RESIDENTIAL TENANCIES AMENDMENT BILL 2011

Second Reading

Resumed from 31 August.

MR P. PAPALIA (Warnbro) [10.33 am]: When I last spoke on the Residential Tenancies Amendment Bill, I was in the midst of a discussion with the Minister for Transport regarding the challenges and problems surrounding antisocial behaviour in social housing. The minister attempts to tackle one component of this problem by this amending bill, specifically antisocial behaviour in social housing, but it is only a symptom of a far wider ailment that afflicts Western Australian society and therefore it is beyond the capacity of the Minister for Transport. Regardless of his intent and regardless of the undeniable energy he brings to the portfolio, he is incapable of dealing with the real problem. He is trying to tackle one specific symptom of the problem—antisocial behaviour in social housing—without having the tools.

The minister acknowledged, by way of interjection, that the problem with antisocial behaviour, which is a symptom of a wider malaise within Western Australian society, is in the field of law and order, for want of a better description. I believe the problem is a breakdown of respect and responsibility, which is a difficult, more expansive, and challenging problem. One minister alone cannot tackle the problem, regardless of how much unbridled energy he brings to the task, and one department alone cannot tackle it. When the ability to tackle prolonged antisocial behaviour in social housing is provided, we are not going to solve the problem because down the very same street upon which lies a state-owned house with Homeswest tenants there may well be private-housing tenants who have perpetrated prolonged antisocial behaviour. I received an email only last week from a resident in Port Kennedy who laments the fact that their quiet area has been destroyed by the recent arrival of people who insist upon consistently behaving in an antisocial manner. They frequently avoid any contact with police, despite repeated reports to the police. It is a remote area; there is no southern suburbs police station because the Barnett government sold off the land for the Secret Harbour Police Station and failed to provide adequate services in that area. These people, who own their own home, represent just as significant a threat as the people who may be Homeswest tenants in social housing. It is in fact unfair to suggest that the problem lies just in social housing. It is only a very small component of state housing tenants who create problems. Similarly, it is only a very small component of private residents who behave in that manner. Also, a small number of people who own their own residences behave in an antisocial manner.

Mr J.E. McGrath: It is only a small percentage of the whole community.

Mr P. PAPALIA: That is right. The problem is more diverse; it is beyond the scope and capacity of one minister and one department. It requires a holistic across-government response, which is what the member for Willagee suggested when the Minister for Transport interjected and agreed with him.

I would like to make the point that there is an opportunity to apply a holistic whole-of-government response. We first have to identify where the problem lies. The government cannot go out, with a shotgun response, in an uncoordinated, unscientific, gut feel–type manner and apply a process right across the state, because that will require a spread of resources. The department has limited resources; the minister knows that. I would suggest that the problem is not as widespread as may be suggested at first look. Yes, it is true that there will be problems spread right across the state, but if we apply a little scientific analysis, we will see there are hot spots. There are areas within the metropolitan area and within regional communities that suffer inordinately due to antisocial behaviour. They are the ones that disproportionately suffer as a result of this type of behaviour. I feel they can be identified. It is not that challenging—there is a link.

We know that in Western Australia our current response within the law and order field fails. We know that 40 per cent of people who offend, and as a result end up in the prison system, reoffend within two years. We also know that 70 per cent of Indigenous people reoffend within two years. If the government widens the analysis window to five years, it is even higher. We know that a relatively small percentage of people in Western Australia offend at a very high rate, such that they end up in the prison system and keep revolving through the door. Those are the people who do, I would suggest, a significant amount of damage to our state. Those are the people who I would suggest lie behind a lot of the antisocial behaviour that we encounter. If the minister is looking for a way to tackle the issue in a scientific manner, if he is looking for a way to identify where he should focus resources and where he should apply the maximum amount of pressure so that there is a coordinated response from as many different agencies as appropriate, he should look at the guys who go into the prison system, come out and go back in again. We should use that justice reinvestment process whereby we get independent analysis of which neighbourhoods in the city and which communities in the regions have the most people going into the prison system and returning to their communities, and then going into the prison system again and coming back. Now the problem is —

Mr J.E. McGrath interjected.

Mr P. PAPALIA: I refer the member to my paper on justice reinvestment because he will not want me to give him a big lecture now. I can give him a brief summary of the answer, but I will not do it right now, member, because I am trying to focus on this antisocial behaviour challenge that we have, with one proposal for focusing resources so that they are more efficiently used and therefore magnify their impact.

Mr Speaker, I cannot recall whether I have had an extension of time.

The SPEAKER: I do not believe you have.

[Member's time extended.]

