RESIDENTIAL TENANCIES LEGISLATION AMENDMENT (FAMILY VIOLENCE) BILL 2018

Second Reading

Resumed from 28 November.

HON NICK GOIRAN (South Metropolitan) [11.51 am]: I am pleased to rise at 11.51 am on Thursday, 29 November 2018 to continue my remarks on the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018, on which I have so far spoken for a fraction over three minutes. I am pleased to see that commonsense has finally prevailed and that, on behalf of the government, Hon Sue Ellery, the most experienced member of the government and the Leader of the Government in the Legislative Council, has decided to lift this bill with all of her might to the highest possible position on the business program today so that we might finally be able to get on with this important piece of legislation. Despite the fact that this is an important piece of legislation, which the opposition supports, I note that the government, for reasons only known to it, decided on Tuesday to leave it until less than half an hour of the sitting day was left to bring the bill on for debate for the first time. Yesterday, we had a minuscule period in which to continue the debate. I am now pleased—a few minutes before we hit noon on the final sitting day for the other place—that the government has finally recognised that this matter is a priority and brought it on for debate.

As I indicated in my three-minute speech last night, as the shadow Minister for Prevention of Family and Domestic Violence, I support the policy and the second reading of this bill. I want to quickly make a couple of remarks in my capacity as the Deputy Chairman of the Standing Committee on Legislation, which tabled its thirty-eighth report. I commend that report to members for their perusal and consideration. I want to highlight three aspects of that report. These three aspects go to the heart of some of the issues that have quite rightly been identified by both Hon Rick Mazza and Hon Michael Mischin. If members have the opportunity to read the report, including the transcripts and so on, they will see that the level of consultation that was carried out by the government on this important bill was poor. I will give one example. There was no consultation with the Commissioner for Children and Young People. Yesterday, Hon Alison Xamon indicated that the Commissioner for Children and Young People is supportive of this bill. What the honourable member said was quite correct; the commissioner is supportive. How do we know this? It is not because the government consulted with the commissioner; it is because the Standing Committee on Legislation had to do the job for the government. We are better off with the process that was undertaken by the Standing Committee on Legislation. Members may be aware that the Standing Committee on Legislation also routinely looks at legislation in line with the fundamental legislative principles that are set out in appendix 2 on page 39 of the report. I want to quickly highlight three of those fundamental legislative principles. Fundamental legislative principle 7 states —

> Does the Bill adversely affect rights and liberties, or impose obligations, retrospectively?

There are 11 fundamental legislative principles that look at the rights and liberties of individuals and there are another five fundamental legislative principles that look at whether a bill has sufficient regard to the institution of Parliament. Fundamental legislative principle 7 is engaged with this particular bill because, as other members have mentioned in their second reading contributions, it affects the rights of lessors. Indeed, as was outlined by my learned friend Hon Michael Mischin yesterday, it does so retrospectively. A lessor has a right to contractual certainty. Many lessors will have lease agreements in place for a period of time—let us say, 12 months. Once this bill passes, a new term will be inserted into their contract, without their consent, by the law of Western Australia in a retrospective fashion. That law will allow tenants the right to affix and remove fixtures. The affixing and removal of fixtures has my support because it will be an important way for tenants who feel unsafe because of family violence to protect themselves. It has my support because they will have the obligation to make good at the end of the tenancy. I think that they are appropriate things that have been done by the government but it still impacts on fundamental legislative principle 7 because this has been done without the consultation of lessors. It is happening retrospectively. Had the government carried out some consultation, there probably would be a greater education campaign out there for lessors. Needless to say, it also imposes obligations on lessors who will for the first time need to give new notices to the other co-tenants within seven days should they receive a notice from the departing tenant. Fundamental legislative principle 11 is also engaged with this bill. It asks the question —

> Is the Bill unambiguous and drafted in a sufficiently clear and precise way?

Clearly not, because obviously the government has a range of amendments on the supplementary notice paper that are fixing up several drafting errors, not the least of which are government amendments at clause 18 dealing with the inappropriate use of the phrase “not less than” and seeking to insert the word “within”. Perhaps equally as important, I refer members to the supplementary notice paper and clauses 10 and 33. The government needs to tidy up the penalty provisions because of the drafting errors that took place. It makes me wonder who in government looked at this bill before it was presented. I note that it went through the other place without these things being picked up.

Hon Simon O'Brien: It went to cabinet.

Hon NICK GOIRAN: Obviously, it went through the cabinet process and the caucus process, but perhaps people were too busy having their factional wars to look at the detail of the bill.

I also note that Hon Rick Mazza has an important amendment on the supplementary notice paper to delete the completely unnecessary and unjustified word "fundamental".

The ACTING PRESIDENT: Honourable members, there is a lot of conversation happening in the chamber. Some of it is important—I get that—but some of it could probably be taken outside or behind the Chair. If we could keep it down to a dull roar, that would be useful. I am listening intently to the remarks of Hon Nick Goiran, who has the call.

Hon NICK GOIRAN: Thanks, Mr Acting President.

I move on to the third of the fundamental legislative principles that I want to draw to members' attention, and that is fundamental legislative principle 12. It says —

> Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?

This is clearly engaged in this particular bill. Hon Rick Mazza has a couple of excellent amendments on the supplementary notice paper that deal with this issue, because the government is inappropriately infringing fundamental legislative principle 12 by giving itself, the executive, the power to add additional categories of individuals that can effectively tear up a lease agreement. Additional categories of individuals can do that. They can sign a family violence form and, within seven days, that will be the end of the lease agreement. The government wants to have the power to categorise those individuals by way of regulation. I am saying that if we are going to give somebody the power to tear up a lease agreement, that should be done with our consent by way of an amendment to the bill and a substantive piece of legislation brought forward. It should not be something that the government does in a sneaky or shifty fashion by way of a regulation when no-one is paying attention. I might add that the very expansive list of individuals who can tear up a lease agreement is very significant and a cogent case has not been put forward to explain why we need to expand those categories of individuals.

Hon Michael Mischin: Or at least before a review takes place.

Hon NICK GOIRAN: I thank Hon Michael Mischin for that segue that takes me to my final point, which is in respect of the review clause. I understand that there is broad agreement around the need for a review clause. I am particularly fond of the version that has been put forward by Hon Michael Mischin, which would see the review take place in three years. It leverages off the important amendment put forward by Hon Rick Mazza that sets out certain things that the review should do. Those certain things are based upon the work that was done by the Standing Committee on Legislation. It is very important that those particular elements are looked at in a review in three years, because it is clear that the government did not, for whatever reason, look at those particular issues. They need to be looked at in three years.

With those remarks, I once again reiterate my support for this bill, the support that it has always had. I support the second reading of the bill. I am fond of the amendments on the supplementary notice paper by the government, the committee, Hon Rick Mazza and Hon Michael Mischin. If we are able to agree to that suite of amendments we will have an improved piece of legislation that will support those victims who have experienced family violence, and who need, for their own safety, to rapidly leave premises. None of the amendments impact any of that, but it will also make sure that other consequences that have not been looked at by the government, including those outlined by the fundamental legislative principles, will be reviewed in three years' time.

HON MARTIN ALDRIDGE (Agricultural) [12.03 pm]: I rise as lead speaker for the Nationals WA on the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018. I note, for the purposes of *Hansard*, that this is the first opportunity that I have had to rise and make a contribution in this place to this bill. Obviously, this bill was first introduced into the other place on 15 May 2018 and was third read in the other place on 27 June 2018 before being introduced into this place on the following day, 28 June 2018. Despite that some time has elapsed since June and it is now late November, this has been the first opportunity for me to rise on behalf of my party and indicate our support for the bill, and recognise that we supported the passage of the bill through the other place in June.

I want to thank the Standing Committee on Legislation for the work that it did in looking at this report. Early in the report, when it looked at the policy of the bill, I thought that the committee outlined quite well some of the shocking statistics of family and domestic violence. One point on page 3 of the report states —

> Police respond to an incident of family and domestic violence every 10 minutes.

That is quite a shocking figure. Further on page 4 it outlines some of the statistics that were provided from some of the submissions it received, particularly about the overrepresentation of Aboriginal communities in family and domestic violence incident reports. The fifth dot point on page 4 states —

> Aboriginal women are 45 times more likely to be victims of family violence than their non-Aboriginal counterparts and more likely to access emergency accommodation or a refuge as a result of intimate partner violence.

Clearly, the report reflected the intent of the government, through its second reading and further through the explanatory memorandum, and the need of a bill of this sort to, in one respect, further deal with the prevalence of family and domestic violence in Western Australia.

I recently had the opportunity to take part in a men's white ribbon breakfast that occurred on White Ribbon Day in Geraldton last week. It was hosted this year at John Willcock College. It was one of a couple of events that I attended that day. Martin Bekker from YouthCARE in Geraldton was the guest speaker at the breakfast and he gave a very insightful presentation from his work over many decades in this area. I was sitting with a group of school children; the entire table that I was on were young men from John Willcock College and a number of them were from the Midwest Clontarf Academy in Geraldton. Probably the greatest impact on me that day was how over a very short time over breakfast these young men opened up to me about their experiences with family and domestic violence. Some of them had quite shocking stories to tell. They gave a very brave account of what they had experienced, seen, endured and indeed what they continue to endure as a result of this issue and their families.

The genesis of this bill has been quite well documented by previous speakers and links back to a 2014 Law Reform Commission report entitled "Enhancing Family and Domestic Violence Laws". The report recommended that the then Department of Commerce review the interaction between the Residential Tenancies Act and family violence orders. In October 2016, the then Department of Commerce released an options paper for consultation to occur and 20 submissions were received as a result of the consultation process. They included submissions from government departments, tenant advocates, lessor and property manager groups, advocates of victims of family violence and individuals. The department considered legislation in other jurisdictions and the 2016 report of the royal commission in Victoria.

I do not want to give an extended second reading contribution because I know there is some urgency with this bill, but I want to talk about a few issues that I would like the minister to respond to. Some of them have already been addressed through the committee's work and I am sure will be addressed during the Committee of the Whole stage of the bill as well. Obviously, members would be well aware of correspondence that I assume was sent to all members of Parliament from the Real Estate Institute of Western Australia. The Real Estate Institute of Western Australia outlined its concerns about this bill in a three-page email to me, and I am sure also to other members. That email was received by me on 21 June 2018. I understand from further correspondence received in August that REIWA has satisfied itself with the bill through further negotiation with the Minister for Commerce and Industrial Relations. However, as I raised during my briefing with the department, and as was also raised by Hon Rick Mazza in his contribution, during the consultation phase on this bill, there was a lack of engagement with property owners. I made the point during my briefing with the departmental advisers that the Real Estate Institute of Western Australia represents real estate agents and property managers. Therefore, there could be some bias with respect to this bill, because real estate agents and property managers benefit financially not only from letting properties and receiving rent, but also from the turnover of properties in the form of vacancy, advertising and letting. I note from appendix 1 of the committee report that the committee sought submissions from both the Landlords' Advisory Service and the Property Owners Association of Western Australia. However, I also note from appendix 1 that a submission was not received from either of those services. I am not sure of the reasons why. It might well be due to lack of time or capacity, or some other constraint. However, there was certainly a lack of consultation. I am not blaming the government for this. It was obviously difficult to gain adequate consultation with organisations that may more specifically represent landlords.

The submission that I received from the Real Estate Institute of Western Australia on 21 June made it very clear that its view at that time was that the tenancy agreements in question should be terminated only by a magistrate. However, in August 2018, when we received further advice from REIWA, it said it was satisfied with the assurances given by the government about the nature of the form that would be used to terminate a tenancy agreement. That correspondence from REIWA states, in part —

> I am pleased to inform you that REIWA, through consultation with industry stakeholders, Shelter WA and Tenancy WA, were able to agree on an appropriate safeguard to be incorporated in the prescribed forms, that would not require changing the Draft Bill, therefore, not delaying its passing.

