RESIDENTIAL TENANCIES AMENDMENT BILL 2011

Committee

Resumed from 23 November. The Deputy Chairman of Committees (Hon Col Holt) in the chair; Hon Simon O'Brien (Minister for Commerce) in charge of the bill.

Clause 41: Sections 42 to 46 replaced —

Progress was reported after the clause had been partly considered.

Hon SALLY TALBOT: I think when we broke last night that the minister had just given me an explanation about essential repairs and how they would be listed in the regulations so that a tenant who was unable to contact the owner of a property could have those repairs carried out and then seek reimbursement if the repair the tenant was seeking was on the list of essential repairs. The minister talked about essential repairs but proposed sections 43(2) and (3) also refer to "urgent repairs". Is the same true for urgent repairs?

Hon SIMON O'BRIEN: It is pretty straightforward. "Urgent repairs" is defined in proposed section 43 and "essential services" are prescribed. In addition, "urgent repairs" extend to repairs that are necessary to avoid exposing a person to the risk of injury or exposing property to damage or causing the tenant undue hardship or inconvenience. All that is contained in the clause before us.

Hon SALLY TALBOT: Yes, but I am concerned about a tenant who cannot make contact with the owner and has the repair done on the basis that the tenant thinks it is urgent and the tenant pays the invoice and then seeks reimbursement from the owner. The definition of "urgent repairs" in proposed section 43(1)(b) states —

> to avoid
>
> …
>
> (iii) causing the tenant undue hardship or inconvenience.

Will we get to the point at which a court will have to arbitrate on whether what a tenant spent money on was an urgent repair and therefore is covered by the act, and that the tenant suffered undue hardship or inconvenience as a result of being unable to use the thing for which the tenant is seeking reimbursement? Will the owner have to argue that the repair should have been put on a maintenance list?

Hon SIMON O'BRIEN: I hope that members will support the provisions contained in this clause because they improve on the current situation. They establish a method for urgent repairs to be done, set out some timetables to ensure that they are done and provide an enforceable mechanism whereby a tenant is not helpless if the tenant is having trouble contacting either the lessor or the agent. They are all good things. We are setting out what should happen in legislation, which is a superior situation to that which may exist in some contracts. I understand that some lessors remove from contracts these sorts of requirements. We are putting into law that this is part of every residential tenancy agreement, so the clause is eminently supportable.

On the member's final question, yes, ultimately, if the tenant and the lessor cannot agree after the fact, or one party wants to argue the case, it may have to be resolved by a court, but that is the same as any dispute, let us face it. However, my Department of Commerce is also an instrument at a tenant's or a lessor's disposal to help conciliate such a situation. That probably provides a better and more attractive first option at least, rather than having to resort to court orders and the like. We cannot legislate that out of the system. People have recourse to the courts.

Hon SALLY TALBOT: I will make one comment about clause 41, but I do not particularly need the minister to respond because I think he has made the government's position clear. There is a situation that is still of concern to me. This legislation is about equity for both the tenant and the landlord. I am still concerned that someone might find that their electric stove, for instance, is not working; they might try to contact the landlord or the owner and cannot, so they read the act—maybe—and decide that replacement of the stove comes under definition (b)(iii) of "urgent repairs" in proposed section 43(1), "causing the tenant undue hardship or inconvenience", and replace the stove and then find themselves locked in a dispute with the owner, who says, "Well, I don't think it came under that provision, you should've gone through the standard maintenance path, and in any case you spent $1 800 on the stove and I could've got you one for $1 200." I think that perhaps we can tighten that in writing the regulations; that is certainly something we will have to keep an eye on. But I worry slightly about this provision for reimbursement.

The other two things I wanted to raise with the minister are about proposed section 44, entitled "Quiet enjoyment". What is the extent to which this provision might go when it comes to behaviour by the owner or the

agent away from the premises? The Tenants Advice Service is quite clear that a number of the complaints it gets about harassment relate to an owner turning up at, say, a person's workplace to make points.

Hon Simon O'Brien: I see what you mean.

Hon SALLY TALBOT: I understand the objective of proposed section 44. This is clearly something that is much better being legislated for than being left to people's goodwill about the restrictions on an owner simply turning up at odd times without prearrangement. Has any consideration been given to the kind of harassment of tenants that clearly appears to occur away from the property itself?

Hon SIMON O'BRIEN: This can be a problem. Given the thousands of tenancy arrangements that exist, it does happen. To directly answer the question, proposed section 44 deals only with the question of the actual residential premises; it does not relate to the situation the member described by way of example at the tenant's workplace. The recourse that would be available to a tenant being harassed in that manner would be to get a nuisance restraining order or a similar device, which is outside the province of what we are talking about today.

Hon SALLY TALBOT: The final question I have under clause 41 refers to proposed section 45(b), at the top of page 33, about changing locks. Under this provision anyone who is following the letter of the law when this bill becomes the law will not be able to change a lock without going through a process of consultation with the owner or the agent. I am particularly concerned about victims of domestic violence who may need to secure themselves at very short notice.

Hon Simon O'Brien: Or some other emergency

Hon SALLY TALBOT: Absolutely, minister. I am sure many of us have found ourselves in that situation as homeowners without being directly threatened by a third party in a violent sense. If our home is broken into, windows are broken and locks are smashed on, say, a Friday night, it is commonsense that there must be a provision to replace the locks. That would apply when someone's keys have been stolen, as happened to me a few years ago when someone walked in the back door of my house, picked up my car keys with all my house keys on it, and walked out the front door and drove my car away. I hope that the minister's answer is not that the officers concerned are experienced and would never let that happen. I am looking here for a way to make provision for people not to break the law and not to have to rely on the understanding of a sympathetic housing officer to secure their property after some kind of burglary, home invasion or violent altercation.

Hon SIMON O'BRIEN: They are all good points. The response is that in this redrafting of the act, the current provisions are being split. Did we give the member a marked-up act?

Hon Sally Talbot: Yes.

Hon SIMON O'BRIEN: Excuse the asides, Mr Chairman. I refer the member to page 47 of the marked-up copy of the act.

Hon Sally Talbot: Yes.

Hon SIMON O'BRIEN: At the bottom is existing section 45, which is being replaced. These matters are dealt with in section 45 of the act, which contains similar provisions to those we are discussing about changing locks and so on. There is also a provision advising that it is an offence to breach those terms without reasonable excuse. Obviously, "reasonable excuse" might mean there is some emergency such as a domestic situation, a violent situation or a break-in and keys stolen, and attempts to contact the other party, whether it is the tenant or lessor, have been in vain and, obviously, the locks need to be changed. That is contemplated by "reasonable excuse". That section has been split in two and, under clause 56 is proposed section 59F, which is the balance of section 45. It has not disappeared, but it is only an offence to breach these terms if one acts without reasonable excuse. In effect, I do not think it is any change from what is currently in place.

Clause put and passed.

Clauses 42 to 55 put and passed.

Clause 56: Sections 59A to 59F inserted —

Hon ADELE FARINA: I move —

Page 44, after line 18 — To insert —

(3) A minor must seek advice from a prescribed tenancy network provider before entering into a residential tenancy agreement about their responsibilities and obligations under the agreement.

The Standing Committee on Uniform Legislation and Statutes Review made this recommendation due to its concern that there are not enough safeguards in the bill to ensure that minors are aware of the contractual obligations they are entering into. We support what the bill does in enabling minors to enter into lease agreements and we understand the circumstances for doing that. We note that once minors have entered into the lease agreement, the bill contains protections for them, if they have legal issues and any matter goes to court, to get support at that time. The committee was concerned that, at the point of signing the rental agreement, no support was provided to ensure that they understood the contractual arrangements. Some of these leases are very complicated—they have a lot of clauses—and I would not expect that someone at that young age would be across their rights and obligations under the legislation. Therefore, the committee felt that, to protect their interests, it would be good if they were able to get advice from another party.

It is provided in a lot of legislation today that when adults are entering into formal contracts, they get independent legal advice before entering into those contracts to ensure that they understand the legal obligations that they are entering into. In many cases, they are required to provide some sort of notification that they have actually sought that legal advice. I know that when I was practising as a lawyer, I frequently gave advice to clients who were entering into mortgages or other legal obligations about the contract that they were entering into to ensure that they understood the terms and conditions of that contract. Although I understand that there is some concern that this might end up being a bit of a problem and might be a bit of a disincentive for landowners to enter into a tenancy with a younger person, I think that, on balance, protecting the interests of the younger person is most important, and it is for that reason that the committee recommended a prescribed tenancy network provider as opposed to a lawyer. We do not want to place on a young person the burden of having to get legal advice, with the cost of that, and we do not want to scare away landlords from entering into lease arrangements with young persons. However, we feel that there needs to be some safeguard to ensure that minors do not enter into lease agreements without understanding the full ramifications of what they are doing, and the rights and obligations that they have under that lease agreement. For those reasons the committee has moved this amendment.

Hon SIMON O'BRIEN: I again thank the committee, both the members and the staff, for the thought and the effort that they have put into considering this bill, as I am sure they do with all bills. Indeed, they often seem to reserve a special dollop of helpfulness when they are my bills, so I appreciate that very much indeed. This is a well-motivated proposal, as we have just heard. But I will just explain what we are trying to achieve with this provision. I invite members to look at proposed section 59A, which currently has two proposed subsections in it. It relates to minors, and it puts into the statute law the existing common law that allows minors to enter into contracts for the necessities of life. That is what we are doing; we are adding something here. The amendment proposes to go a bit further and make it a requirement that a minor must seek advice—not just from anybody such as mum, dad or uncle Bill; it has to be from a prescribed tenancy network provider, and they must do it before they enter into a residential tenancy agreement, and the advice has to be about their responsibilities and obligations.

I wonder whether anyone thinks that all potential tenants ought to have this or whether it should be just minors, because it is sound advice for people to source information about their responsibilities and obligations before they enter a tenancy agreement. There is no argument about that, and I reckon a heck of a lot of people over 18 years of age need to do that. Over the last three days we have discussed some of the circumstances that can arise. This proposal, in effect, though, goes further beyond the intent, and the effect is that it would delay access to housing for minors who may need urgent access to housing. I think that that would be a self-defeating proposal.

Broad-ranging information services are provided by the Department of Commerce and a number of non-government organisations which are targeted at young people and which are already available to provide information about residential tenancy laws. Protections are currently available to minors, including the Magistrates Court (Minor Cases Procedure) Rules 2005, which allow a minor to have a litigation guardian present with them in any court proceedings; and, in this bill, proposed section 22 of the Residential Tenancies Act, which will enable minors to be represented in the court, and the proposed prescribed tenancy agreement will provide plain language obligations that will assist all tenants, including minors, in understanding their obligations and responsibilities. We have already covered a few of these aspects.

