November 2018]

p8917e-8923a

Hon Aaron Stonehouse; Hon Alannah MacTiernan; Hon Nick Goiran; Hon Martin Aldridge; Hon Simon O'Brien; Hon Michael Mischin; Hon Rick Mazza; Deputy Chair

Amendment put and passed.

The DEPUTY CHAIR: Hon Rick Mazza, will you move any of the further amendments on the supplementary notice paper in your name?

Hon RICK MAZZA: Yes, Mr Deputy Chair. I will not move amendment 37/35 but I will move amendment 38/35. This will also be consistent with what we have passed earlier. I have amended it to “14 days” for consistency, as well. I move —

Page 34, line 32 — To delete “so.” and substitute —

so and the restoration must be undertaken by a qualified tradesperson, a copy of whose invoice the tenant must provide to the park operator within 14 days of the restoration being completed.

Amendment put and passed.

Hon ALANNAH MacTIERNAN: I move —

Page 34, after line 32 — To insert —

(6) The long-stay tenant must give notice of the prescribed alterations to the park operator within 14 days after the alterations have been completed.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 36: Glossary amended —

Hon ALANNAH MacTIERNAN: I move —

Page 35, after line 8 — To insert —

family violence has the meaning given in the *Restraining Orders Act 1997* section 5A(1);

Amendment put and passed.

Clause, as amended, put and passed.

Clause 37 put and passed.

Title put and passed.

Report

Bill reported, with amendments, and, by leave, the report adopted.

As to Third Reading — Standing Orders Suspension — Motion

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

That so much of the standing orders be suspended so as to enable the bill to be read a third time forthwith.

Third Reading

Bill read a third time, on motion by **Hon Alannah MacTiernan (Minister for Regional Development)**, and returned to the Assembly with amendments.