> The cross-industry group put to DMIRS a proposition of the inclusion of a declaration in the prescribed form to be utilised under section 71AB 2(d) of the Draft Bill.
>
> This declaration ensures that those completing the report are aware it is a criminal offence to provide false or misleading information to the professional. Any such instance will fall under a breach of section 409 of The Criminal Code and carries the associated penalties ranging from fines of $24,000 to imprisonment.

The draft certified family violence report is attached to the committee report. It was also tabled by the responsible minister during the course of debate in the other place. It states, in part —

> I declare the information about family and domestic violence I have provided to the Certified Professional listed below is true and accurate to the best of my knowledge and was provided in good faith.
>
> I understand that it is an offence to make a fraudulent declaration, and that I may be liable for a penalty if found guilty of this offence.

That inclusion appears to have been negotiated between the Minister for Commerce and Industrial Relations and REIWA to resolve its concerns about that matter. REIWA also outlined a number of other concerns that it did not articulate in its letter of support in August. One concern that interested me was its comments about proposed section 56A. REIWA's email of June 2018 states, in part —

> REIWA supports the legislation that ensures that victims of domestic violence cannot be discriminated against when applying for tenancies. However, there is no reason why a property owner should not be able to refuse an application by a perpetrator of family violence.
>
> This will ensure the perpetrator is accountable for their actions and will also act as a deterrent to the mischief factor.

I would be interested to know from the government perspective—perhaps in the minister's reply—why the government has landed on the position it has taken, and what would be the consequences, unintended or intended, of pursuing REIWA's concern about this matter. Proposed section 56A states —

> A person must not refuse, or cause any person to refuse, to grant a tenancy to any person on the ground that the person —
>
> (a) has been or might be subjected or exposed to family violence; or
>
> (b) has been convicted of a charge relating to family violence.
>
> Penalty: a fine of $5 000.

In my view, REIWA was obviously advocating for the removal of paragraph (b), which would enable those granting a tenancy agreement to discriminate on the ground that the person had been a perpetrator of family violence. I am interested to know the government's view on REIWA's submission, which I assume was made to all members of Parliament, because that certainly was not canvassed in REIWA's letter of support of 14 August.

I now want to talk about a couple of concerns that I raised during the briefing, to put them on the record and hopefully get a response from the government, either in the minister's second reading reply or the committee stage of the bill. A commercial tenancy such as a corner deli or retail space may include some residential accommodation. That may not be the primary function of the commercial tenancy and may not be used as a residential tenancy, but my concern is the intersection between those commercial and residential tenancy arrangements. I have received some advice from the minister's office about this matter that I will read into *Hansard*, and I will seek some clarification from the minister when the right time arises. The advice that I received on 12 September states —

> In Monday's briefing, the Hon Martin Aldridge asked the question of how the proposed amendments would operate in scenarios where a commercial tenancy and a residential tenancy co-existed on the same premises—for example, the corner store with residential premises out the back or above the shop.
>
> As indicated on Monday, Consumer Protection has previously sought advice on the question of which legislation would prevail in a situation where a commercial tenancy and a residential tenancy co-existed under the main roof. The answer is that it depends upon the configuration of the premises.
>
> Where, for example, a small part of floor space of a warehouse was put aside for residential quarters, it is likely that a commercial lease over the premises would prevail.

> Where, however, there is a separation of the premises, such as living space out the back of a commercial shop or over the top of a corner store, each space would have their own leases under the respective relevant legislation.
>
> Given the above, if a residential lease applied to the residential part of the premises, the proposed family violence amendments would apply to that lease.

Therefore, these laws would not apply in circumstances in which a residential setting was part of a commercial tenancy agreement. I expect those circumstances would arise only rarely. Nonetheless, that is a concern to which I turned my mind during the briefing.

Since I was briefed on this bill, one matter that I have not been able to raise, and to which I would like the minister's response, is residential tenancies that arise out of an employment contract. In an agricultural setting, for example, a farm manager or worker may receive residential accommodation as part of their employment package, either written or unwritten. How would these laws operate? That circumstance would probably be more likely to occur than the one that I previously mentioned in terms of the intersection between commercial and residential tenancies when a residential tenancy arises from work-based employment contracts, whether they be written or unwritten. I would certainly be interested to know what would happen in those circumstances. There could be a situation in which a male and a female are in a relationship and the male receives accommodation arising from their employment. Will these proposed laws apply in those circumstances; and, if they will, to what extent? I would like the minister to respond to that during the second reading reply.

It is not my intention to delay the house any further. I know that there are a significant number of amendments on the supplementary notice paper—I think in excess of 40. Many of them are from the government and from the committee's recommendations, which I understand the government has given support to.

I express concern about the way in which the government is playing politics on this issue. I think on this occasion the Minister for Commerce and Industrial Relations is taking a leaf out of the book of the state's Attorney General. I am very alarmed, concerned and appalled by the comments that I observed in the other place late yesterday, when members of particularly the Liberal and National Parties were accused of standing with perpetrators of family and domestic violence on this issue and delaying the passage of this bill. I reinforce that this is the first occasion since this bill was introduced into this place some months ago that I have had the opportunity to make a contribution, albeit brief, because of the urgency for this bill to pass through this house before the Legislative Assembly and the Legislative Council rise this year. I indicate that the National Party will support this bill. I think the contribution made by the minister responsible for this bill in the other place undermines and demeans the importance of this legislation to the victims of family and domestic violence.

HON ALANNAH MacTIERNAN (North Metropolitan — Minister for Regional Development) [12.22 pm] — in reply: I appreciate that members on both sides of this chamber are appalled by the prevalence of domestic violence and absolutely understand that it is something that we have to take more dramatic measures against. I would never suggest in any of my comments that this matter was not taken seriously in this place. I must say that the comments of Hon Michael Mischin started with the premise that he was supporting the legislation. Although there will always be debate about the detail and whether or not there can be some protections, I felt that the overwhelming weight of the member's comments was directed at questioning the fundamentals of the bill and whether this was, effectively, an unjust imposition on landlords and people who lease property. I would not say that this applies to all members of this place, but if we analyse objectively the critique, it went beyond saying, "There are a few problems here, and there are things that we can tighten up, but we understand the importance of this." I do not think we got a lot of that from the member.

Hon Michael Mischin: Do you want to get on to the merits of the arguments that I have raised?

Hon ALANNAH MacTIERNAN: Yes, I am. I think it is important that this is set out. This bill is not opposed by the industry. This bill has not been forced upon the industry. Indeed, detailed analysis has been undertaken, and I think Hon Alison Xamon referred to it. What often happens in family violence cases is that properties are unexpectedly vacated and the landlord has all sorts of difficulties reletting those premises in an orderly way. An analysis has been done and I believe that that analysis was shared with the government committee. It set out the time periods and potential losses that would be sustained by a landlord if there was, as there often is, a sudden abandonment of premises, and what would happen if a court order was required to proceed to wind up that tenancy compared with this process, which will be relatively speedy. It is important to understand that, of course, industry has had concerns and has been engaged in dialogue, but, fundamentally, this bill has not been opposed by landlords.

I point out that every other state in Australia has a form of tenancy arrangement for domestic violence situations. New South Wales has had one since 2010, Victoria since 2008, Queensland since 2008, South Australia since 2017, Tasmania since 2004, the Northern Territory since 2007 and the Australian Capital Territory since 2016. We are the only state that does not have one and we are now trying to address this. It is true that we are the first

state to introduce the third party verification process, which we adopted from various Canadian jurisdictions. It is based on the performance in those jurisdictions and the very clear view that, after a number of years of operation, there has been no evidence that this system has been abused in the way that some members have expressed concern about. It is not just a question of a doctor's note. This process has been responsibly used. There are good reasons why people would not want to go down the path of a court process. We note that New South Wales is considering the Western Australian option. Indeed, some work is being done federally and there is a great deal of interest in that model that we are taking the path on. Members should not think that we are not absolutely out there. This is something that has long been needed in this state and we are getting on and doing it.

I want to make one other comment about the statements of Hon Michael Mischin. He talked about this bill being rushed through. Minister Bill Johnston started his engagement on this bill last year. He started the engagement with industry, and in December last year I believe he made a public statement with the Real Estate Institute of Western Australia that this was the path that they would go down. The legislation was introduced in the Legislative Assembly in May. It came to this place in June, and it was then referred to committee.

Hon Simon O'Brien: No, it wasn't referred to committee then.

Hon ALANNAH MacTIERNAN: It was referred to committee around September or October, I believe.

Hon Simon O'Brien: It was October. Why not deal with it in August when we came back?

Hon ALANNAH MacTIERNAN: Yes, okay; but it had a month in committee and it came back for consideration here.

Hon Simon O'Brien: On time.

Hon ALANNAH MacTIERNAN: It came back on time. The minister accepted every single recommendation of the committee, but we still get this: "It's too rushed!" I point out to the member —

Hon Michael Mischin interjected.

The ACTING PRESIDENT (Hon Robin Chapple): Members!

Hon ALANNAH MacTIERNAN: I put to the member that the way —

Hon Michael Mischin interjected.

Hon ALANNAH MacTIERNAN: I do, but I am going to make this point.

Hon Michael Mischin: interjected.

The ACTING PRESIDENT: Order! Thank you. The minister has the call and hopefully she will be able to continue in some silence.

Hon ALANNAH MacTIERNAN: Thank you.

I want to alert the member to the fact that we are not in the Dickensian age; this is not the "Office of Circumlocution". There is an expectation by the people in this community that we get on with the business of dealing with this legislation. Bill after bill has gone through this place and the member has dragged things out. He has repeated and repeated his comments. I am just going to preface that by saying that that is the context and that is why we come to this thing with some scepticism and concern about the bona fides.

Hon Michael Mischin interjected.

The ACTING PRESIDENT: Members, order!

Hon ALANNAH MacTIERNAN: I am sure that some members think there is a huge amount of landlord concern about here. Hon Martin Aldridge made reference to the fact that there been no consultation with the industry—this is extraordinary! As the committee was told, the Department of Mines, Industry Regulation and Safety wrote to the Property Owners' Association of Western Australia and the Landlords Advisory Service, among others, inviting them to make submissions in response to the consultation process. They chose not to. The department placed the consultation paper on its website and promoted the consultation through local media and social media. No landlords made submissions against the proposed new laws. The department has sent out —

Hon Martin Aldridge: No, the minister has not listened.

Hon ALANNAH MacTIERNAN: The member asked about consultation. I am telling him about it.

The department sent two e-bulletins about the proposed new laws to more than 3 000 private landlords. No complaints or objections have been received from private landlords.

Hon Martin Aldridge: I never received one. When did the department email me?

Hon ALANNAH MacTIERNAN: I know that the member has extensive property in the metropolitan area. Perhaps we were not aware that he was a tenant.

Hon Simon O'Brien interjected.

Hon ALANNAH MacTIERNAN: I have got a property in Albany; that is right. I have got one property in the country. Unlike National Party members, I actually do have a property in the country.

Hon Martin Aldridge interjected.

The ACTING PRESIDENT: Order! Can we curtail some of the across-the-chamber interaction and get on with the legislation.

Hon ALANNAH MacTIERNAN: Thank you.

Hon Michael Mischin: Perhaps we will fly the minister down there.

Hon ALANNAH MacTIERNAN: I think it is good that some people have such an interest in the country that they are prepared to have a house in the country, as opposed to National Party members who have houses only in the city.

Hon Rick Mazza: Is the minister saying there were no letters of correspondence at all from a property owner or a property owner group to the department?

Hon ALANNAH MacTIERNAN: No. The minister has received three letters of complaint. One was concerned about the tenants' rights to change the locks.

Hon Martin Aldridge: That's not what you said a minute ago.

Hon ALANNAH MacTIERNAN: It is part of the consultation process. I was talking about the consultation process, and subsequent to that there have been three letters. One was about the locks and the landlord was concerned about not being given a new key. As members note, there is a penalty in the bill for not providing a copy of the new key. There was also a complaint about the assignment of debt. The landlord was concerned about who would pay in the instance of non–family violence related death. As the minister explained to this landlord, the court can assign only debt related to family violence. All tenants remain jointly liable for non–family violence related debt. Only the third tenant indicated no support for the proposed new laws. Subsequent to the consultation there were some letters, but I was answering the charge of Hon Martin Aldridge that there had been no attempts at consultation with the industry.