The final point I will raise is that the feedback from Queensland, where the written law confirms the right to enter into a tenancy agreement with a minor, which is what we are proposing here now by my proposed section 59A, seems to suggest that those minors who are successful in entering into a tenancy agreement generally have pre-existing and sound supports around them to assist them in not only entering their tenancy, but also going

through it. Therefore, with all those thoughts in mind, we will not support the recommendation, even though I acknowledge the genuine sentiments behind it.

Hon ADELE FARINA: I do not intend to labour this point. I just want to make two points. First of all, a lot of the protections that the minister mentioned occur after the contract has been entered into, which is why the committee made this recommendation. It is fine to say that minors can go to the courts, but that all happens after they have entered into the contract and there is an issue. We acknowledge that those safeguards are in the bill. However, they occur at a much later point than the point that the committee is looking at. The only other point I want to make is about emergency housing. It is not my understanding that Homeswest requires people who need emergency housing to enter into lease agreements. Normally, emergency housing is short term, and then arrangements are made for more permanent accommodation. Although the minister says that this is to ensure that minors have the necessities of life and to ensure that, in cases of emergency, they do not have to go through this process, in most cases of emergency they would not need to go through this process; it is a completely different process. In a lot of cases, young people of the age that we are talking about, 16 to 18 years, will not have any prior rental experience and, in the highly competitive rental market that we are dealing with, will be struggling anyway to get a foot in the door to be able to get a rental property. Therefore, I do not think that that urgency argument will play out in reality. Nevertheless, the committee is not trying to make it harder for minors to get access to housing when they need it. We fully support that sentiment. The committee's only concern was that minors should be made fully aware of the obligations that they are entering into, and we were concerned that there was no safeguard in the bill to require it. However, as I said, I am not going to labour the point.

Hon LYNN MacLAREN: I want to put on the record some of the Greens' concerns about the amendment that the committee has proposed. We totally support clause 56, especially extending the protections of this bill to minors from the age of 16. That is definitely a move in the right direction. We had a briefing from the department that indicated that Queensland, which has had minors in tenancy agreements since 1997, has not had the issues that the committee has predicted may occur here. We also consulted with Shelter WA. It was a bit concerned that the committee amendment may have the unintended consequences of delaying the amount of time that a minor would need to get into housing or, in the worst-case scenario, increasing homelessness for people because they do not feel capable of getting that advice. I am hearing from the government in its response that the WA Tenancy Network is adequately resourced to deal with minors who come to it for assistance. Perhaps the government is struggling to deal with that resource that is necessary in order to make this amendment work. Perhaps the government could deal with this by way of giving information to minors. The Department of Commerce could give information to minors who are going into tenancies, putting some emphasis on trying to empower them about what their rights are. We know that talking to minors is different from talking to adults. A special leaflet or fanzine may be needed to get that message to minors who are looking for a new lease agreement. Listening to the debate, we welcome the fact that minors will be protected under the Residential Tenancies Act, at least once they reach the age of 16. We agree that they should get some advice from someone but we are not prepared to support the committee's amendment at this stage. We think that the department should hear the debate that we have just had and the concerns that have been raised by the sector and try to find a way to ensure that young tenants are empowered to go into these agreements.

Hon LIZ BEHJAT: The minister is not of a mind to support the committee recommendation but he recognises that minors are quite often willing to sign things without looking at them properly or understanding the ramifications. As I understand, under common law, minors can enter into agreements. I think that is the case.

Hon Simon O'Brien: It contracts the necessities of life.

Hon LIZ BEHJAT: Yes, that is right. I have never been one to advocate putting things into regulations rather than legislation. I know that the Commissioner for Children and Young People has some concerns about minors entering into tenancy agreements. Within the proposed prescribed tenancy agreement, could some additional notice be given to a minor if they were to enter into an agreement? Something like that could be developed in concert with the commissioner just to ensure that those safeguards are there. I am not suggesting it should be mandated in the legislation but it could be done via the tenancy agreement.

Hon SIMON O'BRIEN: That is a good idea and something we are already looking at. I thank the member for her support.

Amendment put and negatived.

Hon LYNN MacLAREN: Just because this is the week that we look at domestic violence in our society, would the minister like to reflect on the importance of the tenant compensation bonds, which is the subject of proposed section 59D? We received some advice from the Women's Law Centre and the Domestic Violence Legal Workers' Network. They were extremely supportive of these amendments before us. I wonder whether the minister would like to take some time to point out how important they are.

Hon SIMON O'BRIEN: I thank the honourable member for her support, coming out of left field, no pun intended. I am glad to hear that we are meeting an identified need, and the prospect of that is welcomed. I think the best thing we can do about that is to respond by not delaying this bill any longer and getting it through.

Hon SALLY TALBOT: I move —

Page 46, after line 2 — To insert —

(5) A competent court may, on application from a person who —

(a) is not a tenant but who is occupying residential premises to which a residential tenancy agreement applies; or

(b) is a co-tenant occupying residential premises to which a residential tenancy agreement applies;

and that person is a successful applicant of a violence restraining order against a tenant or co-tenant, order that —

(i) the applicant is recognised as a tenant under the residential tenancy agreement; or

(ii) the applicant is removed, without liability, from the residential tenancy agreement.

This is another recognised need and an acknowledged need. I will spend one minute talking the minister through the implications of this amendment. I recall that the minister addressed this point in his second reading speech. He said that the existing provisions that would remain under this bill did take account of people who find themselves as the tenant without being the legitimate tenant because their name is not on the tenancy documents. I remember the minister saying that that would occur in the case in which a partner who was the named tenant had died. The reason that I have moved this amendment—this refers specifically to a person who is a successful applicant of a violence restraining order against a tenant or cotenant—is that we feel there is still one cohort of people who are likely to be disadvantaged under the current arrangements. They will still be disadvantaged under the new arrangements but could be acknowledged and have their needs taken into account by this very straightforward amendment. I am talking about somebody who is either not a tenant—perhaps they have moved in with the tenant as a de facto—or they might be a cotenant but they are not the tenant as such and they find themselves with a restraining order against the person who is either the cotenant or the tenant. The minister may well say that when that situation arises, the person will be helped into other accommodation, will not be subject to penalties relating to the lease to which they are not the signatory or there might even be a provision to make them the tenant.

We should view this amendment in light of the discussion that we have had over the past 30 minutes or so about the rights of tenants to do things such as change locks. I was at pains to point out during discussion on that previous clause—I give the minister his due; he did respond in a quite detailed way—that we do not want to force people who are taking what anyone would consider to be reasonable action into a situation in which they are technically breaking the law. As we all know in this place, there is no such thing as technically breaking the law; one is either abiding by the law or one is breaking it. I thank the minister for clarifying that provision and explaining how securing the premises has now been split between two clauses. I am sure it is very useful to have it on the record, but it still would not apply to this person who is not the tenant at that precise time they took action.

This amendment is not just about the ongoing tenancy of that person who is not named on the lease or the relocation of that person who is not technically a tenant to other accommodation; it is about the actual status of that person who is taking what I am sure the minister and every other member in this house would consider to be perfectly justifiable action to protect themselves and their family but again finds themselves in the position of not having the law to support their actions.

Hon SIMON O'BRIEN: This amendment is for a proposed subsection to be tacked on to proposed new section 59C. I listened very carefully during the course of the second reading debate and I responded to that and I have listened carefully just now. I think that our current provisions as proposed cover all the necessary bases but in turn do not introduce something that could be problematic. I will explain that as briefly as I can.

The effect of the proposed amendment will guarantee that, upon a person who has been granted a violence restraining order making an application to court, first, if the person is not named as a tenant on a residential tenancy agreement, they will be subsequently named on the agreement; conversely, if the person is a named tenant, they will be removed as a tenant without any liability to that individual. So there are two distinct provisions. We are discussing clause 56 of the bill and proposed new section 59C is within that. We are trying to

introduce a new provision—proposed new section 59C—into the act to allow a person who is a resident of the premises but is not named on the lease to apply to the court at any time to be recognised as a tenant on the lease to ensure the ongoing security of their tenure at the house. I think that is a sufficiently broad category to allow us to embrace not only the part of the proposal that is in the amendment, but also any other reasonable circumstances that could apply—for example, a person who is resident but not a named tenant and is the wife, husband or partner of, or has some other close relationship to, the person named as the tenant and the tenant dies, disappears, is taken to prison for domestic violence or anything else, goes off to hospital for an extended stay or becomes incapacitated; all sorts of things could happen. I think that the provisions we proposed cover that. But there is a bit more I want to comment on.

The amendment, as I already indicated, seeks to do one of two things, which are shown in the amendment as subparagraphs (i) and (ii). They are quite different. Firstly, if the person is a resident but is not listed on the tenancy agreement, the amendment allows them to apply to be recognised as a tenant. I believe we already have that provision. The bill as it is currently drafted provides greater flexibility to enable applicants affected by domestic violence to apply to the courts in a broad range of circumstances and it is not reliant on a fine or violence restraining order. Plenty of people could be in this position—I can see people around the chamber trying to put themselves in this position—and plenty of situations might arise in which a person might not want to take out a violence restraining order but might want to become the tenant. Secondly, if the person is a cotenant—that is, they are named on the lease agreement—and they want to leave as a result of the violence, which is a fair thing, they can apply to the court to have their name removed from the lease agreement without liability. I certainly cannot imagine property managers or owners supporting that amendment and understandably so because currently each tenant named on the tenancy agreement is liable to the landlord for the payment of rent and any damages owing on the premises. The amendment would have the effect of removing a tenant from the lease agreement without any liability, potentially leaving the landlord with a debt that they cannot recover, obviously, from the departing tenant or the remaining tenant. For example, a tenant who signed a 12-month fixed-term lease and after five months was the victim of domestic violence could be removed from the lease agreement without any notice to the landlord or without any consideration of whether the remaining tenant can meet the rent commitment for the remainder of the lease. While not having any sympathy for the perpetrators of domestic violence and having every sympathy for the victims, the fact is that the landlord should not be made the victim. Therefore, the release from liability, which is not connected with the problem, is something that we would not be able to support.

The other consideration that the honourable member might want to give is to section 74 of the Residential Tenancies Act, which provides for circumstances in which a court may relieve a lessor or tenant of some undue hardship related to the termination of an agreement. The government does not feel that the amendment's proposed subsection (5) is warranted. I know I have taken a bit of time, but it is a very complex issue and a complex amendment. I hope I have given sufficient explanation about why we will not support the amendment.

Hon LYNN MacLAREN: The Greens strongly support the amendment put forward by Hon Sally Talbot; we have not been convinced by the government's response that this is already dealt with in the legislation. We think that this is a very important amendment to make and we go on the advice, as I said, of the Women's Law Centre and the Domestic Violence Legal Workers' Network.