Mr P. PAPALIA: The point is that if we analyse what is done elsewhere in the world, other countries have managed to identify hotspots. It can be seen that, as I have suggested, communities suffer disproportionately but also contribute inordinately and disproportionately to the problem. When we focus our resources in a cooperative and holistic manner using a lot of different agencies rather than just a housing department, a much more effective, efficient and cheaper outcome for government can be achieved than we currently get. The problem was demonstrated no more clearly than in a response by the government to the report tabled late last year of an inquiry by the Community Development and Justice Standing Committee into the efficiency and effectiveness of prisoner education, training and employment strategies. It was a bipartisan report. Although the committee comprised a majority of opposition members, two government members were on it, and they agreed with it. It was a unanimous report that recommended that in Western Australia we should look at implementing a justice reinvestment strategy and at bringing a little bit of science to the table to respond to this problem of antisocial behaviour. In its recommendations 22, 23 and 24 it suggested the implementation of justice reinvestment strategies. Recommendation 22 states —

> … a mapping exercise be undertaken to identify those communities currently delivering the highest percentage of population to the prison system.

Recommendation 23 is, in part —

> that the government initiate a properly funded, evidence based, collaborative justice reinvestment strategy in one metropolitan and one regional 'high stakes' community identified by the recommended mapping exercise …

Recommendation 24 is very important because it goes to the heart of what the Minister for Transport was referring to earlier when he said his department alone cannot tackle the problem. It states, in part —

> that government at the highest level charge a lead agency to establish the proposed pilot Justice Reinvestment strategy to:
>
> - have an over arching responsibility for each of the agencies collaborating in the strategy insofar as their deliverables to the strategy are concerned; and
> - have control and be accountable for the pooled Justice Reinvestment budget.

This committee recommended that, as a trial, a number of government departments and agencies coordinate their efforts once they have identified these hotspots. One could be established in the metropolitan area and one in the regions and, in a trial, in a coordinated and focused approach seek a response by all appropriate government agencies to the problem. A tool for identifying where that effort should be directed are the communities that are delivering the greatest number of people to the prison system, because we know that, sadly, those people tend to reoffend and reoffend and reoffend and cycle through the prison system on a regular basis.

The standing committee report also supported the Minister for Transport's observation that he, with his department, cannot do it alone. The Minister for Corrective Services responded to the report, albeit seven months late; but that was not necessarily his fault because there was a change of portfolio in the meantime. In his response to the report, which was tabled in this place on 19 May, the Minister for Corrective Services acknowledged the value of the standing committee's recommendations regarding justice reinvestment and said outright that justice reinvestment cannot be achieved by the Department of Corrective Services alone and that it will require a government-wide approach. I agree wholeheartedly. He also said that the government acknowledges the desirability of collaboration among government agencies.

He went on to say that Australian and international research indicates that any justice reinvestment strategy requires a well-coordinated and closely monitored interagency approach. It was suggested that the sort of agencies that would need to participate in this sort of response in Western Australia would be Housing, because stable housing and access to support in the community have been identified as important factors for newly released offenders. Mental Health is another, and there is no surprise there because this government, like

previous governments, is locking up mentally ill offenders rather than trying to treat them. Then there is the alcohol and drug-use agency. We know that is a serious issue and that is part of what I referred to yesterday, minister, when I suggested that mandatory sentencing for antisocial behaviour in social housing such as creating clandestine laboratories that might threaten children is a piecemeal, uncoordinated and incoherent response to a symptom. The challenge is the antisocial behaviour; the challenge is the reoffending of significant numbers of our prison population who reoffend time and again as a result of that experience in the prison system and are not receiving any sort of help to change their behaviour. It does not work. Threatening these people with prison is ineffective. In fact, by putting them in prison we are allowing them to coordinate and network and become more entrenched prisoners. I am not talking about serious high-end offenders; I am talking about low-key drug addicts who build clan labs in their social housing or their rental properties and, in that way, pose a threat to other people in society. They need more effective intervention than being thrown into prison where they get to network and become worse criminals.

The other necessary requirement identified by the Minister for Corrective Services, if we are to have a holistic response and implement a justice reinvestment strategy, was the provision of parenting and social supports. That all accords with the argument I have conveyed through my discussion paper on justice reinvestment written some time ago.

Mr D.A. Templeman: A quality paper.

Mr P. PAPALIA: The interesting thing about the Minister for Corrective Services' response to the Community Development and Justice Standing Committee recommendations is that he said the government cannot do it, not because it does not necessarily have the will, although I suspect that is a significant component, but because they do not have the data. According to the Minister for Corrective Services, it is not that justice reinvestment is not a good idea or that we should not do a trial as recommended in the member for Morley's committee's report. That is not the problem. The problem is that the department does not know which communities have the highest number of repeat offenders. The department does not have the statistics. That is the challenge. It says in here that mapping the communities that deliver high numbers of prisoners would ideally be achieved using the department's prisoner entry–exit date. However, the department does not currently have sufficient and/or reliable data on the location of prisoners before and after imprisonment. Also, all information to build a social economic profile such as educational level, employment history, income et cetera is currently collected on a voluntary self-reporting basis and is therefore incomplete. It goes on to say that although some of the required information is currently available, the development of a complete and reliable data set for the analysis that forms the basis of justice reinvestment would require a significant investment in further data development. That is obviously an overwhelming obstacle.