I want to address some specific questions from Hon Rick Mazza. He sought clarification about why proposed section 17B(1) does not allow the lessor to apply to the court for a determination of their rights and liabilities. The answer is simple: the lessor does not need to apply. As far as the lessor is concerned, all tenants are jointly liable for any debt or damage arising out of the tenancy. That is the current law and that will be the starting point. It changes only if a tenant seeks to have it changed. The lessor does not have to apply; he can rely on the law as it is. If the tenant seeks to change the tenancy, they need to approach a court and attempt to get a ruling. The honourable member—I am going to try to remember to call him "honourable" because I believe that halfway through Minister Johnston's presentation last night, he might have occasionally forgot his honorific —

Hon Rick Mazza: I noticed that.

Hon ALANNAH MacTIERNAN: I know; the member pointed it out to me.

Hon Rick Mazza thought that only Department of Housing properties with asbestos would be exempt under the proposed regulations; that is not correct. A case was certainly put by the Department of Housing for its properties, but any prescription will be equally applied to privately owned houses with asbestos. The member also suggested that the proposed provision excuses tenants from giving a copy of any new key to the landlord if the landlord is a perpetrator. That occurs only if the landlord is a perpetrator in relation to that particular person, so it is only if there is a familial relationship between the landlord and the victim of the domestic violence. It cannot be that a person thinks that the landlord in his own personal relations might be a perpetrator; it has to be a personal relationship. I am not quite sure how it happens, but I understand that this came up because there have been numerous times when, apparently, the landlord has been leasing the property to his or her partner—I do not want to say that it is always one way, but, as Hon Alison Xamon points out, that often happens. The perpetrator has to be in that relationship with the person alleging domestic violence.

Hon Alison Xamon asked about the cost–benefit analysis. I did make reference to that. The department asked the Real Estate Institute of Western Australia for the average vacancy rate for rental properties. This year was chosen because it has the highest vacancy rate. Hon Alison Xamon also asked for clarification of the intended effect of the proposed amendments—the response is quite lengthy. Terminating the lease has an impact on everyone. The proposed amendments contained in the bill start with the presumption that the tenancy agreement will remain on foot. For any co-tenants, the lease can be varied only to the extent of terminating the interest of either the victim or perpetrator. We might leave more detailed discussion on that to the Committee of the Whole stage. Hon Alison Xamon

asked if the ordinary provisions for the lessor to terminate the tenancy agreement will remain available to any lessor who does not like the new laws. Yes, they will remain available. Quite a number of other matters were raised and perhaps they might be more productively dealt with in the committee stage.

Hon Alison Xamon: If we do it now, we do not have to deal with it after.

Hon ALANNAH MacTIERNAN: Hon Alison Xamon asked for confirmation that the proposed new laws do not apply to common areas of a strata complex. That is correct. These reforms will allow the changing of security upgrades only to rental premises, not to the common property. Hon Alison Xamon also asked that we confirm that lessors do not have a defence to prosecution action if the property manager disclosed the form to a third party. Section 87A of the Residential Tenancies Act provides a defence for either party when the lessor and the property manager are both charged with the same offence if they —

(a) did not aid, abet, counsel or procure the act or omission of the other giving rise to the offence; and

(b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission …

Hon Nick Goiran —

Hon Nick Goiran: I don't need a response.

Hon ALANNAH MacTIERNAN: Hon Nick Goiran does not need a response.

We acknowledge that this is new legislation, and the minister agreed in the other place to insert a five-year review clause. However, in discussion with our colleagues and after listening to all their concerns, I have approached the minister and he has agreed to reduce that to a three-year period. We note that Hon Rick Mazza foreshadowed some amendments seeking to constitute the review. Although we are happy to include them, we were concerned initially that that might be read as limiting the review to just those matters, but after negotiation with Hon Michael Mischin, we have come up with a form of words that include a saving provision to ensure that that review will be comprehensive, and those matters will be included, but that will not be exclusive. We are absolutely prepared to accept those concerns.

Hon Nick Goiran suggested that we were reserving for ourselves the power for the bureaucrats to get out there and add to the categories of persons who were able to provide third party verification.

Hon Michael Mischin: He didn't say that.

Hon ALANNAH MacTIERNAN: He did say that. He was very dramatic. He said we could do that. We have pointed out to the member that this would be only by way of a disallowable instrument. That has not been enough to satisfy the members on the other side, for some reason, but, always trying to negotiate and accommodate, I approached the minister and asked whether we could take a leaf out of the book of Hon Peter Foss, whom some members opposite might recall. I remember when I was trying to get through some amendments around the Taxi Act he moved a provision so that the regulations would not take effect until the disallowance period had expired. This would not allow anything to be snuck in and start operating. Minister Johnston is prepared to accept that as a compromise. I understand Parliamentary Counsel is now drafting this amendment. We understand that concern, so we are proposing that if we can resolve this, these prescribed circumstances will exist, but they will be subject to a provision whereby the regulation does not apply immediately on the making of the regulation; rather, it will be only when the disallowance period has finished. I think that is very reasonable. This may be a legitimate way around it.

We are also prepared to accept, as long as we have prescribed circumstances as well, Hon Rick Mazza proceeding with his amendment in which the sorts of things that will be considered to be the security treatments are articulated. We are happy to have that put in and to have them prescribed by that caveat.

The other thing the minister has been prepared to negotiate on—he has been very willing to work on a compromise—is Hon Rick Mazza's concern about the issue of proof. Hon Rick Mazza argued that when a tenant has made security alterations, the tenant is required then to make good the property, so there should be a requirement to produce an invoice from a qualified tradesperson. We pointed out—I think in our discussions, Hon Nick Goiran accepted that this might be the case—that jobs might be done pro bono for a not-for-profit set up for this reason. We are therefore prepared to modify that provision to require that within 14 days a certification be provided that the work has been done by a suitably qualified tradesperson. It is not an invoice but a certification.

Hon Michael Mischin: Certification by whom?

Hon ALANNAH MacTIERNAN: It would be by the person who did the work, certifying that they have done the work. I think that is a reasonable compromise, so we will see this legislation come through with a few more

protections or constraints on it moving further and, of course, a full and comprehensive review will be done after three years, making it very clear that those items that have been raised by the opposition and the crossbenchers are enshrined within that legislation.

I am hopeful that we can all come to an agreement on the Residential Tenancies Legislation Amendment (Family Violence) Bill. Certainly, the National Party and the Liberal Party in the other place have strongly supported this bill. I hope that with these modifications now before us, we can find a common pathway for it. Thank you.

Question put and passed.

Bill read a second time.

Committee

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

Clause 1: Short title —

Hon SIMON O'BRIEN: I rise at clause 1 for the purpose of making some general remarks about the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018 and how we might deal with it. I am a member of the Standing Committee on Legislation and members will be aware that they have the benefit of the thirty-eighth report of that committee on this bill. This bill was referred to the standing committee, which was also given capacity to inquire into the policy of the bill. It was the unanimous view of the committee—and subsequently, of the house—that this bill's second reading be agreed to. We all knew that was coming, so I did not place any remarks on the record during the course of the second reading debate and I do not seek to do so now, but the fact of the matter is that the policy of the bill has been decided.

This brings us to consideration of the detail of the bill, and how the mechanics of the bill will serve that policy. I invite members to very seriously contemplate the thirty-eighth report of the Standing Committee on Legislation, which I think they will find is a very easy-to-read and clear document that also covers many, if not all, of the issues that were raised as items of concern during the second reading debate. We now come to the practicalities, and I again point out to the chamber, as not only a private member but also a long-time participant in committee inquiries, that the purpose of a standing committee inquiry and report on a bill is to facilitate the processes of the bill's passage through the house. I again urge members to rely on the contents of this report as they go through the clauses, clause by clause. That might facilitate things.

There certainly are some matters relating to the mechanics of how this bill operates that we will pause to talk about and contemplate from time to time during the course of this Committee of the Whole House, and I will be participating in that from time to time as well, particularly with regard to matters that relate to subsidiary legislation and what should and should not be prescribed, and what alternatives there may be to prescription by regulation. We heard something from the Minister for Regional Development in her closing remarks on the second reading debate that I am not sure reflects the appropriate way ahead, but we will come to that in due course.

Seeing as I did not comment during the second reading debate, though, I will conclude my remarks by recommending this report to the Committee of the Whole as we embark upon the committee stage. I personally derived a great deal of benefit from my participation in examining this bill. My understanding of the issue benefited greatly from that exercise. I want to reassure members at this stage that their standing committee examined quite minutely the concerns that are being raised now, as best we could within the limited time frame we were given. I reassure members of that, and I now strongly support this bill, whereas prior to the committee report I might not have been so robust in my support of it.

That was encouraged in no small amount—I think all the members of the committee were impressed—by the approach taken by the department that used to be called the Department of Commerce. I am not sure what it is called now—the Department of Mines, Industry Regulation and Safety, or something. I want to particularly place on the record my appreciation, which I think is shared by other committee members, of the professional and competent approach taken by Ms Patricia Blake, the senior policy officer. If that embarrasses Ms Blake, tough! She deserves to be recognised, and it obviously shows the long-term benefits of having had expert ministerial guidance in the earlier part of her career!

Hon MICHAEL MISCHIN: I have just a general question, but I should comment on the approach taken by the minister in her reply to the second reading debate. Rather than addressing any of the myriad issues I raised, and what I thought were evidential issues that could be explained, she chose to dismiss them as somehow questioning the fundamentals of the bill. I remind her that I instituted the department's exploration of the desirability of some amendments to the residential tenancies legislation resulting from the Law Reform Commission report. I was awaiting the results of that before the previous government lost office. That does not mean that the legislation

I would have put forward would, in any way, have reflected in detail the approach that is being taken here, but I support the reforms. For the minister to opportunistically try to twist my attitude for public relations purposes, in the same way that I was misrepresented in just about everything that was said by the Minister for Mines and Petroleum in the other place last night—I was utterly misrepresented through false accusations, false comments and other things by him and his colleague the Minister for Child Protection—is simply deplorable.

At some stage I will give the chamber an enlightened, let us say, revelation of the nature of my discussions with the responsible minister in respect of this bill; it was not edifying, and Hon Bill Johnston made it quite clear in his comments that he would not entertain any discussion from me about how the bill might be improved. That was way back in June. In fact, he indicated to me at the time, "I hope that you all oppose the bill, because then I can say that the Liberals support family violence." Hon Simone McGurk says that it was a disagreement and that I reacted immaturely, but that was the substance of the comments by Minister Johnston, when I simply wanted to flag with him that I had some reservations about the manner in which the bill ought to be framed and that I had certain questions to raise. He was not interested in talking, and I accepted that we were at a polling booth and that there would be no discussion, but, as a courtesy, I simply wanted to raise with him that I had some reservations about some of the approaches. His response was, "I hope you do oppose it, because I can say that the Liberals support family violence." I pointed out at that point that that was along the lines —

The DEPUTY CHAIR (Hon Robin Chapple): Members, I just remind people that we are dealing with clause 1.

Hon MICHAEL MISCHIN: I shall indeed, because I am still awaiting a sensible response from the minister to the variety of issues I raised in the course of the second reading debate that have been dismissed.

Hon Donna Faragher: An apology would be good.

Hon Alannah MacTiernan: That's not going to happen.

Hon MICHAEL MISCHIN: No, an apology is not going to happen.

The DEPUTY CHAIR: Members, we are dealing with clause 1 and I require people to deal with matters contained within clause 1.

Hon MICHAEL MISCHIN: I shall. Thank you, Mr Deputy Chair. As I say, there is more to be said about that particular conversation; it went downhill, but that is the only conversation I had.