If the government is saying that existing provisions already permit this, I do not see why we cannot be explicit in giving rights to victims of domestic violence to maintain their residency. Often it is the case, as we have heard just this week, that when someone is wrapped up in domestic violence, they are controlled to a great extent by another individual. That individual is likely to be the one who has all the legal documents and all the legal arrangements. Sometimes they control all the money. It is about power and control. All these victims want is to survive and be able to live in the place that they have been living, so why should they not have that right and our laws guarantee them that right to stay in their home? This amendment as drafted is about a competent court examining this. This will not be an automatic thing that some office worker rubber-stamps; a competent court will look at a situation in which two people share a house, one of whom is on the residential tenancy agreement and has a violence restraining order against them. This is not a flash-in-the-pan thing; obviously, it is already recognised by the courts as a problem between two people who share a house.

The Women's Law Centre and the Domestic Violence Legal Workers' Network have examined this amendment and believe this amendment will solve a problem and provide these people, who are in most desperate need, with some legal assurance that they can maintain their residence at a time of tremendous upheaval. I think this is the least we can do. If the minister is in agreement that this is the kind of thing that this law is intended to do, why not be explicit, and why not change the law so that at this time we can move to give people who are in situations of violence some security in their home? This is an appropriate time to do that. I welcome the amendment that Hon Sally Talbot has put forward and strongly support it. I ask the government to reconsider its earlier

opposition to the amendment, because this amendment would add something in this particular week when we look at the victims of domestic violence. This is an important time for us to act decisively to stop the cycle of violence. Part of that is helping a victim of domestic violence to secure their home.

Hon MAX TRENORDEN: The answer to the question that Hon Lynn MacLaren has asked is: because it is a bad method of writing legislation to do so. The second thing about the amendment is that it puts in a deferred reaction. I cannot speak for the metropolitan area, but I can speak for the regions. I would say that the risk of a woman who has received domestic violence, or a male who has received domestic violence, losing their house is close to nil. The point of all this is not about those sorts of issues. Those types of decisions are best left to the highly competent managers in the housing agencies. I would much prefer that the manager of my agency in the central Wheatbelt made those decisions on a case-by-case basis. Attila Menschely is the manager who operates in my area. He is the best public servant I have seen for some time. So the member might be able to say to me that I have some bias in that area. But I would back him 100 per cent of the time.

There seems to be a view that the intention of this clause is to make life tough for people who get into trouble. That is not the issue. As I said during the second reading debate, this is about people who have tenancies and who make other people's lives a misery. I could give the member an example of a case that occurred in Northam recently, similar to what the member has just been talking about—I do not want to do that, because it will instantly identify people—in which I have been very happy with the outcome. The people came to me, and, when I rang the manager, he had already sorted it out and I did not have to talk to him about it. I think the member is reading too much into the clause. The second weakness in the amendment is that the matter will need to be taken to a court. That will delay the process. By the member's own admission, the people she wants to protect and the people I want to protect need immediate help, not delayed help.

So, I do not support the amendment, and the National Party will be supporting the minister.

Hon SALLY TALBOT: I want to respond briefly to that. I think Hon Max Trenorden has either misread or misunderstood the amendment. If Hon Max Trenorden had been following the debate, he would know that the minister has already referred to the fact that housing officers are very experienced, and that even though at the moment we do not have provisions covering aspects of tenancy agreements, things are often sorted out very effectively on the ground by good housing managers. But that is not the point of this legislation. We have to, as legislators, lay out a set of principles by which we operate. That is what we are trying to do now. If Hon Max Trenorden is lucky enough in his areas to have a person who is able to be proactive on these matters and who sorts them out to the satisfaction of people who do not have the strength and the clout and the resources to fix things themselves, that is a very good thing. But to suggest that we will somehow make life more difficult for the victims of domestic violence by insisting that they trawl through a court process to get a resolution is just ridiculous. That is not what we are saying. There is nothing in this amendment that would have any effect whatsoever on the work that Hon Max Trenorden's local housing manager is doing, and on his assessment is doing very well. However, that is not the case in other areas of the state. Every honourable member in this place knows that is not the case in other parts of the state. In any case, we should be giving those good managers the resources of the law to help them do their job even better.

I am sure the minister also has a response to what Hon Max Trenorden has been saying, and maybe this will be one of those occasions when they will both oppose the amendment, but perhaps for slightly different reasons. But I would point out to both the minister and Hon Max Trenorden that domestic violence is not like anything else. It is not like other forms of violence. Hon Lynn MacLaren gave a very eloquent account just a minute ago about what it is like to be a victim of domestic violence. A victim of domestic violence is not a recipient, as I think Hon Max Trenorden said. A person does not receive domestic violence. It is not something that comes in a box and the person mistakenly opens the lid and out it comes. This is to do with seriously dysfunctional relationships that are based on violence and the abuse of power. It is not like anything else. That is why Labor has chosen to frame this amendment in this way. We want to make particular acknowledgement of the fact that there are people who find themselves in these situations. These situations are not directly comparable to other situations in which people find themselves in difficulty with their tenancy. That is why we have made this amendment specifically about people who have been able to obtain a violence restraining order against their partner.

Hon SIMON O'BRIEN: I am keen to resolve this matter. But just briefly, before we go to the vote, I had better respond to what Hon Lynn MacLaren has said, because she asked me to. The way that she asked me to was in terms that could be considered unfortunate by someone reviewing this debate, because the proposition is being supported on the basis that this is a proposition that we support if we are concerned about domestic violence; and, therefore, if we will not support it, we do not care about domestic violence. We all know that is not the case.

Hon Lynn MacLaren: It is just an opportunity, minister, to enact a law.

Hon SIMON O'BRIEN: Hang on a minute. I want to make it quite clear that I reject that notion. What this provision that we are considering is all about is the right that should exist, and the opportunity that should exist, for co-residents who are not on the tenancy agreement and who suddenly find themselves abandoned or bereaved or widowed, and simultaneously find themselves at risk of being put out of their home. The prescribed new sections that I am sponsoring in this bill are very broad and will provide, in a wide range of circumstances, for such a person to go to court and receive the benefit of being recognised as the tenant; and that is a good thing.

What this amendment does is something that we have already discussed, and I am not going to go back over it. But I ask the member to do this: go to those women's legal services, and others, that she says would support this provision, and ask them how many victims of domestic violence apply for violence restraining orders, because they believe, and those supporting them believe, they need it, and do not get it.

Hon Lynn MacLaren: Some.

Hon SIMON O'BRIEN: So, that happens. If we put in the bill the provision that is proposed in this amendment, in addition to what we already have—which is broad and allows for all sorts of persons whom we could see as victims, not only of violence, but of circumstance or ill-health or whatever—we will say, "Here is a specific provision that deals with people who are successful applicants for a violence restraining order." What if they are not a successful applicant for a violence restraining order?

Hon Lynn MacLaren: Then the other clauses would apply.

Hon SIMON O'BRIEN: No. A court may say, "Therefore, you do not qualify for this benefit", because this provision is specific, whereas the others are general. In that situation, the specific reference trumps the general. Again, all the good folk down at the legal support services also know that. So, it is for that technical reason that we are trying to deliver what the member wants, and I am trying to stop the member from supporting an amendment that would prevent those very deserving people from having the benefit that this bill intends them to receive. That is the very good and technical reason why I reject this amendment. I have mentioned those things so that members can vote accordingly with confidence, but also to make it clear that we are in no way rejecting this because we have no sympathy for the victims of domestic violence. I know that all members in this chamber are united in wanting not only to support victims of domestic violence, but also to try to ensure that we do not have victims of domestic violence.

Hon LYNN MacLAREN: I thank the minister. I appreciate his carefully going through the analysis of the impact of this amendment on the bill. As with most arguments, there are two sides to the coin; there are two sides to that opinion. I think it is important that the debate we have had will illuminate the meaning of this bill and how it will be enacted. It is worthy to note, as Hon Sally Talbot said, that domestic violence is a different situation, and specific laws may be needed to deal with those unique circumstances. I hear the spirit of the minister's comments when he said that he would expect the rest of the bill to protect victims of domestic violence in their homes and allow them to maintain their residential tenancies. I still respectfully disagree, minister, and continue to support the amendment. But I also welcome the minister's support for victims of domestic violence.

Amendment put and negatived.

Clause put and passed.

Clauses 57 to 73 put and passed.

Clause 74: Sections 76A and 76B, Part V Division 5 heading and section 76C inserted —

Hon SALLY TALBOT: Before I speak about the amendment to clause 74 standing in my name, I would like to ask the minister a couple of things about proposed section 76A, which is headed "Termination of agreement by lessor if premises abandoned". The minister will not be surprised to know that my questions relate to remote communities and tenancies that are held particularly by Aboriginal people, although that is a specific case that illustrates my concern. I am quite sure that honourable members will not have to use much imagination to extend that concern beyond Aboriginal tenants. The first line of the proposed section refers to "on reasonable grounds"—that is, when a lessor suspects on reasonable grounds that a tenant has abandoned the residential premises. This is another phrase that is increasingly being found in legislation and perhaps is a little vague for the taste of some of us in this place. I wonder whether the minister could talk about the intent of the government in using a term such as "on reasonable grounds". It seems to me that one of the things we should ensure that we legislate against on all occasions when it is possible—I quite readily concede that often it is not possible to legislate against this—is vexatious allegations and relationships between tenants and owners that have completely broken down and descended to the point at which people will not get reasonable anything, let alone reasonable grounds for suspicion that a tenant has abandoned the premises.

I will not go into any detail about why I am raising this issue in relation to Aboriginal people, because I think these issues are well known to everybody in this place. For cultural or family reasons, Aboriginal people tend to move around the country in a way that non-Aboriginal people do not. Although a non-Aboriginal person might plan to be away for a period and would take the relevant steps to inform agents and authorities that they will be away for a period, that is far less likely to occur with many Aboriginal tenants. Aboriginal people simply may not have the chance to plan for an absence from their property, and they certainly are less likely to be in a position in which they know the precise date of their return for any number of reasons that I will not go into now. It seems to me that the provisions of proposed section 76A are very troubling for those reasons that I have outlined.

Hon SIMON O'BRIEN: I hope I can give the chamber some comfort in this matter. There is a requirement, of course, for legislation to instruct what shall happen to the rights of the respective parties if premises are, in effect, abandoned. It does happen and it has to be addressed. The provision that the member has just discussed relates to a requirement or a threshold level of a lessor suspecting on reasonable grounds. Over my working life, I have had a bit to do with the interpretation of these expressions in a variety of different positions. The term "suspect" carries with it a higher level of determination than do other expressions that are sometimes used. A suspicion has to be more than just a vague idea or a hunch; it has to be a formulated tendency to believe based on actual observations of events or circumstances that lead to a suspicion. "Reasonable grounds" is another term that is frequently used. "Reasonable grounds to believe" is an expression that I have seen in many statutes. Of course, grounds have to be capable of being identified—what are the grounds? "Reasonable" is an adjective that has adopted certain meanings and is discussed in court cases. However, in this case, clause 5 will amend the definitions in section 3 and we will have a definition of "reasonable grounds". It is unusual for legislation to include a definition of "reasonable grounds" because usually that is left up to the courts to decide and all sorts of things are discussed about that.

Hon Sally Talbot: What are you referring to, minister?

Hon SIMON O'BRIEN: Clause 5, which amends section 3 and inserts the following definition —

> ***reasonable grounds***, for suspecting that a tenant has abandoned residential premises —

This definition is specifically for this requirement —

> means that the tenant has failed to pay rent under the residential tenancy agreement and that at least one of the following has occurred —
>
> (a) the presence at the premises of uncollected mail, newspapers or other material;
>
> (b) reports from neighbours of the tenant or from other persons indicating the tenant has abandoned the premises;
>
> (c) the absence of household goods at the premises;

That is, the place has been cleaned out —

> (d) the disconnection of services (including gas, electricity and telephone) to the premises;

It is good to have that comfort and I hope that goes a long way towards addressing the questions that have been raised.

Another point I will make is that Hon Sally Talbot indicated that the circumstances she was particularly contemplating might relate to Indigenous tenants in a fairly remote or regional area. This proposed section is, of course, a one-size-fits-all approach for everyone in the sector; it is not intended to be Indigenous-specific. In the case of the particular tenant group that the member is talking about, I think very often they would be Homeswest tenants, although not exclusively. Homeswest has experience in weighing and judging these matters and can also save some Indigenous tenants from falling foul of these circumstances by making sure that steps are in place to ensure the tenants do not fall into rent arrears and that social security payments are therefore automatically deducted and the like. I hope that reassures the member.

Hon SALLY TALBOT: That does indeed go some way to providing us some reassurance. However, before we move on, I point out that in the light of the debate we have just had about victims of domestic violence, it is not beyond one's wit to conceive of a situation in which a malevolent partner, who was the tenant, would fail to pay the rent on one day, clean the place out on day two and on day three the landlord arrives and declares the place abandoned. I wonder whether it is necessary to have a time provision there. I was not going to ask for a response from the minister on that but I can see that the minister's adviser has shaken her head and informed the minister of something.

Hon Simon O'Brien: It was not in disagreement. I point out that perhaps in that case proposed section 59C, which we have already considered, might come into play to give greater rights to that abandoned tenant.

Hon SALLY TALBOT: I thank the minister for that. I move —

Page 58, after line 13 — To insert —

76BAA. Court to consider interests of children

A court shall not terminate a social housing or residential tenancy agreement under section 73, 74, 75A or 75 unless the court has taken into consideration —

(a) the interests of any child in the property and surrounding properties; and

(b) the effect that the termination may have on such children.

76BA. Termination of agreement affecting a child or person who has a mental illness

(1) Where a court terminates a social housing or residential tenancy agreement under section 73, 74, 75A or 75, and a child resides at that property, the court may order the Department of Child Protection to determine if the child is in need of protection.

(2) Where a court terminates a social housing or residential tenancy agreement under section 73, 74, 75A or 75, and a person who has a mental illness resides at that property, the court may order the Commissioner for Mental Health to arrange for an assessment for their care, treatment and protection needs.

This amendment has been crafted to take account of two other cohorts of people who frequently get caught up in situations that no-one in this place would wish upon anyone who is living either alone or with their families in rental accommodation. Those two cohorts are children and people with a mental illness.

It was of some concern to us when we first sighted the bill that there was no provision to take into account the particular interests of children, knowing that children are often severely disadvantaged by the kinds of disputes that can arise over the tenancies of their parents and carers. Clearly, people with a mental illness is another group of people who are far less well resourced to cope with the kind of situation they might find themselves in when something goes wrong with a tenancy agreement. We have proposed this amendment to take into account the interests of those two groups of people. We have particularly endeavoured to provide recourse for both of those groups to be represented by an advocate, should there be a case to either defend or to be made for the protection of their interests. In the case of people with a mental illness it is the Mental Health Commissioner and in the case of children it is the Department for Child Protection.

After some conversations with Hon Lynn MacLaren, she has provided an alternative version of essentially the same measure. I concede that the member's amendment is a little more elegant than my amendment and therefore I am more than happy, on the basis that it captures precisely the same sentiment, to seek leave to withdraw my amendment and indicate that Labor will support the essentially same amendment submitted by Hon Lynn MacLaren.

Amendment, by leave, withdrawn.

Hon LYNN MacLAREN: I move —

Page 58, after line 13 — To insert —

76BAA. Court to consider interests of a child or person who has a mental illness

A court shall not terminate a social housing or residential tenancy agreement under section 73, 74, 75A or 75 unless the court has taken into consideration —

(a) the interests of any child living on the property or surrounding properties and the effect that the termination may have on such a child; and

(b) the interests of any person with a mental illness living on the property and surrounding properties, and the effect that the termination may have on such a person.

76BA. Termination of agreement affecting a child or person who has a mental illness

(1) Where a court terminates a social housing or residential tenancy agreement under section 73, 74, 75A or 75, and a child resides at that property, the court may order the Department of Child Protection to determine if the child is in need of protection.

(2) Where a court terminates a social housing or residential tenancy agreement under section 73, 74, 75A or 75, and a person who has a mental illness resides at that property, the court may order the Commissioner for Mental Health to arrange for an assessment for their care, treatment and protection needs.

Hon Sally Talbot has correctly said that this amendment was first put forward by the Australian Labor Party to specify that the courts need to take into consideration the interests of children and people who are mentally ill. All the Greens (WA) did was take a careful look at the amendment as drafted and put it in terms that enabled the court to take those important considerations into account. We have improved the ALP's amendment a little. We had trouble supporting that amendment because it just recommended that the Magistrates Court should refer people with a mental illness if the court determined that that was a factor in the residential tenancy matter. We could see that the intention of the amendment was for the court to take those interests into consideration. We hope that the minister will see this our way. The Tenants Advice Service has worked constructively with the parties in the house to put forward a strong amendment, and we welcome the fact that the original amendment was put forward by the ALP. This amendment would stop the termination of a tenancy agreement and ensure that the Magistrates Court takes into consideration a tenant's mental illness. We believe that would be a great improvement on the Residential Tenancies Amendment Bill.

Hon SIMON O'BRIEN: We will not support this amendment; we do not believe it is necessary. This argument has been applied to the social housing debate we are having as part of consideration of this bill. This proposed measure relates also to private housing tenancy arrangements. It never fails to amaze me the willingness of some people, particularly in this place, who are not parties to contracts but who want to tell the people who are parties to contracts what they should do and how they should structure their affairs. This amendment most certainly would impact on a whole range of private rental arrangements in a way that I do not think has been contemplated.

Let us go through it quickly. The requirement that a court take into account the interests of a child or a person with a mental illness is proposed to apply to a range of circumstances. If under proposed section 75A a court was considering the termination of a social housing tenancy agreement due to objectionable behaviour, as we see in proposed section 75A(4), the court is not limited in the issues to which it may have regard. Does the member not think a court contemplating kicking someone out of their accommodation will have regard to whether there are issues of mental illness or children involved? Of course it will. This amendment would not be needed in those circumstances. But in other circumstances, it could place an onus of consideration that is not germane to the question that is intended to be resolved. In relation to the application of this proposal to section 73 of the act, where it is intended to apply, by way of example, the amendment could make it extremely difficult for a private landlord to evict a tenant who is using the property for an illegal purpose. Is that really the intention of the amendment? I would not have thought so. For example, under the current law, if a tenant assaults a landlord and causes significant injury to the landlord, the landlord need only establish this fact to the court and an eviction order can be granted. Of course the court would consider all the circumstances. The proposed amendment adds another legislated layer of complexity to the process insofar as it would require the court to take into account the interests of any child residing in the premises before an eviction order could be granted in these circumstances. So much for justice delayed. There is the potential to create a great deal more uncertainty in the outcome of any proceedings for private landlords. As the Minister for Housing observed in another place —

> I am reluctant for us to impose a social obligation on private landlords for a matter which is effectively a contractual relationship. If I buy a house and finance it through a bank, then live there with my family and I have financial difficulties and am forced to sell that house because of my inability to repay my bank, I do not think that the bank would have regard to my family circumstance.

That is true. Although we might have sympathy for children who are the responsibility of their parents or guardians, we are trying to impose an obligation here on a private contractual relationship that is, quite frankly, inappropriate for the clause we are considering, so we will oppose it.

Hon SALLY TALBOT: I am beginning to get a really good feeling for why people like the members of the Property Owners Association of Western Australia were at their wits' end in trying to deal with this government. On the one hand the minister stands up and gives us that fine capitalist rhetoric about protecting private investment, and even if we were to accept that —

Hon Simon O'Brien: Did I say "capitalist"?

Hon SALLY TALBOT: No; you did not.

Hon Simon O'Brien: No; you are the one trying to play class warfare.

Hon SALLY TALBOT: He painted such a brilliant, vivid word picture, there is no doubt in my mind that was what he was doing. It was a good old nineteenth-century piece of rhetoric. Part of our argument about how this bill should be improved is that, if we are genuinely maintaining the balance between owners and tenants, equal provisions should apply to the public and the private sector. When it comes to the management of antisocial behaviour, the government is not the slightest bit interested in helping private landowners to bring about a better situation.

Hon Simon O'Brien: Why do you think property owners would be having a problem with this government?

Hon SALLY TALBOT: Yet when it comes to something like this, that is the first thing to which he has recourse in trying to defend his position. It is just completely illogical.

I want to have one more go. I have read the debate in the other place, so I know that the Minister for Housing was feeling somewhat tetchy about the fact that his lenders would not take into account his personal circumstances in regards to vacating properties and things. I will make the point one more time. This amendment will allow courts to take certain things into consideration. If the minister is saying —

Hon Simon O'Brien: It will not do that; it will require them to do it. There is a big difference.

Hon SALLY TALBOT: If the minister is saying that this happens already because even with private landlords, if a matter gets to court, the court will, of course, look at whether the person is suffering from a mental illness. It is just not good enough to constantly fall back on crossed fingers. It is like the politics of optimism. We cannot legislate on that basis. We have to make the law crystal clear. We on this side of the house think it is absolutely right and proper that the interests of the child and the interests of people with mental illness should be something the court takes into consideration when making a final determination about difficulties that have arisen in connection with either a social housing or residential tenancy agreement.