The idea, as has been touted, that there was discussion before yesterday about how this bill ought to be progressed and that somehow a deal had been made that if there was a committee report, there would be no debate is just fatuous, stupid and utterly wrong. The idea that any party in this place can control the others in debate is a fantasy of the Labor Party; it just wants us to rubberstamp its legislation. It is not circumlocution, minister; it is proper input and debate. I know the Labor Party does not like that, but that is what we are here for and that is our responsibility. I will pass over the fact that the various issues I have raised have not been commented on and have simply been dismissed by this minister. I am pleased to say that we have had some discussion on the proposed amendments—which seems contrary to the minister in the other place's indication that no amendments from this place will be given any worthy consideration, will be dismissed with contempt and will simply not be passed down there—but we will see.

My first question arises out of a comment in the committee report about section 74 of the current act.

Hon Alannah MacTiernan: Is this relevant to clause 1?

Hon MICHAEL MISCHIN: It is relevant to clause 1. Paragraph 5.8 of the committee report states, in part —

> Current options are termination under the undue hardship provisions in section 74 of the *Residential Tenancies Act 1987* …

There is a comment about using —

The DEPUTY CHAIR: Members, I understand this is an enthralling part of the debate, but noting the time, I will leave the chair until the ringing of the bells.

Sitting suspended from 1.01 to 2.00 pm

Hon MICHAEL MISCHIN: My question related to paragraph 5.8 of the standing committee's report, which referred to options for termination under the undue hardship provisions of section 74 of the Residential Tenancies Act. A couple of examples are cited in support of that section's inadequacy to deal with termination on the basis of family violence. Again, without critiquing the force of that evidence, to what extent was consideration given to extending the hardship provisions to permit termination, given that a process is already available under that section, rather than drafting a discrete scheme as proposed in the bill? It seems that if there was any doubt that there could be a termination on the basis of hardship in the event of family violence, making that clear in section 74 with a few

consequential amendments might have resolved that difficulty. Can the minister explain to what extent thought was given to an extension of those provisions?

Hon ALANNAH MacTIERNAN: I want to make a comment. I believe that the fundamental policy of the bill is being challenged again. Frankly, if we were able to rely on the existing hardship provisions, we would not need this piece of legislation. That is the whole point. I want members on the other side to understand that we are seeing a fundamental challenge to the policy under the rubric of "We support the bill." We decided, as was discussed in the committee's report, that the current provisions were not capable of sustaining the sort of model we wanted. Hon Michael Mischin says it all started under him, so presumably he would be aware of those limitations and why we could not rely on the hardship provisions in the act.

Victims of family or domestic violence need certainty of outcome when they make a decision to leave, because their risk of serious harm or homicide increases significantly. Therefore, they need to know that they can leave and will be able to secure alternative accommodation. A court application for hardship is not certain. Cost analysis shows that it also does not work for landlords. A court application is likely to cost a landlord far more in lost rent than the proposed new law. The hardship provisions terminate the entire agreement for all tenants and the landlord. By contrast, the proposed new laws will leave the tenancy agreement on foot with any remaining co-tenants if they want to stay on and the landlord so wishes, which is also better for landlords. Case studies show that a reliance on hardship provisions would cost landlords more.

I will give an example of what I understand is a real case. In September 2017, a victim of family and domestic violence left a rental property following a violent assault by her partner. The police pressed charges against the perpetrator tenant, who remained in the tenancy. Under police protection, the victim tenant moved to the north of the state and protective bail conditions were placed on the perpetrator. In December the family of the victim tenant contacted the property manager to explain the situation and to negotiate to have the victim tenant's name removed from the tenancy agreement. Negotiations were protracted and in February the property manager told the family that the perpetrator tenant was required to agree to have the victim tenant's name removed. In April 2018, the victim tenant received notice of a court application for termination of tenancy agreement for non-payment. The matter was heard at the first instance in May 2018 and was adjourned until June. In the meantime, the victim tenant was assisted to apply for termination of her tenancy interest on the grounds of hardship, which was heard at the same time as the lessor's application. The entire process took more than six months. It resulted in uncertainty and stress for the victim tenant and a lengthy period of unpaid rent for the lessor. It also consumed two court hearings.

Hon MICHAEL MISCHIN: I thank the minister for the speech! She could not resist the idea of once again distorting the debate. I do not cavil against the policy of the bill. It was a simple question that could have been answered in a couple of lines. I asked to what extent had extending the hardship provisions available under section 74 of the Residential Tenancies Act been considered. Plainly, if I can dissect and take all the fat away from the minister's answer, she has told me that it was considered but it did not go far enough to address some of the particular issues. But the minister raised one area, and that is the apparent sensitivity of the government to the costs and financial burden that will be imposed on the lessor. To what extent does the government propose to allocate additional resources to either the State Administrative Tribunal or the Magistrates Court to expedite any cases that arise out of this legislation that may require an expeditious determination?

Hon ALANNAH MacTIERNAN: Because we have minimised the need for matters to go to court, we have been advised by the relevant tribunals that they can manage with existing resources.

Hon MICHAEL MISCHIN: I will have to take that on face value, but certainly I had one lessor who recently complained that it took something like three months to even get a listing from the Magistrates Court in Perth to determine a question of a tenant who had abandoned the premises and was not paying rent. In any event, I take it that no further resources will be allocated and that the minister will not address the various other issues that I raised in the second reading debate. I have no further questions about clause 1. We can move on to the merits of the various amendments that I am told the government will not under any circumstances agree to in the other place.

Hon RICK MAZZA: I rise to make a couple of comments about the comments made by the Minister for Commerce and Industrial Relations in the other place yesterday when he put his proposal to the Liberal Party. According to yesterday's uncorrected *Hansard*, he said —

> Vote against Rick Mazza's amendments because then we will have the numbers.
>
> …
>
> Let me make it clear, Hon Rick Mazza's amendments will be rejected by the Labor government and I expect that all the Liberal members will vote with the Labor government …

According to the uncorrected *Hansard*, he then goes on to say —

Tell Hon Rick Mazza that they will not support these badly drafted and unnecessary amendments.

That is bit rich coming from a minister who recently, with the approval of fracking, adopted my policy in the Petroleum and Geothermal Energy Resources Amendment (Veto Powers) Bill, yet he is saying that my amendments are unnecessary. Perhaps the minister can explain why they are badly drafted. I am sure the Parliamentary Counsel's Office would be very interested to learn why they are badly drafted and unnecessary.

Hon MARTIN ALDRIDGE: During the minister's second reading reply, I was hoping that she would address a matter I raised during the course of my second reading contribution. Despite the fact that the minister misrepresented my remarks about consultation with property owner organisations and landlords themselves, she said that some 3 000 emails had been sent to landlords as part of the government's consultation. Can the minister please explain how that occurred and the response rate that was achieved?

Hon ALANNAH MacTIERNAN: I thank the member for that. An e-bulletin is regularly sent out. Landlords need to opt in to be on the database. We are more than happy to provide the member with the link to the e-bulletin. I do not want to offend anyone here because I know there is sensitivity about referencing websites, but we are more than happy to give the member the link so if he would like to opt in, he is welcome to do so. It is the database that the department uses to contact landlords and property owners.

Hon MARTIN ALDRIDGE: Thank you for that, minister. I would certainly be interested if the minister could provide a copy of the e-bulletin that was provided to the 3 000 landlords. That would be appreciated. How many responses to those 3 000 emails were received by the department?

Hon ALANNAH MacTIERNAN: No responses were received but more than 1 500 people clicked onto the particular e-bulletin.

Hon MARTIN ALDRIDGE: During my second reading contribution, I raised the issue of commercial tenancies and I read in the response from the minister's office. Although I do not recall the minister making further reference to that in her reply, I assume that she does not dispute the response that I read into the chamber. I also raised another circumstance that could arise, probably more commonly than the intersection between commercial and residential tenancies; that is, residential accommodation arising from an employment contract whether written or unwritten. To what extent will this bill, once it becomes an act, have an effect on providing protection to victims of family and domestic violence when the residency arises from a work arrangement, which in a lot of cases would be linked to the perpetrator rather than the victim?

Hon ALANNAH MacTIERNAN: All employment-related tenancies that are covered by the Residential Tenancies Act will be covered by this provision. We recognise that in some cases challenges will emerge from that, but we do not see that there is any way around that.

Hon AARON STONEHOUSE: I am looking at a copy of a "Certified Family Violence Report" form—I apologise that this has come up already—in appendix 5 of the Standing Committee on Legislation's report. Is this still the most current and up-to-date version of the form that will be adopted by the government?

Hon ALANNAH MacTIERNAN: Yes, it is.

Clause put and passed.

Clause 2: Commencement —

Hon MICHAEL MISCHIN: I note that the question of the capacity of clause 2 to impinge on Parliament's sovereignty was considered by the Standing Committee on Legislation in paragraphs 7.2 to 7.6 of its report, with a finding that the committee was satisfied with the explanation. I want to get an idea of when it is expected that the operative provisions of the act will be proclaimed. We have been told that this bill is a matter of urgency and that it has to be passed before the end of the year and the like, but when does the government, assuming that the bill passes through all stages today in both houses, expect that the substantive provisions of the act will come into operation?

Hon ALANNAH MacTIERNAN: I thank the member for that. As a former Attorney General, Hon Michael Mischin would be well and truly aware that Parliamentary Counsel cannot start drafting regulations until such time as the primary legislation has passed this place. We need this bill to pass so that we can get moving with those regulations. It is the aim of the department to begin that drafting as soon as the legislation has passed. There is hope that we will get these regulations in place by late February, early March.

Clause put and passed.

Clauses 3 and 4 put and passed.

Clause 5: Section 17B inserted —

Hon RICK MAZZA: I move —

Page 4, line 24 — To delete "fundamental".

It was covered in the committee report that "fundamental" is probably unnecessary. It is not in the Restraining Orders Act 1997, so I move that it be deleted.

Hon ALANNAH MacTIERNAN: I caution members against supporting this amendment. The reason that a statement of principles is included is that there was a clear request from the Chief Magistrate, who argued that it was important to articulate the objectives of the legislation within the legislation. Guiding principles need to be enshrined in the legislation to guide future interpretation. As part of that, "fundamental" is included in the description of the nature and severity of the breaches. The language is picked up from various sources, such as the Universal Declaration of Human Rights and the Australian Human Rights Commission. It does not in itself necessarily have a major impact, but I do not think that this house should accept this amendment, given all the language that we have been addressing towards family violence to get people to understand that this is one of the critical issues that we as a community are struggling with. We have all been wearing our badges that say "Stop the Violence". For this house seriously to contemplate changing a piece of legislation that went through the Legislative Assembly and to remove the word "fundamental" would communicate that this house does not see this as an important issue, as it is seen in the Legislative Assembly and in the community. I really honestly think that this would be extremely unwise. It would be detrimental to the reputation of this place if we were to support the deletion of this word. It would water down the seriousness with which we are taking this issue of domestic violence.

Hon NICK GOIRAN: I have been authorised on behalf of the opposition to indicate that we will support Hon Rick Mazza's amendment. Despite the smokescreen that has just been put up by the minister, let us be very clear here that this is a drafting error. It is plainly incomprehensible to talk about a fundamental violation. The word "fundamental" has been drafted in error. It needs to be deleted and we need to move to more substantive clauses.

Hon AARON STONEHOUSE: Could the minister explain this? I do not have a background in law; I did not study law. What is the difference between a violation of a human right and a fundamental violation of a human right? If the minister could explain that for the laypeople who do not have degrees in law, it would be much appreciated.

Hon ALANNAH MacTIERNAN: We take the view that taking someone's life is pretty much a fundamental breach. This wording has been taken directly from the Victorian legislation.

Hon Michael Mischin: It must be right then!

Hon ALANNAH MacTIERNAN: I urge members. I do not want to prolong it. We are not bringing forward this amendment. We on this side of the house are not going to agree to a statement that will be interpreted as us seeing this legislation as less important. We see the fact of domestic violence as more important. The opposition wants us to say that we do not think that this is such a fundamental breach. We put these provisions, Hon Aaron Stonehouse, in the legislation because the Chief Magistrate pointed out that in his view it was very important that we have guiding principles. The word "fundamental" was incorporated to show the strength of seriousness with which the government and the Parliament treat this issue. I am urging sensible members on the other side not to get themselves into this trap.

Hon MARTIN ALDRIDGE: Based on some advice from the Chief Magistrate, we are now creating a new legal threshold, if you like, whereby we can have a "violation" and a "fundamental violation". Could the minister explain to me whether there are other areas of law, perhaps the Criminal Code, with such varying thresholds of violation?

Hon ALANNAH MacTIERNAN: I have explained why we have included "fundamental" and I have nothing further to add.

Division

Amendment put and a division taken, the Deputy Chair (Hon Matthew Swinbourn) casting his vote with the noes, with the following result —

Ayes (17)

Hon Martin Aldridge	Hon Nick Goiran	Hon Robin Scott	Hon Colin Tincknell
Hon Jim Chown	Hon Colin Holt	Hon Tjorn Sibma	Hon Ken Baston *(Teller)*
Hon Peter Collier	Hon Rick Mazza	Hon Charles Smith	
Hon Colin de Grussa	Hon Michael Mischin	Hon Aaron Stonehouse	
Hon Donna Faragher	Hon Simon O'Brien	Hon Dr Steve Thomas	

Noes (16)

Hon Robin Chapple	Hon Sue Ellery	Hon Kyle McGinn	Hon Dr Sally Talbot
Hon Tim Clifford	Hon Diane Evers	Hon Martin Pritchard	Hon Darren West
Hon Alanna Clohesy	Hon Laurie Graham	Hon Samantha Rowe	Hon Alison Xamon
Hon Stephen Dawson	Hon Alannah MacTiernan	Hon Matthew Swinbourn	Hon Pierre Yang *(Teller)*

Pair

Hon Jacqui Boydell	Hon Adele Farina

Amendment thus passed.

Clause, as amended, put and passed.

Clause 6: Section 27C amended —

The DEPUTY CHAIR (Hon Matthew Swinbourn): I move —

Page 5, line 24 — To delete "person" and substitute —

lessor

Amendment put and passed.

The DEPUTY CHAIR: I move —

Page 5, line 26 — To delete "person —" and substitute —

lessor —

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 7 to 9 put and passed.

Clause 10: Section 45 amended —

Hon ALANNAH MacTIERNAN: I move —

Page 8, line 21 — To insert after "lessor" —

in writing

This is in regard to who the lessor is not to give the keys to. It is about giving the lessor notice of who not to give the keys to.

Amendment put and passed.

The DEPUTY CHAIR: I move —

Page 8, line 27 — To delete the line and substitute —

Penalty for this subsection: a fine of $5 000.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 11 put and passed.

Clause 12: Section 47 amended —

Hon RICK MAZZA — by leave: I move —

Page 10, line 9 — To delete "prescribed".

Page 10, line 10 — To delete "prescribed".

Page 10, line 11 — To delete "***prescribed***".

I do not think I need to go through these one by one. We can do this in a job lot. The main reason for these amendments is that I do not know that we need regulations. The alterations I have listed are to do with security alarms and cameras, locks, screens, shutters on windows, security screens on doors, exterior lights, locks on gates and the pruning of shrubs. The list is very comprehensive. I cannot see any other issues that may arise. At some

later time, maybe in the review in three years—if we happen to get that amendment up—if there are other things needed, we can deal with those through the house at that time.

Hon ALANNAH MacTIERNAN: We were keen to try to negotiate an outcome here. We put forward a proposition whereby the bill would make it clear that these prescribed circumstances would require regulations, so they are not a bureaucratic effort. We proposed to ensure that that regulation not take effect until such time as the period for disallowance of the regulation had transpired, so nothing could be surreptitiously done. I think that the gesture was made in good faith to try to resolve the concern. The member has indicated that that change is not acceptable to him. Without that, we believe that we need this power to prescribe. We are concerned, for example, that if we were just to go with the list there at the moment, it may not be sufficiently articulated. We would have been quite happy to have put in that list if we could also have the other prescriptions. We would have been happy to do that. Because we believe that there may be new technology and new security measures available, we would certainly have looked at a much more extensive provision than to constrain the right of pruning trees and shrubs. That is very general. The department would have developed, in consultation with the lessors, a more extensive set of rules clarifying exactly what is possible. If the opposition does not allow us to have a prescription to be able to introduce more provisions by regulation, we do not think that is adequate. As I said, we were happy to compromise on two fronts. The first was to introduce a further limitation so that the regulations took effect only once the disallowance period had ended, so that there could be no suggestion that things were being hurried through. We have circulated some new clauses that indicate how that would operate. We would even have been happy to have accepted the next one, because we would have been able to fix it by way of regulation. But we certainly would not support this as it is. I must say that I am very disappointed. We really did seek to meet Hon Rick Mazza halfway, but that is obviously not something he wants.

Hon NICK GOIRAN: I support what Hon Rick Mazza is doing here, because the bill will allow tenants to impact on property that they do not own—third party property that is owned by landlords—and without the consent of the landlord. Such a crucial change to somebody's property ought to be in the bill and not subject to regulation. The minister makes a very good point about the compromise proposal. I have to say that the government was almost there. When the minister referred to, effectively, the Foss model of regulations, I understood that what the government was looking at was the possibility of the regulations being tabled and becoming effective only upon resolution by both houses, but that is not the wording of proposed new clauses 22A or 32A—they will simply not come into effect until the disallowance period has passed, and that is a different thing altogether. Had it been what I understood, I suspect the opposition would have been in favour of that—that would have been a good compromise—but given that is not what has been drafted, we will need to support Hon Rick Mazza.

Hon ALANNAH MacTIERNAN: It is effectively the same thing. If Parliament does not disallow within the disallowance period —

Hon Nick Goiran: It is not the same.

Hon ALANNAH MacTIERNAN: I think effectively it is. The concern articulated by Hon Nick Goiran was that somehow or other these regulations could be introduced without anyone knowing about them—without there being the opportunity. We are saying that they would not only appear in the *Government Gazette* as they normally would, but also have to come to this place and then go to the Joint Standing Committee on Delegated Legislation to be considered. There would be the possibility, at any time within that period, for a member to move for these regulations to be disallowed. I am very concerned. The concession the government was prepared to give, which really is different from the way in which we deal with regulations in 99 per cent of cases, to provide greater scrutiny and to ensure that there was no bad faith going on here—that we were not wishing to undermine the position of lessors or do anything untoward—was clear. We are not going to persuade the opposition, so I guess we will just have to vote on it.

Hon SIMON O'BRIEN: I have to hand some further draft amendments. A minute ago, I received a new supplementary notice paper—issue 8, dated today—and now I have received to hand some further draft amendments, which I do not think have the status of a supplementary notice paper yet. Nonetheless, it just shows how dynamic a committee stage this is on this matter. Not only does this include some further draft amendments for the clause we are on, but also there is a proposal for a new clause 22A, which relates to what the minister and Hon Nick Goiran have just been discussing—that is, regulations being made for the purposes of this section of the act cannot come into operation until after the end of the period during which they are subject to disallowance under the Interpretation Act 1984. That gives effect to what I think Hon Nick Goiran was asking about, and to which the minister earlier referred or even gave an undertaking to provide.

My contribution at this point of the debate is to advise the chamber that the fundamental issue here is misconceived. Members will discover on pages 21 or 22 of the report by the Standing Committee on Legislation that the committee itself had a divided view on this. Let me make a couple of things clear about what we are actually

talking about here. I am not inclined to vote in favour of this amendment and I am yet to be persuaded by what I have heard. My vote is going to count, like everyone else's. As I have just said, I think the argument here is focused in the wrong place and therefore is misconceived. Hon Nick Goiran pointed out that the legislation we are being asked to pass empowers tenants, in highly definitive circumstances, to make alterations to their landlord's property—that is, someone else's property. As Hon Nick Goiran correctly pointed out and as Hon Rick Mazza would correctly point out, that is a significant thing that has an impact on the current rights of those property owners. Those members then went on to say—I am sure they will correct me if I am characterising this incorrectly—that such things should not be prescribed by regulation. They are right. They are not going to be prescribed by regulation; that power is going to be itemised by the substantive clause to be passed by this Parliament, which in due course will become the amended section 47 of the act. This Parliament is making the decision right now about giving the power to certain people in the future in a domestic violence situation. Are we going to give them the power to make certain changes that will affect someone else's property—that is, the landlord's property? That is the question before us when we are contemplating agreeing to clause 12 of the bill. We are making the decision. It is not being delegated to someone else to do by regulation. I repeat: it is not being delegated. What is proposed to be delegated to the powers that make regulations are matters of detail, which, in my view, quite rightly should be prescribed by regulation. That is because the items that will be in due course enumerated in regulation will be the sorts of things that might vary in consultation with affected parties, including landowners or landlords. They might be affected in other ways—perhaps someone has left something out or something that should have been put in was not, or something is in the list that does not in practice work. Those are the sorts of things it is convenient to prescribe by regulation. Let us not have any further suggestion that Parliament is about to delegate some power that should not be delegated, because that is not the case. Members can be reassured on that point.

A package of amendments has been proposed. Three are identical—they remove "prescribed" in three different places—and have been by leave moved together. But it goes beyond that, because Hon Rick Mazza is proposing to include, through his next amendment, the things that in his view should be nominated in the legislation, as listed in proposed new section 47(5). That specifically lists the alterations that may be undertaken. He talks about "the addition, removal or alteration of any of the following", and then there is a list of things such as security alarms, and locks and screens and what have you. We can all see that. These are the things that the proponents of the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018 say should in due course be prescribed in regulation, and we are being asked to say, "No, that should not be reserved for the regulation-making power; it should be in the bill." I am saying quite clearly that this list of things—for want of a better term—should be reserved for regulation. The imposition on a property owner's rights are dealt with by the substantive parts of this bill. We are making that decision as a Parliament, but it is entirely appropriate for this list of things to be reserved for regulation. Sometimes we can get things wrong, and this list would not need to be varied or modified by a bill coming through the houses of Parliament in due course, when, and if—it might happen—something has been left off and we have to change it, or something has been included that should not have been or should have been included differently. We cannot wait for a bill to come before the house and be prioritised to deal with that.

Let me give members an example. In an amendment that will come up in due course we will be asked to take on part of that list, being locks on gates. When we consider locks on gates, what about external gate locks that are in common areas in strata properties? Will an individual domestic violence victim be allowed to change the common-user gates in their strata property? Is that what is contemplated? That may be right or wrong, depending on someone's point of view, but that is the sort of detail that is very, very important. I urge the chamber to be very careful about adopting this proposed block of amendments, because that is not the way the legislation should be constructed.

Hon ALANNAH MacTIERNAN: I thank the member for that very important and clear contribution. The bill clearly outlines a range of things and their purpose, and limits it to the things necessary to prevent the entry onto a premises of a person. It is highly problematic to try to guess all that detail and insert it into the legislation. I really urge members to listen to the very wise counsel of Hon Simon O'Brien on that.

The DEPUTY CHAIR (Hon Matthew Swinbourn): Before we go on, to be clear, I am working off supplementary notice paper 67, issue 8; I have also been provided with an additional document that includes a number of matters already on the supplementary notice paper and two matters that are not. When we get to the amendments to clauses 12 and 35 on that additional paper, if the minister wishes to move them, we will then deal with them. Hopefully, confusion will not continue to reign.

Hon NICK GOIRAN: I think the solution is that when we get to new clause 22A, as foreshadowed by the Minister for Regional Development, we simply amend it to ensure that the regulations will come into operation upon a resolution of both houses of Parliament. I have sent to the minister a form of words that would achieve that effect. I believe that would resolve the issue to the satisfaction of the majority of members. That would therefore mean

that it would not be necessary to support this amendment by Hon Rick Mazza, but it would give effect to what we had understood the government was proposing by way of compromise.