Hon LYNN MacLAREN: The amendment I have moved intends for the court to consider the interests of a child or a person who has a mental illness in that the court shall not terminate a social housing or residential tenancy agreement under sections 76, 74, 75A or 75 unless it has taken into consideration the interests of the child living on the property or surrounding properties and the effect the termination will have on the child. Why is that? The state has a responsibility to look after the dependents among us because we as a society recognise that children are not empowered to the same degree as adults and the court would be taking into consideration their interests.

Hon Simon O'Brien: Do you seriously think that that is what you are proposing means?

Hon LYNN MacLAREN: I am only reading the amendment.

Hon Simon O'Brien: Well, you do not understand it. Who drafted it for you?

Hon LYNN MacLAREN: The second amendment is about the interests of any person with a mental illness living on the property and surrounding properties and the effect the termination will have. It does not say the court cannot terminate an agreement; it says the court has to take that into consideration. Why? Because we recognise that people with a mental illness have special needs and why should the court not consider those special needs? That is all these amendments seek to do; no more, no less. They are not trying to undermine the capitalistic system; all they are trying to do is point out that when a residential tenancy contract goes before the courts for termination, these two groups of people, who we as a society acknowledge it is really important to have secure homes for, be taken into consideration. It is not a big thing; it is not a new thing; it is something we want written in law because those are the values we share as a society.

The second part of the amendment refers to the termination of an agreement that may impact on a child or person with a mental illness. All we are saying is that the court may order the Department for Child Protection to determine whether the child is in need of protection. I am sure if the Minister for Child Protection were here and not away on urgent parliamentary business, she would be at least supportive of the spirit of this amendment. Lastly, we are seeking that the court may order the Mental Health Commissioner to arrange for an assessment for the care and treatment and protection needs of any people who are determined to have a mental illness whose current residential agreement may be in danger of being terminated. I want to bring us back onto the page to be clear what I am moving in seeking to amend the Residential Tenancies Act to secure the rights of people who are mentally ill and the rights of children.

Amendment put and negatived.

Clause put and passed.

Sitting suspended from 1.00 to 2.00 pm

Clause 75 put and passed.

Clause 76: Section 79 amended —

Hon SIMON O'BRIEN: I move —

Page 63, lines 1 to 4 — To delete the lines and insert —

(7) In section 79(5):

(a) delete "an owner" and insert:

a lessor

(b) delete "he" (each occurrence) and insert:

the lessor

(c) delete "the owner" (second occurrence) and insert:

the lessor

My reasoning for this amendment is that clause 89 of the bill contains a table that sets out all the instances in the Residential Tenancies Act 1987 where "owner" is to be replaced with "lessor". During drafting, parliamentary counsel included all references to "owner" in section 79(5) of the act to be amended to "lessor". Section 79(5) has a reference to the "owner of goods". In this context, "owner" refers to the person whose goods were removed and disposed of due to being left on the premises, and is not a reference to the lessor; therefore, this occurrence of "owner" should not be amended to "lessor". The proposed amendment will remove section 79(5) of the act from the table at clause 89 of the bill and allow for only the appropriate occurrences of "owner" to be individually replaced with "lessor" in clause 76 of the bill. In short, it corrects a drafting error in relation to the handling of abandoned goods.

Point of Order

Hon KATE DOUST: Mr Deputy Chairman, you might just remind members not to wander around the chamber when you are speaking.

The DEPUTY CHAIRMAN (Hon Jon Ford): I thank Hon Kate Doust for that, and that is quite right, but there is no point of order.

Committee Resumed

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 77 and 78 put and passed.

Clause 79: Section 81 replaced —

Hon LYNN MacLAREN: I note committee recommendation 4 regarding clause 79, which asks the minister to —

> **… explain the rationale for the 30 days notice period to vacate in clause 79 and whether consideration has been given to this being unreasonable in a tight rental market.**

Obviously, the amendment before us is an amendment on setting that 30-day period, but it may not be long enough. I am referring to the insertion of proposed section 81A(3), which reads —

> The notice to vacate must be in a form approved by the Minister and must include a specified date that is not less than 30 days after the date on which the notice is given to the tenant.

Because the committee has looked into this and come up with that question, although it did not recommend an amendment, I think that it would be fair to seek an explanation from the minister for why 30 days was chosen and then we could consider whether it should be 60 days.

Hon SIMON O'BRIEN: It is my pleasure to do that. The committee recommended that I explain the rationale for the 30-day notice period to vacate in this clause, and whether consideration had been given to this being unreasonable in a tight rental market. The provision is based on recently introduced New South Wales legislation, and is consistent with the time frame in that jurisdiction. The period of 30 days is considered to be a

reasonable time frame, particularly as the current practice often sees a tenant evicted with less than one day's notice. If the period of notice is too long from a mortgagee's perspective, there may be unintended consequences in the current market. For example, it is common practice for a property investor to use the equity in their principal home to raise a loan for an investment property. Banks will often register a mortgage against both the investment property and the principal home to secure the loan. If the investor defaults on the investment loan, it is entirely at the discretion of the mortgagee as to which property it chooses to repossess and sell. At the moment, the majority of repossessions would appear to be of investment properties. If, however, this legislation makes it too difficult for the mortgagee to resell the property quickly, a shift in balance may occur and mortgagees may seek to repossess the principal home instead. It is a balancing act, and the government is of the view that a notice period of 30 days during which a tenant does not pay rent is a reasonable time frame for the tenant to find alternative accommodation.

Clause put and passed.

Clauses 80 to 86 put and passed.

Clause 87: Schedule 1 amended —

Hon SALLY TALBOT: I want to draw the minister's attention to concerns I have about imposing a time limit on the repayment of bonds to departing tenants. I looked at the statistics on this matter. It appears that a significant proportion of complaints to the Tenants Advice Service is about a lag in time for repayment of bonds. Will the government consider perhaps making some amendment to the bill to put such a time limit in place? If it has been considered and rejected, what were the reasons for that? The figures that TAS has given me are quite remarkable. Earlier in the debate I think the minister was given some advice by his advisers from the Department of Housing about the number of complaints relating to bonds that have been received. It was a relatively small number. In the case of the Tenants Advice Service, I am told that out of 5 955 advices given in 2010, 928 related to bonds which, by my rough reckoning, is about 17 per cent. It is certainly a problem out there in the world of people who are trying to reclaim their bonds. It is obviously a matter of considerable significance. We have already referred several times during this debate to the fact that bonds can be worth a significant amount of money these days, particularly if tenants are paying bonds worth a month's rent. Tenants clearly need this money to help fund their next residential arrangement. I draw the minister's attention to those statistics from TAS and ask him to consider some sort of time limit or draw our attention to the fact that one might be there that we have missed.

Hon SIMON O'BRIEN: I am advised that we are not the only jurisdiction that does not have a time limit on the return of bonds. In fact, no jurisdiction does in Australia. Members may wish to examine clause 8 of schedule 1 in the principal act, which provides a mechanism for the courts to determine the disposal of security bonds and their repatriation to the rightful owner. That is nothing like what the member was looking for in terms of achieving an expeditious return of bond moneys, but it is all we have.

The government, in considering this matter, has decided against trying to impose a time limit for bonds to be returned, such as seven days or 14 days, simply because that could be most inconvenient to both of the parties involved. For example, if a departing tenant wanted to go back to the property and make good some soiling or damage to the property in order to get their bond back, it would take an indeterminate amount of time to do that. The processes of correcting any deficiencies in the property to determine how much bond money, if any, was due back to the departed tenant could take longer than a nominal period of seven days or 14 days or whatever it might be. Recognising that, I do not think we want to get into a position of saying it should be three months or so, because that is what people would shoot for. Unless there is some reason not to do so, there is no reason why a bond should not be returned promptly. For the reasons I have outlined, we are not in favour of legislating for a time limit on return of bonds at this time.

Hon SALLY TALBOT: One would assume that all the bonds being held by the Department of Commerce will give us more data about the way that bond returns have been processed. I would imagine that some time down the track the minister could expect to be answering questions to give us some idea about whether there is a problem there. I do not know whether the minister has thought of that.

Hon SIMON O'BRIEN: I have no doubt that it will be an interesting exercise, as the system matures, to look at some of the data and the experiences that we accrue. I dare say that the Department of Commerce will identify some trends and possibly work out where the blockages are in stopping bonds being repatriated to their rightful owners. Perhaps that is a discussion for another day.

Clause put and passed.

Clause 88 put and passed.

Clause 89: Various references to "owner" amended —

Hon SIMON O'BRIEN: I move —

Page 95, before line 1, the Table the 8th row the first column — To delete "s. 79(5)".

The explanation for this amendment is the same as the comment I made about the last amendment that I moved; that is, it corrects a drafting error.

Amendment put and passed.

Clause, as amended, agreed to.

Clauses 90 to 94 put and passed.

Clause 95: Section 75A inserted —

Hon SALLY TALBOT: I move —

Page 108, lines 4 to 19 — To delete the lines and insert —

> **75A. Termination of social housing and residential tenancy agreement due to illegal behaviour**
>
> (1) A competent court may, upon application by the lessor under a social housing or residential tenancy agreement, terminate the agreement where there is evidence that the tenant has used the premises, or caused or permitted the premises to be used, for an illegal purpose.

Clause 95 contains proposed new section 75A, and I have to say that this is a very problematic clause for the Labor opposition. The proposed new section is headed "Termination of social housing tenancy agreement due to objectionable behaviour" and provides that a competent court can terminate the agreement if it is satisfied that the tenant has done one of three things, with the rider that the behaviour has to justify termination of the agreement. Proposed new section 75A(1) states, in part —

> (a) used the social housing premises, or caused or permitted the social housing premises to be used, for an illegal purpose; or
>
> (b) caused or permitted a nuisance by the use of the social housing premises; or
>
> (c) interfered, or caused or permitted any interference, with the reasonable peace, comfort or privacy of any person who resides in the immediate vicinity of the premises,

If the underlying motive of this clause, the purpose of this clause, is to give authority to people to prevent the kind of behaviour that I described in my contribution the other day in this debate in which somebody's life is made virtually intolerable by not just rowdy behaviour but behaviour that, although not overtly violent, involves damage to property and really is what most of us would be quite ready to call harassment, this is a good clause and we support the intent of it. However, the problem arises at the point at which we start talking about two things under one heading. The two things we seem to be talking about are illegal behaviour and nuisance behaviour—namely, behaviour likely to cause offence or, in the jargon of today, antisocial behaviour. The simple reality is that what is antisocial behaviour to one person is not antisocial behaviour to another person. Australian demographer Bernard Salt has said a few times in different contexts recently something that I think we would all do well to bear in mind when we talk about life in the big city. He makes the point that people complain about traffic congestion, parking and that sort of thing, yet there is a certain extent to which living in a big city means that people need to cope with such things as traffic congestion and difficulty parking. If people do not want that, Bernard Salt suggests that they go live in a village where it does not happen. I think everybody in this house is aware that there has been an ongoing discussion about the noise associated with the entertainment area around the Old Brewery site. Indeed, I read the other day—I think it was in the context of submissions about the Perth Waterfront project—that the Old Brewery site is now regarded as pretty much a failure as a mixed development because so many of the people who bought into the residential accommodation took such vehement objection to the noise of what most of us would have thought was part of living on a site such as that.