Hon ALANNAH MacTIERNAN: No, I unfortunately cannot accept that because that really is the equivalent of introducing a new bill into Parliament. I have said that we were prepared to do something that is not done in 99 per cent of cases in regard to regulations, but we would not agree to that because it would not get us beyond where we would go with making an amendment to the legislation.

Hon AARON STONEHOUSE: I am a little confused here. I have what I think is a supplementary notice paper extract with a new clause 22A that reads —

> Regulations made under subsection (1) for the purposes of section 47(4) or (6)(b) or 71AB(2)(d)(vi) cannot come into operation until after the end of the period during which they are subject to disallowance under the *Interpretation Act 1984* …

Presumably that is the minister's amendment that she supports that would address the concerns —

Hon Alannah MacTiernan: It is to try to address the concerns that this may be something that would be done in secret and would take operation before anyone had time to comment on it.

Hon AARON STONEHOUSE: I am a little confused, then, about what Hon Nick Goiran was proposing to amend —

Hon Alannah MacTiernan: He is proposing an alteration to that, so instead of waiting until the end of the period of disallowance, we would have to bring forward an actual motion to both houses of Parliament, which is not —

Hon AARON STONEHOUSE: That does not appear on any of the supplementary notice papers at this time, does it?

Hon Alannah MacTiernan: No.

Hon AARON STONEHOUSE: Okay.

Amendments put and negatived.

The DEPUTY CHAIR: Hon Rick Mazza, you have another amendment immediately following the previous amendments on the supplementary notice paper.

Hon RICK MAZZA: There is no point in that, Deputy Chair.

The DEPUTY CHAIR: So you do not wish to pursue that? Do you wish to pursue any of these amendments?

Hon RICK MAZZA: Not the amendments to lines 22 and 24 on page 10, but can I get a bit of guidance on my next amendment? That amendment will delete "tradesperson" from line 25 of the bill.

The DEPUTY CHAIR: The minister has flagged an amendment before then, so perhaps if we go to that amendment first. Minister, that amendment is not on the supplementary notice paper; it is on this additional document here and concerns page 10, after line 23.

Hon Michael Mischin: Talking about draft 3, are we?

The DEPUTY CHAIR: Yes, the draft 3 document.

Hon ALANNAH MacTIERNAN: We do not support this one; I am sorry, member —

The DEPUTY CHAIR: No, sorry, minister; this is your amendment.

Hon ALANNAH MacTIERNAN: Sorry, I thought the member was moving it.

The DEPUTY CHAIR: This is an amendment to clause 12 for the Minister for Regional Development representing the Minister for Commerce and Industrial Relations to move. It reads —

> Page 10, after line 23 — To insert —
>
> (aa) the tenant must give written notice to the lessor of the tenant's intention to make the prescribed alterations; and

Hon ALANNAH MacTIERNAN: Yes, thank you. This amendment is not exactly in the terms that we had discussed previously, but from the advice we have had now, we believe it would be appropriate for the sorts of additional protections that would be appropriate. The minister believes that we cannot, and our advice is that it is not appropriate to, demand invoices because these matters might not be paid for; the alterations might be done on a pro bono basis. However, we recognise that we want to give some greater protection here. At the moment, the tenant is not required to tell the landlord of alterations that they have made, pursuant to the legislation, but this is

a new provision we have introduced. It will require the tenant to give written notice to the lessor of the tenant's intentions to make the prescribed alterations. It is more information and advice to the landlord. It is an additional protection for the landlord that has come out of the discussions with Hon Rick Mazza.

The DEPUTY CHAIR: Minister, you need to move the amendment.

Hon ALANNAH MacTIERNAN: I move —

Page 10, after line 23 — To insert —

(aa) the tenant must give written notice to the lessor of the tenant's intention to make the prescribed alterations; and

The DEPUTY CHAIR: You need to sign it. The Minister for Regional Development representing the Minister for Commerce and Industrial Relations has moved the amendment in her name. The question is that the words to be inserted be inserted.

Hon RICK MAZZA: I rise to say that I welcome this amendment. I think it is good that landlords are given notice that they are going to have alterations made to their property. I ask the minister what time frame the tenant has on advising the landlord that they intend to make these alterations? Is it seven days before they start making the alterations, or 14 days? I am a little unsure of the time frame in which the tenant must give notice to the lessor before they commence making those alterations. Can the minister please clarify that?

Hon Alannah MacTiernan: Sorry?

Hon Rick Mazza: Would you like me to repeat the question?

Hon Alannah MacTiernan: Yes, just quickly.

Hon RICK MAZZA: I was saying that I welcome the amendment. My concern is that it does not give a time frame of how many days' notice the tenant has to give the lessor in writing of their intention to make the prescribed alterations. Do they have to give seven days' notice or 14 days' notice? What is the time frame?

Hon ALANNAH MacTIERNAN: They just have to do it before they make the alterations. There is no time limit. Bear in mind the purpose of this legislation, member. We have someone who is in fear of their life and their physical safety and they need to do it. This introduces, for the first time, the requirement that before they do the works, they need to notify the landlord. These are matters of urgency.

Hon RICK MAZZA: I accept that, and that is why I am a little surprised that the minister has put this amendment on the supplementary notice paper. In a lot of circumstances, as far as the policy of the bill is concerned, the alterations have to happen pretty quickly. It is not clear what happens if the tenant cannot get hold of the lessor to give them written notice of their intention. Do they just need to send an email and go ahead with it? What is the operation of this amendment?

Hon ALANNAH MacTIERNAN: They do not need consent; they just need to simply email or text—whatever mechanism is available. Obviously people need to go out and get the people who are going to come in and do the work. At that time, they can then contact their agent either via email or text message and let them know that this is what they are doing. If the member does not want to pass it, we are quite happy to withdraw it. If it is not helpful, we will withdraw it.

Hon Rick Mazza: I am just asking genuine questions, minister.

Hon MARTIN ALDRIDGE: In turning my mind to this amendment, I can understand and appreciate the reasons that a time period could not be prescribed for the reasons that the minister has outlined and that some of these things may need to happen fairly rapidly. If this amendment is not supported—looking at the bill as it stands—am I right in thinking that we could have a situation in which fixtures are affixed to a property and then remediated after the tenancy agreement concludes without the landlord having any knowledge of it occurring? As the bill stands today, could it occur that a tenant could install, remove and make good without the landlord having any knowledge?

Hon Alannah MacTiernan: Yes, that's correct.

Hon MICHAEL MISCHIN: I indicate that I am of the view that this is a vast improvement to the legislative scheme as it currently stands. It is unfortunate that it has been done at this very late stage and on the run. I would have preferred something like a form of words that the tenant must "as soon as practicable" give written notice of the tenant's intention, but the way it has been framed is better than nothing at all. I indicate the opposition's support for the government's amendment, but it is regrettable that this simple improvement was not considered—in fact,

was pre-emptively dismissed—by the minister earlier. We could very easily have had all this out over the last several months and saved us all this rush at the last minute.

Hon AARON STONEHOUSE: I welcome this amendment. I am of the view of the other members in this chamber that this improves the bill somewhat. I wonder whether the minister can explain to me the impetus for this amendment. What spurred on the government to bring in this amendment at the last stage?

Hon ALANNAH MacTIERNAN: I am very conscious that we have to get this bill back to the Legislative Assembly. Hon Rick Mazza raised a number of issues. We have not been able to accommodate all of the issues he raised. We thought in our drafting that this might be a provision that would perhaps allay some of his concerns.

Hon AARON STONEHOUSE: Is the minister foreshadowing the amendment Hon Rick Mazza has on the supplementary notice paper at page 10, line 25, to delete "tradesperson" and insert "tradesperson, a copy of whose invoice the tenant must provide to the lessor within 7 days of the alterations being completed; and"? Is that what the minister is foreshadowing?

Hon Alannah MacTiernan: We won't support that one.

Hon AARON STONEHOUSE: Okay, so if I understand this correctly, I infer that the minister's intention is that this is the government's alternative to Hon Rick Mazza's amendment around a tradesperson and them providing an invoice; is that correct?

Hon ALANNAH MacTIERNAN: We acknowledge that it is not exactly the same thing and that it gets to a slightly different point, but we believe that this is what we can put on the table to give greater clarity for the landlord.

Hon NICK GOIRAN: I indicate that I will be supporting the government's amendment and I will also be supporting Hon Rick Mazza's amendment at page 10, line 25.

Amendment put and passed.

Hon RICK MAZZA: I move —

> Page 10, line 25 — To delete "tradesperson; and" and substitute —
>
> > tradesperson, a copy of whose invoice the tenant must provide to the lessor within 7 days of the alterations being completed; and

I appreciate that the government has made the amendment we just approved, but it does not cover my concerns about the alterations. The bill provides for a qualified tradesperson to undertake the work. That is fair enough, but how would a landlord know that a qualified person did undertake the work? This is not inconsistent with what goes on in a tenancy arrangement. Quite often within a lease, there will be a provision to have the carpets professionally cleaned when the tenant vacates and they have to provide a copy of the invoice for the professionally cleaned carpets. This is much the same. My big concern here is that it is to ensure that a qualified tradesperson undertakes the work. What we do not want is Uncle Charlie, a handyman, going in and doing electrical work or dealing with asbestos or some other method of maybe doing a home handyman job on these attachments. The provision of invoices is to provide comfort to the lessor that a qualified tradesperson has undertaken the work. Insurance issues may arise—it must be done by a qualified tradesperson—or there could be warranties for the work. I am very concerned that without the provision of these invoices, shoddy work could be done. The minister gave the reason the government does not want to go down this path as being if a charitable organisation undertakes the work for the tenant. That can be easily overcome, by a certificate from that charity that a qualified tradesperson undertook the work, even if it was done free of charge. There could always be an invoice with a nil balance at the bottom. There are ways to cover that off, but it is very important that if this work is to be undertaken by a qualified tradesperson, evidence to that effect be provided to the landlord.

Hon ALANNAH MacTIERNAN: The government will not support this amendment. We believe it to be ill-conceived. This is about what happens at the end of a tenancy. Just as a person currently has an obligation to make good the premises, and the premises will be inspected, so a person who has taken advantage of these provisions in relation to security items has the obligation to make good. The lessor will come in and inspect the property, and make a decision on whether the property has been made good, as they would in any other circumstances. We think that requiring a whole new set of obligations at the end of a tenancy, beyond the existing provision for making good, is unjustified. We want that to be very clear. Under normal lease arrangements, a tenant is required to make good the property, the lessor inspects it, and there may or may not be a dispute about it. The only reason we would put a provision in this legislation is to make absolutely clear the right to make good. The

right to go in and put these things in will not in any way discharge the tenant from a more general obligation to make good. We will not be supporting this amendment.

Hon MICHAEL MISCHIN: The minister is confusing me. She is talking about this all being at the end of the tenancy, but she has foreshadowed an amendment inserting a new subsection (7) requiring tenants to give notice of the prescribed alterations to the lessor within 14 days of their completion, and yet she is saying this can wait till the end of the tenancy. I do not understand that. We are looking at two different time frames for a start. One is 14 days, as the minister suggested as part of the amendment she is planning to move, and I can see a dissonance there with the seven days. I think it should properly be 14 days, to keep it consistent. Hon Rick Mazza's proposed amendment has nothing to do with the end of the tenancy, and the minister's proposed amendment about giving notice of the alterations has nothing to do with the end of the tenancy. I will be supporting the minister's amendment, if that is any comfort. I will also support Hon Rick Mazza's amendment, but I suggest that perhaps he move to change it to 14 days.

Hon RICK MAZZA: I take on board what Hon Michael Mischin has said. If members feel that seven days is a little tight, I am happy to amend that to 14 days. I have to say to the minister that it is not an unusual practice in tenancy agreements that copies of paid invoices for work done, particularly by tradespersons, are presented to the lessor at the time that those works are completed.

The DEPUTY CHAIR (Hon Matthew Swinbourn): Hon Rick Mazza, if you wish to withdraw your current amendment and put forward a new motion to amend for 14 days, you just need to seek leave to withdraw your current amendment. The question is that the words to be deleted be deleted. Hon Rick Mazza has moved his amendment; he needs to seek leave to withdraw his amendment.