I make that point to illustrate that what some of us will put up with in a certain context might be intolerable for another person. I can give the house a concrete example with direct reference to the kinds of families and situations that really should be at the front and centre of our concern in dealing with an amendment such as the one under consideration now—namely, Labor's proposed change to the government's proposed amendment to the act. The Tenants Advice Service gave me a case example that I will now share with the chamber. The case example states —

> *An Aboriginal family with 3 young children was evicted by the Department of Housing due to anti-social behaviour. The family's only option has been to move from the South-West region to the Goldfields to stay with extended family. Consequently the children have been uprooted from their school and their community. All complaints of anti-social behaviour came from the neighbours who had issue with how the family lived. The Department took the view of the neighbours without any discussion with the tenants. The tenants believed that their behaviour was normal.*
>
> *The family is categorised as dysfunctional with numerous mental and medical issues. An adult suffered a brain injury, a direct result being issues with anger management. The Department originally said that they would extend the tenancy for 6 months to closely monitor tenants but instead took them to court. No mediation was offered by the Department between the tenants and the neighbours and there was no referral of the tenants to relevant services such as Supported Housing Assistance Program. At the time of the eviction, the tenants were engaging with services as recommended by other community providers and had stopped the behaviour, however systemic issues such as anger management were still being addressed. Despite these positive actions, the tenants were still evicted by the Department of Housing.*

I have had direct experience of this in my own South West Region. There was a very well-publicised case of a couple of families in Pinjarra some four or so years ago. Unfortunately, the whole situation was shrouded in tragedy because it ended with a young man being killed in what was, I suppose, essentially a car accident, but was associated with the living conditions at the property. At the time, as the parliamentary secretary for Peel, I convened a roundtable conference of all the agencies. It was astonishing to see how many agencies turned up to this roundtable meeting. There would have been about two dozen people in the room trying to work out how they could act cooperatively to alleviate the circumstances in which this family found itself. I also spent some considerable time talking to the family and I discovered that, yes, there were enormous problems associated with the obligation provisions that many Aboriginal people are involved in; family members were arriving from other parts of the state and there was a family obligation to take care of these people. Therefore, there were a lot of issues with overcrowding. In the middle of all this it emerged that a couple of non-Aboriginal neighbours had set up video-monitoring systems with cameras pointing at the house that was giving rise to the problems. These cameras were filming children coming and going and playing in the street. I am not taking sides in this issue. I am not in any way trying to discount the stress, anxiety and misery that had been caused by the non-Aboriginal people caught up in that situation; nevertheless, I think that most of us would agree that it is not acceptable behaviour to set up camera-monitoring systems on children who belong to another family. Many other cases that we have heard about throw up similar considerations. Some people, particularly if they are elderly or not well, will be very, very distressed by children running across the front lawn, especially if they are noisy, even if it is just childish play noise, and particularly if they use offensive language. These situations can snowball; things can very, very quickly get out of hand. In the best circumstances under the existing provisions of the act, people such as the housing officer, whom Hon Max Trenorden referred to earlier in this debate, can just go in and resolve the situation and the whole thing is defused very quickly. But, unfortunately, in many, many of those situations, there is a snowball effect; one thing leads to another, and, before we know it, people are in court and there is homelessness and all the other attendant miseries that go with the bad outcomes of those situations.

I will summarise our position on this amendment. As far as illegal behaviour goes, we have no problem with the measures contained in the government's changes to the Residential Tenancies Act. However, as far as antisocial behaviour goes, we feel that this proposed new section would be much, much more effective if it were amended to remove the references to "antisocial behaviour" and to refer simply to "illegal behaviour". I would suggest that "illegal behaviour" is a pretty broad term. It can still encompass behaviour that is menacing. We are not adopting a kind of soft approach to behaviour that is genuinely distressing to third parties. But to lump all this together and say that we do not need to make a distinction between illegal behaviour and antisocial behaviour in coming up with a provision to terminate a person's tenancy in a property, I think is very ham-fisted. It will almost certainly have consequences above and beyond the consequence that the government—I hope it will assure us—was intending, and that is to give the department the power to prevent and halt illegal behaviour in social housing tenancies. I therefore urge the government to support the amendment that stands in my name.

Hon SIMON O'BRIEN: This amendment is not supported. This amendment means that proposed new section 75A will apply only to a situation in which the premises are used for an illegal purpose. It removes the nuisance element and the interference element. That is a fundamental change to this provision, and it will strike a fundamental blow to what this part of the bill is trying to achieve. Members will recall that during the second reading debate, the observation was made that there are three main elements or areas in this bill: the introduction of a residential tenancies database, the recommendations of the previous review of the act, and the so-called social housing changes. This proposed new section deals with those social housing changes, and it is specifically constructed to achieve an outcome. The amendment that has been moved by the honourable member strikes at

the heart of what we are trying to achieve here. It certainly takes out some important elements. In effect, it will take out paragraphs (b) and (c) of proposed subsection (1). That leads me to ask the question: what about nuisances caused by the use of the social housing premises? If we delete that reference, what will we do instead? Will we just allow the behaviour to go on? That is the question that has to be answered. That is the question that was sought to be answered by this provision. Is this bill now to be silent on that point? That does not make much sense.

Similarly, are we to fail to introduce a new element about interfering, or causing or permitting any interference, with the reasonable peace, comfort or privacy of any person who resides in the immediate vicinity of the premises? One of the key drivers of the government's bill in relation to social housing matters was to address the problem of social housing tenants who are causing their neighbours to live in fear and intimidation and real inconvenience. What will we do about those people? The amendment proposes that we do not do anything about that and we do not do anything about the nuisance and the interference that is caused to residents in surrounding properties. This government does believe that is the approach that is required. That is why we have sought to legislate in this way, and that is why we reject this amendment.

Mr Deputy Chairman (Hon Jon Ford), you have been, I think, admirably tolerant in allowing me, and others, to canvass matters that go to the very heart of the policy of the bill; and fair enough. However, this amendment will remove some of the key elements of the government's proposals as contained in this bill. I think we have already debated that enough, suffice now for me to conclude by observing that this amendment is inconsistent with the government's intentions. Therefore, we cannot support it. I also make the observation that there is an attempt here, by the wording of the proposed amendment, to extend some provisions beyond social housing; and that was not intended by the government either. Therefore, for all those reasons, I invite members to reject this amendment.

Hon SALLY TALBOT: I would just like to point out to the minister that we wholeheartedly embrace the policy of this section of the bill. There is no question about that, and I thought I had made that clear in my remarks to explain what this amendment is about.

Hon Simon O'Brien: So why do you want to gut it?

Hon SALLY TALBOT: The purpose of the bill is to address the problem that exists at the moment, where it appears that there is no legal measure that the department can take to remove people who have social housing agreements when they are using their premises, or allowing their premises to be used, in a way that is causing distress to other people around them. I point out simply—I will not go on at length, because to my mind I have already made the point adequately—that if we are talking about illegal behaviour, this amendment will give the department a power that it does not have at the moment. Having said that we embrace the policy of the bill, which is to give the department some more muscle to act against people, there has to be some emphasis on placing an onus of proof on the department. It cannot be the case that the government would want to endorse the set of circumstances that I have just put on the record by citing the case that was drawn to my attention by the Tenants Advice Service.

Hon Simon O'Brien: Surely the court is going to require the department to provide its evidence in support of such an application.

Hon SALLY TALBOT: And clearly that does not happen at the moment, because that provision is not there. My amendment will ensure that the once the government's policy intent is framed by legislation, it is absolutely incumbent on the court to make those considerations about exactly what the behaviour constituted.

One thing to which the minister did not refer is that we are talking about four terms here. We are talking about nuisance behaviour, illegal behaviour, and antisocial behaviour, which is a kind of catch-all term that has been used in the media. But we are also talking about the term that the government has introduced in the title of this section, which is objectionable behaviour. I say again that I am sure that the minister was a completely angelic child —

Hon Simon O'Brien: No, I wasn't, actually. I was something of a maladjusted youth.

Hon SALLY TALBOT: Then perhaps the minister might like to reflect on some of that maladjustment and remember some of the behaviour that he might have engaged in when he was this maladjusted child that he has just confessed to being.

Hon Simon O'Brien: A teenager more than a child.

Hon SALLY TALBOT: In the case that I described some days ago when we started this debate, where a group of children, all under 10 years of age, as my informant told me, were throwing eggs, rocks and other objects at her garage door and causing her enormous distress, surely a question has to be asked about how we are going to

categorise that behaviour. If the government just wants to say that it is behaviour that somebody found objectionable, are we going to find that the parents of those children are being served? The next amendment we come to canvasses the point about people not being served with warning notices anymore. Are we going to find that the parents and carers of those very young children will be served with eviction notices, supported by the legislation proposed by the government? If the minister were to accept my amendment, that could not happen, because illegal behaviour would have to be proved. If the minister will not accept my amendment, the way that the government has attempted to legislate to capture its policy intent will cast much too wide a net and will entrap people who should never have been evicted or had their tenancies terminated.

The DEPUTY CHAIRMAN (Hon Jon Ford): Before I give the call to Hon Lynn MacLaren, I will make a comment about expediting the debate. I have been listening to the debate very closely, and various members have made their points eloquently. However, the points have remained the same and, if not tedious, they could be described as repetitive—with the exception of the minister's reference to his maladjusted youth! I just say that members should make their point, but they do not need to repeat it.

Hon LYNN MacLAREN: The Greens (WA) welcome the amendment before us. We are opposed to this clause for various reasons that I intend to go into later. The proposed amendment is a considerable improvement on what we have, and we agree with the arguments put forward by Hon Sally Talbot. It is an improvement on the existing proposed section 75A under clause 95; therefore we support it.

Amendment put and negatived.

Hon LYNN MacLAREN: I move —

Page 108, lines 29 and 30 — To delete the lines and insert —

to —

(a) whether the behaviour was recurrent and, if it was recurrent, the frequency of the recurrences; and

(b) the seriousness of the behaviour.