Hon RICK MAZZA: I look for some guidance here, Deputy Chair. Do I need to withdraw the entire amendment and then give you a new amendment, or can we just amend "7 days" to "14 days"?

Hon SIMON O'BRIEN: Mr Deputy Chair, if I may facilitate things, you are quite right in your direction to Hon Rick Mazza, but I will move to amend the amendment. I move —

To delete "7" and substitute —

14

Division

Amendment on the amendment (deletion of words) put and a division taken, the Deputy Chair (Hon Matthew Swinbourn) casting his vote with the noes, with the following result —

Ayes (21)

Hon Martin Aldridge	Hon Diane Evers	Hon Simon O'Brien	Hon Colin Tincknell
Hon Robin Chapple	Hon Donna Faragher	Hon Robin Scott	Hon Alison Xamon
Hon Jim Chown	Hon Nick Goiran	Hon Tjorn Sibma	Hon Ken Baston *(Teller)*
Hon Tim Clifford	Hon Colin Holt	Hon Charles Smith	
Hon Peter Collier	Hon Rick Mazza	Hon Aaron Stonehouse	
Hon Colin de Grussa	Hon Michael Mischin	Hon Dr Steve Thomas	

Noes (12)

Hon Alanna Clohesy	Hon Laurie Graham	Hon Martin Pritchard	Hon Dr Sally Talbot
Hon Stephen Dawson	Hon Alannah MacTiernan	Hon Samantha Rowe	Hon Darren West
Hon Sue Ellery	Hon Kyle McGinn	Hon Matthew Swinbourn	Hon Pierre Yang *(Teller)*

Pair

Hon Jacqui Boydell	Hon Adele Farina

Amendment on the amendment (deletion of words) thus passed.

Amendment on the amendment (insertion of words) put and passed.

Hon MARTIN ALDRIDGE: The minister said that one of the primary reasons the government could not support this amendment is that under the current tenancy arrangements the tenant has a requirement to make good. Is the minister saying that there is no constraint on them making good that residential property? If they do some damage to some electrical systems in-house and they need to fix that damage, is the minister

saying that they could make those repairs without any consultation with or authorisation by the landlord or property manager?

Hon ALANNAH MacTIERNAN: The act as it stands now requires them to make good the house. Obviously, with electrical work, other legislation is at play—that is, the legislation regulating who can do electrical work.

Amendment, as amended, put and passed.

Hon RICK MAZZA: I move —

Page 11, line 2 — To delete "so." and substitute —

so and the restoration must be undertaken by a qualified tradesperson, a copy of whose invoice the tenant must provide to the lessor within 7 days of the restoration being completed.

The amendment we just dealt with was for the provision of copies of invoices when security attachments are put onto a property to a qualified tradesperson's standard. This amendment deals with when the lessor requires those attachments to be removed from the property and the property made good—which is in the bill—that those repairs are done by a qualified tradesperson and, again, that copies of the receipts or invoices for the repairs undertaken to make good on the property are provided to the landlord within seven days.

Hon ALANNAH MacTIERNAN: As I explained before, we strenuously oppose this amendment. It puts an additional obligation on people that they would not have had as a normal tenant. As a tenant, they have an obligation to make good. This legislation makes it clear that anything that they do pursuant to the act does not change that obligation to make good and that they have that obligation to make good. The member is seeking to put this class of tenant in a more disadvantageous position. We do not support that.

Hon RICK MAZZA: As I said before, it is not unusual —

Hon Alannah MacTiernan: I think we should just vote on it. We're not going to agree. You have made your —

Hon RICK MAZZA: Excuse me, the minister does not have the call; I have the call.

It is not unusual in tenancy agreements for receipts to be provided for work that has been done. If these works are undertaken by a qualified tradesperson, I cannot see any reason those invoices cannot be provided to the landlord so that the landlord knows that it has been undertaken by a qualified tradesperson and it has been done to a good level of workmanship. This could have implications as far as warranties and insurance for the property.

Hon SIMON O'BRIEN: I think we are making a mountain out of a molehill. The evidence that the committee received—I think it was from several different sources—was that, in fact, when a tenant has made alterations of the type that is being contemplated, they are improving the value of the property. When a simple and basic flat or home has been made secure after a domestic violence incident—it has had new screens put on the windows and new locks on the doors, and an alarm system—it has added to the value of the landlord's property. The landlord will not want them taken out and holes from screws restored anyway. I think we are getting uptight about nothing. If they want to give them an invoice at the end, that is all very well, but there is probably no point in doing it, so we should not be spending any more time on this.

Hon MARTIN ALDRIDGE: I really want the minister to respond to the notion that she keeps suggesting; that is, a tenant has to make good any damage they do to a property and the tenant has full discretion to make those repairs with whomever they like and no notification to the landlord is required. Is the minister saying that I could drive my car through the wall of my unit and do damage to the property, which I clearly have to make good, and I could go on Gumtree and find somebody who says that they can do a bit of bricklaying and a bit of plastering—who may or may not be insured—and make repairs to a property under the current law? The minister is suggesting that this is inappropriate because it is inconsistent with the current law. Is the minister saying that they can do that now without any regard to the landlord?

Hon ALANNAH MacTIERNAN: The landlord has the right, if he believes that the work has not been adequately done, to take action against the tenant. That is the existing provision.

Hon RICK MAZZA: I take on board what Hon Simon O'Brien said in his contribution. I think that, in most circumstances, he is right. Most landlords would be happy to leave security attachments on, but there may be occasions, and the bill provides for it, when landlords want them removed. I am saying that if they are removed, they should be removed by a qualified tradesperson and copies of invoices provided to the landlord. I might ask for a little guidance here. To be consistent with the previous amendment, I would like to amend the clause that I have put from "7 days" to "14 days" so that the tenant has to provide those invoices.

Hon AARON STONEHOUSE: Before we move on, I have a question for the minister. She may have already answered this, but could she clarify it for me again, in case I missed it? Under the current law, a tenant has an obligation to make right any damages or alterations. Are they currently required to use a qualified tradesperson when they make right any damages or alterations?

Hon Alannah MacTiernan: Only in areas such as electrics or plumbing when legislation requires it.

Hon ALISON XAMON: Can I confirm that this is going to be a more onerous make-good requirement for people who have already experienced domestic violence as opposed to people who otherwise need to make good?

Hon ALANNAH MacTIERNAN: Yes, Hon Alison Xamon is exactly correct.

Hon NICK GOIRAN: I had not intended to engage on this point, but we need to make sure that people are not misled. Let us be clear that the alterations that we are talking about here have already been done by qualified tradespersons, not because I say so but because the government in its bill said that the alterations are to be done by a qualified tradesperson. All that Hon Rick Mazza is doing here is saying that the person who then removes those same alterations should also be a qualified tradesperson. It is no more complicated than that. We do not need to get confused.

The DEPUTY CHAIR (Hon Robin Chapple): Does somebody want to move an amendment in relation to the second part of Hon Rick Mazza's amendment about "7" days?

Hon NICK GOIRAN: I move —

To delete "7" and substitute —

14

Amendment on the amendment put and passed.

Hon ALISON XAMON: The Greens will be opposing this amendment and I want to be very clear why. Although the legislation requires that a professional tradesperson install the necessary security provisions, the reality is that when someone is taking them out and making good—as has already been stipulated, except in situations in which other prescribed reasons, such as electrical and plumbing work that requires professional tradespeople to legally undertake that work—a lot of the make-good provisions that otherwise apply can be done by individuals without tradespeople. For example, anybody in this place could feasibly do very basic patching and painting. That is what often occurs when people are making good provisions in any tenancy. I want to be very clear that except for those areas that require professional expertise, we are creating a more onerous and expensive make-good provision for people who have already been through domestic violence than we are for other tenants.

Division

Amendment, as amended (deletion of words) put and a division taken, the Deputy Chair (Hon Robin Chapple) casting his vote with the noes, with the following result —

Ayes (17)

Hon Martin Aldridge	Hon Donna Faragher	Hon Robin Scott	Hon Colin Tincknell
Hon Jacqui Boydell	Hon Nick Goiran	Hon Tjorn Sibma	Hon Ken Baston *(Teller)*
Hon Jim Chown	Hon Colin Holt	Hon Charles Smith	
Hon Peter Collier	Hon Rick Mazza	Hon Aaron Stonehouse	
Hon Colin de Grussa	Hon Michael Mischin	Hon Dr Steve Thomas	

Noes (16)

Hon Robin Chapple	Hon Sue Ellery	Hon Kyle McGinn	Hon Dr Sally Talbot
Hon Tim Clifford	Hon Diane Evers	Hon Martin Pritchard	Hon Darren West
Hon Alanna Clohesy	Hon Laurie Graham	Hon Samantha Rowe	Hon Alison Xamon
Hon Stephen Dawson	Hon Alannah MacTiernan	Hon Matthew Swinbourn	Hon Pierre Yang *(Teller)*

Pair

Hon Simon O'Brien	Hon Adele Farina

Amendment, as amended (deletion of words) thus passed.

Amendment, as amended (insertion of words) put and passed.

The DEPUTY CHAIR (Hon Robin Chapple): We will now deal with the committee recommendation. I move —

Page 11, lines 3 to 7 — To delete the lines and substitute —

(6) Subsection (4) does not apply to premises entered into the Register as defined in the *Heritage of Western Australia Act 1990* section 3(1) or in the register as defined in the *Heritage Act 2018* section 4.

Amendment put and passed.

Hon ALANNAH MacTIERNAN: I withdraw my amendment 42/12. It is no longer required.

Clause, as amended, put and passed.

Clause 13: Section 56A inserted —

Hon MARTIN ALDRIDGE: I raised this issue during the second reading debate and I did not get a response from the minister. The Real Estate Institute of WA submitted that landlords ought to be given the right to discriminate against a perpetrator of family violence, whereas this clause obviously does not allow discrimination against an applicant who has been subjected or exposed to family violence or has been convicted of a charge relating to family violence. Given that the minister did not address that specific matter during the course of her second reading reply, can she explain to me why the government has settled on this approach, which is essentially protecting perpetrators of family violence from being discriminated against in the application process?

Hon ALANNAH MacTIERNAN: The view of the experts in this area is that the perpetrator will be dealt with by the criminal justice system. The criminal justice system is there to deal with that behaviour. It is also the view that the perpetrator being housed increases the likelihood that that person will engage in behaviour modification and rehabilitation projects. The industry experts advise that rehabilitation is unlikely to happen if the perpetrator is unable to find and secure accommodation. It may well be that the perpetrator is otherwise a reasonably functioning person able to operate as a tenant, pay their rent and hold down a job, but they have a problem with domestic violence. Very serious consideration was given to this matter, but there were good policy reasons why we determined it in that way.

Hon MARTIN ALDRIDGE: Is it currently the law that landlords cannot discriminate against a prospective tenant's application on the grounds of any other criminal conviction?

Hon ALANNAH MacTIERNAN: No; no existing provision prevents a person from taking into account other offences.

Hon MARTIN ALDRIDGE: To clarify that response, under Western Australian law, no protection prevents a landlord from discriminating against someone convicted of a terrorism charge or murder or some other criminal conviction, but this bill creates a new offence that will prevent discrimination against someone on the grounds that they have been convicted of a charge relating to family violence.

Hon ALANNAH MacTIERNAN: That is true. This provision has been instituted at the request of the Commissioner for Victims of Crime. The concern was to ensure that in this case there was no increased risk coming to the victim from the sense of the perpetrator being even more agitated because they are unable to find accommodation, and also because there is a serious attempt and desire to address the behaviour of the perpetrators.

Hon AARON STONEHOUSE: This is a really interesting provision of the bill. I appreciate the need to ensure that the perpetrators are housed, because having a homeless or couch-surfing domestic abuser will often put their victims in greater harm's way than having them housed and settled somewhere else.