Members may note that this clause bears some resemblance to the original drafted amendment, which went out for consultation and was considered earlier. We feel that it is important that the seriousness of the behaviour is an element for consideration. We do not think that clause 95, as it stands, is sufficient to ensure that trivial matters, nuisance behaviour and small, niggly things will not lead to eviction. We note with some concern that consideration of the seriousness of the behaviour was originally part of this bill but was deleted at an earlier stage. If we do not have even this threshold of seriousness, how can we ensure that these termination clauses are used appropriately and only in the event that a tenant is deserving of eviction? While I have serious, grave concerns about the entire clause, I am going to move to try to improve it a little by ensuring that only serious behaviour is cause for eviction. I look forward to hearing the government's views on that.

Hon SALLY TALBOT: In indicating that the Labor Party will support this amendment moved by Hon Lynn MacLaren, I would like the indulgence of the chamber to refer ahead to an amendment standing in my name, the final amendment on the supplementary notice paper, for proposed section 61A. That captures another element of precisely what Hon Lynn MacLaren has referred to. I will now address my remarks to the amendment moved by Hon Lynn MacLaren, and when we get to that final clause I can briefly refer back to those comments, because it is the same point.

This is troubling, and the point I referred to in my earlier remarks has also been mentioned by many third-party stakeholders—that people will no longer have a sense of building up towards a termination. It seems now that a termination is the response to behaviour of a certain kind that offends somebody else, rather than a series of warnings. The account that I put on the record about the Aboriginal family in the south west is a prime illustration of the fact that if we work with people, they can actually change their behaviour; people do listen and adopt different ways of dealing with their kids, and they do seek treatment, advice and counselling and all those other resources that they may not even know about when the behaviour originally gave offence to neighbours and people living in the area. It seems to us to be counterproductive to have this sort of guillotine effect on people's tenancies when we know that homelessness is obviously the literal result of terminating a tenancy, but often it is also long-term homelessness, relating to exactly the kind of family dysfunction that leads to the disruptive behaviour in the first place. It is almost as if the government, instead of putting people on a treadmill cycle, is just shooting them off the end with this sort of guillotine effect. What Hon Lynn MacLaren is attempting to capture with this amendment is precisely what I am trying to capture in my amendment to insert a new section 61A. I hope that the government takes it very seriously.

Hon SIMON O'BRIEN: I have just a couple of quick items in response. The government does not support the recommendation. The government previously removed the element that Hon Lynn MacLaren is trying to reinsert into this draft of the bill, and it relates to a phrase in proposed subsection (3) which provides that the court may have regard to whether the behaviour was recurrent and, if it was recurrent, the frequency of the recurrences, and also to the seriousness of the behaviour. I can advise the chamber that that version of the bill was drafted prior to the completion of the government's revised disruptive behaviour management strategy. The government has since toughened its stance on disruptive behaviour and it is the view of the government that, for example, a case involving three minor disturbances, as defined in the policy, within a 12-month period would warrant eviction. In other words, we do not want in proposed section 75A(3) a deciding influence upon the court to be that it must consider whether the behaviour is serious in every sense of the word. However, we consciously want to give the court the power to contemplate whether the behaviour justifying the termination is recurrent and occurs frequently. That is what we want the proposed section to mean. On the question of the seriousness of an offence, the court would weigh the seriousness of a matter, and there is provision for that in proposed section 75A. Proposed section 75A(1) provides, inter alia, that a competent court may, upon application, terminate an agreement if the court is satisfied that the tenant's behaviour justifies terminating the agreement. That is what it says; that is already there. The member is trying to amend proposed section 75A(3), but subclause (4) states —

> Subsection (3) does not limit the issues to which the court may have regard.

Proposed section 75A(3) provides that the court "may" have regard to the frequency of the occurrence. Other things are taken into account, but proposed section 75A(3) is concerned also with the frequency of the occurrence. That is the way we have drafted the amendment and that is how we would like it to remain. The seriousness of the behaviour element was specifically withdrawn because we wanted to clearly communicate that to the courts. At the same time, and again in a conciliatory note, removing the reference to the seriousness of the disruptive behaviour does not prevent the court from taking the seriousness of the matter into account. Obviously a court would take that seriousness into account as a matter of course. The provision as drafted puts this matter in front of the courts rather than leaving it up to a government department or agency to make that call. Members are right; it is a serious matter when someone is to be evicted from rental accommodation, but we have a review provision in the legislation. Homeswest will still make decisions based on policy, experience and a bit of commonsense on whether or not it will apply to a court, but then the court will decide whether the termination of a tenancy is justified. That in itself is an improvement. I do not think that the words the member wishes to insert add to the clause. In fact, I think they take away from an element of its intention because we specifically want the court to consider frequent and recurring disturbances—even if they are of a low-level—as part of the behaviours that may justify an eviction.

Finally, the previous speaker gave us a preview about proposed section 61A. I think we will come to that in due course, but I do not think that, of itself, should influence our consideration of this clause.

Amendment put and negatived.

Hon LYNN MacLAREN: I will explain why we are opposing clause 95 and want to delete proposed section 75A. We have examined this clause carefully and tried to fix it. We have had a couple of attempts at ensuring that it would apply only in certain situations such as when illegal or extremely serious behaviour occurred that would result in the termination of a tenancy agreement, but we have failed to fix it. We have before us a provision that we are seeking to pass into law, which according to the Standing Committee on Uniform Legislation and Statutes Review is potentially inconsistent with the Equal Opportunity Act and the Racial Discrimination Act. I will put on the parliamentary record two criticisms about this bill. I think I made very clear in the second reading debate the reason that the Greens (WA) are opposed to this clause, but I will explain it again. I will quote from two documents. The first is recommendation 6 of the Standing Committee on Uniform Legislation and Statutes Review, which states —

> **The Committee recommends that in light of the views of the Commissioner for Equal Opportunity, the Minister advise the Legislative Council:**
>
> **(1) of any inconsistency between clause 95 of the Bill and section 36(2) of the *Equal Opportunity Act 1984;* and**
>
> **(2) of any section 109, *Commonwealth Constitution* inconsistency between clause 95 of the Bill and the *Racial Discrimination Act 1975 (Cth)*, the *Disability Discrimination Act 1992(Cth)* and the *Age Discrimination Act 2004 (Cth).***

As members can imagine, the committee examined this clause carefully—I thank it for the work that it did—and came up with some recommendations, one of which I have just read out. The committee was informed by the Equal Opportunity Commission, which is very concerned about this, as are the Greens. The Equal Opportunity

Commission said, as noted in the second reading debate, that other parts of the legislation already deal with difficult tenants and if the department wants to move those tenants out, it has the tools to do that already. According to the Equal Opportunity Commission —

Point of Order

Hon SIMON O'BRIEN: Sometimes with these matters we have to consider whether it is convenient to let the member have her say and then it is over or whether we have to uphold the customs and procedures of the house. The point of order I am raising is that the member is opposing this clause, which is what members sometimes do in committee. There is no amendment before the Chair to make this clause more suitable to the member; she is simply opposed to it. We are hearing from her a direct rerun of the second reading debate. Indeed, the member is constantly saying, "As I have already said in the second reading", as if to highlight the fact. The member is also referring to matters that I have already responded to as part of the second reading debate. I have not seen a more blatant case in the committee stage than this when, instead of doing the things we should be doing in the Committee of the Whole, the member is having a rerun of the second reading debate. I am sorry to have to interrupt the member, but I put it to the Chair that that is out of order.

The DEPUTY CHAIRMAN (Hon Jon Ford): Thanks for that, minister. Members, I listened carefully to what Hon Lynn MacLaren said. I, too, was concerned when she made reference to a second reading speech. However, she then started putting an argument that the policy of the bill could already be maintained through clauses already passed, and that deleting this clause would make no difference to that. I am willing to accept that as part of the argument. As the minister pointed out, and as I have pointed out, being repetitive in argument does not assist her case or the progress of the bill.

Committee Resumed

Hon LYNN MacLAREN: Thank you, Mr Deputy Chair. I intend to add new information that I have not —

Hon Simon O'Brien: You should have added that during the second reading.

Hon LYNN MacLAREN: Then I would not be able to talk about it now.

Hon Simon O'Brien: You don't know what you are doing then.

The DEPUTY CHAIRMAN: Order, members. I am trying to expedite the passage of the bill within the auspices of the rulings of the chamber. Interjections do not assist in that. I also make the point that because a member introduces new argument for the same purpose does not mean it is not tedious. There are two aspects— repetitiveness and tediousness.

Hon Ken Travers: There is an "and" in there!

The DEPUTY CHAIRMAN: I make the point that we do not —

Hon Simon O'Brien interjected.

The DEPUTY CHAIRMAN: Order, members. There is also a standing order that says that when the Presiding Officer is speaking, nobody else speaks.

I make the point that it serves the chamber well to put an argument and get on with the question; it does not serve the chamber well to make repetitive and tedious remarks. Having said that, I will listen closely to the continuing remarks of Hon Lynn MacLaren, who, I must point out, has not actually moved to oppose the clause yet.

Hon LYNN MacLAREN: According to the Equal Opportunity Commission —

> Nearly 22% of the Department's properties are occupied by Aboriginal tenants and their families. Many of them have chronic diseases and disabilities. Complaints received by the Commission reveal that many Aboriginal tenants are elderly grandmothers, sometimes great-grandmothers, with the care and responsibility for grandchildren and other relatives, who reside with them from time to time, usually out of necessity.
>
> … in the Commission's experience, the tenants who are, and will be, least able to comply with this requirement are elderly Aboriginal women, often suffering from chronic illnesses. They not only have the care of children or grandchildren who reside with them, but are often called upon to look after members of their extended family. When overcrowding becomes an issue, the likelihood of disruptive behaviour increases. These women have explained to the Commission (and the Department) that they find it extremely difficult to monitor and control the behaviour of every relative or visitor who may be staying temporarily. The consequence is that the strikes are recorded against the tenants, who are not themselves responsible for the disruptive behaviour, but who are unable due to age, disability, and a

> sense of obligation to do much about it. That is, they are unable to comply with the 'requirement or condition' within the meaning of the Act.

The Equal Opportunity Commissioner concluded that she is opposed to both the strategy and to the insertion of section 75A into the Residential Tenancies Act. She states —

> I remain concerned that the Department, after an extensive period of consultation with the Commission and other organisations, and during which significant improvements were made in the way that Aboriginal tenancies are managed, should now be adopting the Strategy. I am even more concerned that the Government should think it necessary to introduce a Bill codifying the Strategy in the RTA. The result will be that more of the most vulnerable social housing tenants will be evicted, unfairly in my view, and the Department will become weighed down by an ineffectual policy that will draw significant resources and personnel away from other important programs.