The theme of this bill and this debate has been the balance between protecting victims of domestic violence and the property rights of lessors. Of course, everyone has the right to feel safe and be free from violence, but lessors have the right to their private property, and we are trying to draw a balance between those two things. Now we are also intruding on someone's right to freedom of association. I would not want to associate or do business with a domestic violence perpetrator and I am sure that in most cases no-one here would want to. But let us be clear that we are not only saying that we cannot discriminate against someone who has a history of domestic violence, but we are imposing a penalty for it. We are saying that if someone has strong convictions about perpetrators of domestic violence and discriminates against someone with a domestic violence background, they will be hit with a $5 000 penalty. That is a significant sum, in my view. That is as high as the penalty for the heinous crime of providing people with single-use plastic bags. That is indeed a high penalty.

Probably at the core of this matter is that lessors discriminate against potential lessees and tenants all the time based on their capacity to pay the rent and their behaviour and propensity to damage the property of the lessor. This bill creates a scenario in which a victim of domestic violence can get out of their lease and have that lease transferred to perhaps the perpetrator, in some cases, potentially leaving the lessor out of pocket of half their bond. If a lessor has someone with a history of domestic violence move into their property, perhaps with a new partner, and that person has a past of abusing their co-tenant, who had to cancel their lease and move out to find other housing, the lessor might be concerned that that scenario may repeat itself in the future. We are denying lessors

the opportunity to discriminate against those people for the very real and very possible risk that they will repeat their behaviour of violence towards their spouse and have to have their lease broken again—the contract blown again—for which the lessor would be out of pocket. I think that would be of real concern to lessors and members must keep that in mind when we go forward here. We need to consider not only that balance between the property rights of the lessor and the safety of the victims, but also someone's freedom to associate with or dissociate from people who perpetrate what is a reprehensible act in our society. My question for the minister is: How did the government arrive at this $5 000 figure? Will this fine be a fixed one-off single figure of $5 000 or will it be up to $5 000? I know some members of this chamber have an objection to minimum penalties, and in this place we have previously amended bills to reflect up to a maximum penalty as opposed to simply a penalty of a fixed figure.

Hon ALANNAH MacTIERNAN: I thank the member. I understand the member's concerns. It is a maximum penalty. Under the law, this operates as a maximum penalty. That figure was chosen because generally in legislation in the area of residential tenancies there are two classes of fine—of $5 000 and $20 000—and this was at the lower end. We are not suggesting that the person may find other reasons. A person might have a bad tenancy record, with a history of failed tenancies, and obviously that can ground it. We understand that there are issues here, but we have acted on the advice of experts. We believe that this is probably going to be the thing that will deliver the most benefit. We have other areas such as the fact that the state does not allow landlords to discriminate against people on the basis that they have children, so there are some other provisions we have around this. This does not mean that a perpetrator of domestic violence can get any property they want, they cannot, but a property cannot be denied expressly for the reason that they are a perpetrator of domestic violence.

Hon MICHAEL MISCHIN: I will put the question to the minister because this is important. This is not one of those case-by-case things that we let the courts decide; this is a very practical issue not only for leasing agents, but for lessors and property owners. The proposed section states —

> A person must not refuse, or cause any person to refuse, to grant a tenancy to any person on the ground that the person —
>
> (a) has been or might be subjected or exposed to family violence;

If I am a lessor or a lessor's agent and I am vetting tenants for someone's house and the application asks whether the person has been convicted of any criminal offences and the applicant says they have—they have been convicted of wilful damage, assault and a few other things—but it is all right because they relate to family violence, I cannot refuse on the basis that those convictions are related to family violence. Is that correct, minister?

Hon ALANNAH MacTIERNAN: I think it is important to understand that this does not require a landlord to give an applicant the house. If they have received multiple applications and there are other people they prefer, they can choose those people. This does not interfere with the right of the landlord to make a choice, but it just says that forward action cannot be taken expressly because the applicant is a perpetrator of domestic violence and because of that they cannot have the house. That is a policy principle. I do not seriously think this is going to have a practical impact on landlords. It was not a matter we had any commentary on from landlords. I guess we will just have to vote on it.

Hon AARON STONEHOUSE: I just want to make one final point before we move on from this clause. I appreciate the answers the minister has provided. To look at this from the perspective of government and advocacy for victims, if the intention is to get domestic violence perpetrators rehoused so they do not continue to cause problems for the victims, I wonder why the language used in proposed section 56A(b) is very specific. It says "has been convicted of a charge relating to family violence". Domestic violence perpetrators who have not been convicted or perhaps have been charged but a conviction not made yet can be discriminated against on the basis of their domestic violence activities. Perhaps that is not being prohibited expressly here. I wonder whether the minister can give any commentary on that. We have previously heard that there is no provision under current law that prevents a lessor from discriminating against somebody on the basis of their criminal convictions. Is there any provision in current law that prevents a lessor from discriminating against someone on the basis of their presumed or suspected criminal activities? What is to prevent lessors then discriminating against someone they suspect is a perpetrator of domestic violence but who has not been convicted?

Hon ALANNAH MacTIERNAN: I understand the point that the member is making, but we do not necessarily expect that the landlord will be in a position to make those sorts of judgements about people who have not been convicted. Honestly, I do not have any more to add. I see the point, but I guess we are presuming that a landlord might not necessarily know that a person has been a perpetrator if there has not been a conviction.

Hon AARON STONEHOUSE: The reason I raise this is that the provisions that allow someone to terminate their lease, to terminate a contract, do not require a conviction of domestic violence, do they? They merely require a note, a letter, and a declaration from a prescribed professional—a health professional and so on.

Hon Alannah MacTiernan: That is to protect the person.

Hon AARON STONEHOUSE: That is to protect, sure.

Hon Alannah MacTiernan: That is a very different provision. It is to protect the victim.

Hon AARON STONEHOUSE: But we have established in this bill that a conviction of domestic violence is not necessary to grant people the ability to exit a lease.

Hon Alannah MacTiernan: That is right, because it is about protecting their safety.

The DEPUTY CHAIR: Members!

Hon AARON STONEHOUSE: There is quite a rather high threshold when it comes to criminal charges of course. There is a higher threshold there of course. We want to allow a less onerous process for people to get out of their leases and I can understand that. I am just making it very clear that for those concerned about the victims of domestic violence and getting perpetrators rehoused, this does not go nearly as far as the provisions that allow lessees to terminate the lease in the first place. I imagine that the reason a relatively low bar has been set for people to terminate their leases is that it is very hard to convict these people of domestic violence, and I imagine a person has to be able to get out of their lease in a relatively quick time as well. That is merely a deficiency I have noticed through questioning. I wonder whether the government would entertain the idea of an amendment, but I am not too sure how that would be gone about. Perhaps in proposed section 56A(a) there could be words such as "subjected or exposed" and "perpetrator", but I am not too sure. I am pontificating now. It is merely a deficiency I have noticed, minister.

Hon ALANNAH MacTIERNAN: We are not proposing to broaden the liability of the Real Estate Institute of Western Australia. We have negotiated this with REIWA. A suggestion that we should make landlords more exposed is certainly not something we are going to deal with at this time.

Clause put and passed.

Clause 14: Section 59E amended —

Hon MICHAEL MISCHIN: I note that a lessor may be charged with an offence relating to a failure by a lessor to give a tenant a copy of the key of the premises and there is a defence to that charge. Why is it simply not a matter of not being criminally responsible for that? Why is there a reversal of the onus of proof in that case—something that the Labor Party has consistently opposed?

Hon ALANNAH MacTIERNAN: This was introduced at the request of the Chief Magistrate, who said there needed to be a defence for someone who was refusing to give a key, so this became the defence. If the lessor refused to give a key, he wanted to make it absolutely clear that the defence was that they had a lawful instruction.

Clause put and passed.

Clauses 15 to 17 put and passed.

Clause 18: Part V Division 2A inserted —

Hon ALANNAH MacTIERNAN: I move —

Page 17, line 13 — To delete "not less than" and substitute —

within

This is just a small administrative amendment. When the co-tenant gives notice to the landlord, it must be within seven days. This just tightens the provision that the tenant is required to give notice within seven days.

Amendment put and passed.

Hon MICHAEL MISCHIN: We are coming to a raft of amendments on the supplementary notice paper concerning the review of the new division of the act that is being inserted by some of the provisions in the bill. There is a review provision proposed by the minister, there is one by Hon Rick Mazza and there is one under my name. It is my understanding that there is an agreement between the government and other members of the chamber that they will support the amendment standing in my name at 39/18. If that is the case, perhaps members can indicate that they are withdrawing their proposed amendments and I will move mine.

Hon ALANNAH MacTIERNAN: The government is prepared to withdraw its amendment, so I will not be moving the amendment to page 19, after line 10.

Hon MICHAEL MISCHIN: I move —

Page 19, after line 10 — To insert —

71AF. Review of Division

(1) The Minister must carry out a review of the operation and effectiveness of this Division, and prepare a report based on the review, as soon as practicable after the 3rd anniversary of the day on which this Division comes into operation.

(2) Without limiting the scope of the review, the review must address the following —

(a) the effect of this Division on lessors' rights to recover debts owed by tenants;

(b) the effect of this Division on lessors' insurance policies;

(c) the effect of this Division on contractual certainty;

(d) the extent to which this Division affects contractual obligations upon lessors and co-tenants who are not perpetrators of family violence and the impact of those obligations;

(e) such other matters as appear to the Minister to be relevant.

(3) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 3rd anniversary.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 19 to 22 put and passed.

New clause 22A —

Hon ALANNAH MacTIERNAN: I move —

Page 20, after line 19 — To insert —

22A. Section 88 amended

After section 88(2) insert:

(3) Regulations made under subsection (1) for the purposes of section 47(4) or (6)(b) or 71AB(2)(d)(vi) cannot come into operation earlier than 6 months after they are published in the *Gazette*.

I understand that we have been moving amendments on the run. We had some new advice from Parliamentary Counsel proposing an alteration to the new clause we had proposed, so that regulations made for the purposes of subsection (1) cannot come into operation for a period of six months after publication in the *Government Gazette*. That is the latest proposition from Parliamentary Counsel. Again, we are trying to deal with that issue. There will be six months between the publication and the gazettal.

Hon NICK GOIRAN: I understand we are at proposed new clause 22A. This latest information is difficult, because it comes at such a late time and moments before we have question time and things like that. That was not the understanding at any stage. Now we are talking about a six-month period. I have had no opportunity to consult with any of my colleagues on this latest amendment. We do not even have anything on the supplementary notice paper. What I had indicated earlier to members as a way forward to address the concerns of both Hon Rick Mazza and the government was that the regulations would be tabled and they would come into operation upon resolution of both houses of Parliament. Once we have a precise form of words that the government intends —

Hon Alannah MacTiernan: We have. Do you have a copy of it?

Hon NICK GOIRAN: The minister just mentioned "6 months".

Hon Alannah MacTiernan: Yes, but have you got a copy?

Hon NICK GOIRAN: I do not have the "6 months" version, no. All I have before me is supplementary notice paper issue 8. I understood from that supplementary notice paper that the minister intended to insert new clause 22A. If that is the question before the Chair, I would want to move an amendment. I will foreshadow that amendment. I will move that all the words after, and including, the word "until", be deleted and that we instead insert the words "absent a resolution of both houses of Parliament". I just seek clarification of what the actual question is before the Chair.

The DEPUTY CHAIR (Hon Robin Chapple): Could I get the minister to clarify exactly what she is working from?

Hon ALANNAH MacTIERNAN: This should have been circulated. It would read —

(3) Regulations made under subsection (1) for the purposes of section 47(4) or (6)(b) or 71AB(2)(d)(vi) cannot come into operation earlier than 6 months after they are published in the *Gazette*.

The DEPUTY CHAIR: Minister, could you sign that?

Hon ALANNAH MacTIERNAN: I have.

Progress reported and leave granted to sit again at a later stage of the sitting, on motion by Hon Alannah MacTiernan (Minister for Regional Development).

[Continued on page 8917.]