I move, at page 108, line 1, to page 109, line 10, to oppose the clause.

Hon LIZ BEHJAT: I obviously do not support Hon Lynn MacLaren in her opposition to this clause. I want to go on the record to say that when she started her remarks she commented something along the lines that the uniform legislation committee looked at this matter in detail. I would like to put on the record that we did not look at that matter —

The DEPUTY CHAIRMAN: Order, member. Before you proceed, I really must counsel you. You are flying close to the wind if you start raising issues that are not printed in the report in regards to the committee's deliberations. I counsel you on that. I accept the point you are making but —

Hon Liz Behjat: I cannot hear you properly. Could you speak up, please.

The DEPUTY CHAIRMAN: I am counselling you against the possibility that you might be referring to deliberations that occurred within the committee. It is safer to refer to the report.

Hon LIZ BEHJAT: I refer to paragraph 8.61 of the committee's report at page 23 —

> Due to time constraints the Committee was unable to investigate in detail the Commissioner's concerns and in light of this the Committee makes the following recommendation.

The committee then pointed out that it did not investigate those matters in detail, which I think is what Hon Lynn MacLaren may have said. I wanted to correct the record about that.

Clause put and a division taken, the Deputy Chairman (Hon Jon Ford) casting his vote with the ayes, with the following result —

Ayes (27)

Hon Liz Behjat	Hon Wendy Duncan	Hon Nick Goiran	Hon Simon O'Brien
Hon Matt Benson-Lidholm	Hon Phil Edman	Hon Nigel Hallett	Hon Ljiljanna Ravlich
Hon Helen Bullock	Hon Sue Ellery	Hon Alyssa Hayden	Hon Linda Savage
Hon Jim Chown	Hon Brian Ellis	Hon Col Holt	Hon Sally Talbot
Hon Mia Davies	Hon Donna Faragher	Hon Robyn McSweeney	Hon Ken Travers
Hon Ed Dermer	Hon Jon Ford	Hon Norman Moore	Hon Ken Baston *(Teller)*
Hon Kate Doust	Hon Philip Gardiner	Hon Helen Morton	

Noes (4)

Hon Robin Chapple	Hon Lynn MacLaren	Hon Giz Watson	Hon Alison Xamon *(Teller)*

Clause thus passed.

Clause 96: Part VIA inserted —

Hon LINDA SAVAGE: I move —

> Page 115, after line 22 — To insert —
>
> (3) The personal information may indicate the circumstances of the breach.

I will briefly provide some background as to why the committee moves that amendment. If members are interested, I suggest they turn to pages 24, 25 and 26 of the report of the Standing Committee on Uniform Legislation and Statutes Review on the Residential Tenancies Amendment Bill 2011. In the course of the

evidence given we were told that residential tenancy databases are a relatively recent phenomenon, and it has really only been since about 1987 that they have grown to become relatively medium to large sized. The advice we received from the minister informed us that, currently, Western Australian tenants cannot seek recourse if a listing is false, malicious, out of date or inaccurate. The committee welcomes the proposed provisions that will enable people to readily check information listed about them on the database and seek correction for information that is wrong or outdated. Proposed section 82E(2) states that the listing "must indicate the nature of the breach". According to the department, this would require that a listing state, for example, rent arrears or property damage, and the person making the listing could add the surrounding circumstances to the listing, such as the tenant was temporarily unemployed, so providing information that is accurate. As I said, the committee noted that this was a welcome step forward, but noted that the absence of express provisions to qualify a negative listing with information regarding the circumstances around which it was made appeared to be a weakness of the database, especially as that information would be kept for three years. On that basis, the committee moves the amendment 3/96.

Hon SIMON O'BRIEN: The recommendation is not supported by the government. The effect would be to expand the amount and type of information that may be held on a residential tenancy database to include the tenant's circumstances that gave rise to the breach. I want to let the chamber know that the model provisions developed by the Ministerial Council on Consumer Affairs—known as MCCA—were subject to consultation in each state and established strong limits on the information that may be listed on a tenancy database in order to remove ambiguity and the potential for discriminatory practices, and to reduce the prospect of people being excluded from the tenancy market. Allowing for additional contextual information would give rise to unintended consequences. For example, although it may be beneficial for a tenant if the breach listing were to note that a tenant broke their leg or was made redundant as a reason for being in breach; other contextual information could have negative connotations, such as "tenant has mental illness and damaged premises" or "domestic violence causing damage to the premises". These negative connotations may result in discriminatory leasing decisions. In the interests of brevity I will conclude at that point, but clearly the government has reasons for the statute being constructed in this way, and it does not entertain the proposed amendment.

Amendment put and negatived.

Leave granted for the following amendments to be considered together.

Hon LYNN MacLAREN: I move —

Page 120, after line 3 — To insert —

(a) subject to paragraph (c), in the case of personal information relating to a breach of lease committed before the particular person attained the age of 18, one year;

Page 120, line 4 — To insert before "3 years" —

subject to paragraph (c), and in all cases not covered by paragraph (a),

Page 120, line 8 — To delete "3 year period mentioned in paragraph (a)" and insert —

period mentioned in either paragraph (a) or (b)

We move these amendments because, basically, if a minor is going to be on the database, we do not think they should be on it for three years. The briefing with the department raised the concern that, although well intentioned, this amendment may have the perverse impact of disadvantaging 18-year-olds in the rental markets, since lessors will be aware that any negative listings will be removed from residential tenancy databases. To get around this problem, I propose that the bill be amended so that breaches committed before a person attains the age of 18 are listed for merely one year. For the benefit of people trying to tease out how we have changed, the amended clause would read —

(a) subject to paragraph (c), in the case of personal information relating to a breach of lease committed before the particular person attained the age of 18, one year; subject to paragraph (c), and in all cases not covered by paragraph (a), 3 years; or

(b) if, under the national privacy principles to …

So the rest would remain. If members are getting the gist of this, all we are trying to do is say that minors should be treated differently—when people are young, they make mistakes. It is worthwhile listing them on the database if they are a tenancy risk, but perhaps we should be a bit more mindful that as people grow up they modify their behaviour, and that maybe after a year they might have learnt the error of their ways and could be cleared from

the database so that they can get a residential tenancy. Youth homelessness is a big issue, and we fear that any decisions made in this chamber may impact on youth homelessness in a negative way. This would be one way to mediate the effect of having a residential tenancy database that lists people for three years at a time.

Hon SIMON O'BRIEN: Three amendments are being taken together, and rightly so. Has Hon Lynn MacLaren considered the amendment standing in my name at 18/96, which is very similar, and targeted at doing almost the same thing, the difference being that the amendment standing in my name is drafted differently? That is because I had the benefit of counsel to do it. It also adopts a different outcome. While there is a three-year period for everyone else, instead of minors being subject to a one-year period, even if it occurs at 17 years and 11 months, my amendment contemplates what I think was the committee's intent; that is, as with other things, the age of 18 should be a clear point of demarcation. Whereas a childhood or minority record is expunged at that point and the 18-year-old then embarks on adult life, at the eighteenth birthday, the former data is discarded or expunged and one starts again. I think the member is aware of that. While I have been talking about it, she has had a moment to further think. Rather than proceed with these three amendments, if we go ahead with my amendment, we could get this done very quickly. Perhaps the member might like to respond. I would prefer to do it that way; that is, we do not go down this route of agreeing to this trio of amendments but we agree to a similar matter in my amendment, which is on the supplementary notice paper.

The DEPUTY CHAIRMAN (Hon Jon Ford): As I hear it, Hon Lynn MacLaren, the minister is offering you to seek leave to withdraw your amendments if you are in agreeance with the amendment that he proposes.

Hon LYNN MacLAREN: Thank you, Mr Deputy Chairman. I appreciate that guidance. I did hear what the minister had to say. It seemed like he agreed with the premise that there was sufficient cause to reduce the time period that minors could be on this database. He has drafted an alternative amendment, which has been circulated on the supplementary notice paper and which will achieve more or less the same thing. I seek leave to withdraw the amendments standing in my name.

Amendments, by leave, withdrawn.

Hon LINDA SAVAGE: I think this would be an appropriate time, in light of considering amendments to clause 96, to note the committee's recommendation, which states —

> Page 120, line 10 — To delete "principles." and insert —
>
> principles; or
>
> (c) if that person is a minor as described in section 59A the period ending on the day when that person attains the age of 18 years.

I acknowledge what the minister has expressed about the amendments moved by Hon Lynn MacLaren, which appears to me to reflect what the committee was seeking to do with the amendments that it proposed.

The DEPUTY CHAIRMAN: From what I am hearing, you do not intend to move the committee's recommendation.

Hon LINDA SAVAGE: No.

Hon SIMON O'BRIEN: I move —

> Page 120, after line 10 — To insert —
>
> (c) if the person —
>
> (i) was a minor as defined in section 59A(1) when the information was listed in the database; and
>
> (ii) reaches 18 years of age before the end of the 3 year period mentioned in paragraph (a),
>
> the period ending when the person reaches 18 years of age.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 97 to 108 put and passed.

New clause 61A —

Hon SALLY TALBOT: I move —

Page 49, after line 14 — To insert —

61A. Section 61A inserted

Before section 61 insert:

61A. Termination of social housing or residential housing agreement decision affected by previous behaviour

In deciding whether to terminate a social housing or residential housing agreement, the court may have regard to the frequency and nature of any notices given to a tenant specifying a breach and requiring that it be remedied, as referred to in section 62(3) and (4).

This amendment ensures that people who are subject to social housing and residential housing tenancy agreements are served sufficient notice of the fact that they are causing problems to the department and gives them a chance to correct their behaviour. I indicated at the beginning of my remarks on this bill that the removal of those provisions seemed to be a basic withdrawal or an imbalance between the rights of tenants and owners. This is my final attempt to redress that balance, which I understood was always the government's intention. I addressed this issue at much more length earlier in the debate in relation to a similar amendment moved by Hon Lynn MacLaren, so I will confine my remarks to that at this stage.

Hon LYNN MacLAREN: The Greens support this amendment and hope that we can improve the safeguards around termination of tenancy agreements.

Hon SIMON O'BRIEN: The government does not support the amendment. It is redundant, in view of our earlier dealings with new clause 75A. In any case, all the ground has been canvassed.

New clause put and negatived.

The DEPUTY CHAIRMAN: Hon Kate Doust made a point earlier in the debate today about people moving around the chamber. I have noticed, particularly on this occasion when a lot of members are in the chamber and attendants are moving around, that it is hard to see whether members are seeking the call. That is a practical example. For the first time I have noticed the impact and why that standing order is in place. I remind members, particularly when the Presiding Officer is talking, to stop because we do not want people to miss a call.

Title put and passed.

Bill reported, with amendments.