Mr J.E. McGrath: Would you like the department to know when someone comes out of jail or what?

Mr P. PAPALIA: Mate, I would think that most reasonable members of this place and most reasonable members of the public expect that if we are spending billions of dollars on a corrective service system—we commit billions of dollars over the forward estimates—and hundreds of millions of dollars in recurrent expenditure in just operating costs, we can expect that the government might want to have a bit of a look at where the clients, the troublemakers, are coming from and going back to. That might lead the government to question whether all the other agencies are focussing their efforts on the right place. Studies have been done in Australia, and internationally, but a good one was done in New South Wales that identified that, if we can reduce the rate of reoffending by only 10 per cent, it will take 800 people out of the prison system. If it costs $100 000 a year to provide these guys with the comforts of the prison system, there is a massive windfall to be had by government by just identifying a little bit of data, by finding a little necessary information, to target and focus its resources in a more efficient manner. It is not the minister's fault. He did not invent this. The last government did the same thing and previous governments have done it forever. The issue is that we have not asked the questions, as indicated by the minister's response to this report, for want of funding proper analysis. I suspect that this may just be too overwhelming and too hard for the Department of Corrective Services; it cannot find $100 000 or whatever it would cost to get some academic at UWA to do the analysis of the information from the departments and other agencies. It would find it too overwhelming because it does not have that money. I understand where the department is coming from. It is looking after its pot. It is swimming to keep its head above water right now. This should really be the role of cabinet and of influential ministers such as the Minister for Housing. If they expanded their vision, if they opened up what they are looking at beyond their own siloed area of activity, there may be the opportunity to make vast savings through the expenditure of only a relatively tiny amount. For the cost of locking up five prisoners a year, which is half a million dollars, I reckon the government could get a study done to identify which neighbourhoods in the city and which communities in the country are overwhelmingly disproportionately represented in our prison system on an ongoing basis. I reckon it could do that. Make it the cost of 10 prisoners a year.

Mr J.E. McGrath: You can nearly do it without a study.

Mr P. PAPALIA: I said that to the Chief Justice and he said, "I can tell you which one it is in the regions right now". I am sure that it would not be that challenging, but the government would want to do it in a scientific way. For the sake of allocating an amount equivalent to locking up 10 people for a year to do a little bit of research, that would then give the Ministers for Housing, Education, Health, Child Protection and possibly the Minister for Disability Services—all these people—the data they need to look at their own expenditure, effort and resourcing and whether they are using it in an efficient way. Are they applying the grey matter to get the maximum benefit for the taxpayers' dollar to reduce the rate of crime and antisocial behaviour and to restore respect and responsibility in the community? Let us spend a bit of money to find the target and to go at that target, rather than doing it in a piecemeal, haphazard, gut-feel manner. I am not saying that you guys invented it; I have said that on numerous occasions. It is habitually the response of government. Everyone is working very hard and they are operating in their own little world. This challenge is across all departments and requires an across-government response to have any sort of impact—even a tiny impact, such as a 10 per cent reduction in recidivism.

MR T.R. BUSWELL (Vasse — Minister for Transport) [10.52 am] — in reply: I thank all members opposite who have participated in this debate on the Residential Tenancies Amendment Bill 2011. I said to my staff the other day that this was actually one of the more engaging second reading debates in which I have participated. I appreciate all the input and views put by members opposite. It seems to me that the predominant issues—no doubt this will be teased out as we work through consideration in detail—were in and around antisocial behaviour. I will talk about those in a second.

I point out to the house that it is 11.00 am on Thursday. Exactly a week ago at 11.00 am on Thursday, or just prior to this, I was in Wongan Hills. While I was there I went to the shire chambers and was also shown around their town, which they are very proud of, and rightly so. At the shire chambers I also met with half a dozen residents from a street in Wongan Hills. The lives of those residents have been ruined—absolutely destroyed—because of antisocial behaviour in a property in that street. Interestingly, the antisocial behaviour is occurring in only one unit of a duplex. The duplex unit behind, which is also Department of Housing property, is occupied by a person who is making a positive contribution to the community and who is valued by neighbours. That is a very important point to make. I met with these people whose lives have been ruined. These people were very emotional. One man was unable to attend the meeting; I understand he was receiving some mental health care as a result of the circumstances he is in. When I meet with people like that, my resolve to maintain a firm line against antisocial behaviour is strengthened. They are not the only people I have met like that. All members in this place would have met people in similar circumstances. This is a very difficult issue. I will talk a bit more about the antisocial provisions later. I have met other people. The member for Rockingham likes to make out that I nipped out to Stacee Parkinson's house simply because she was Stacee Parkinson. She had been traumatised by the people in her complex who had been operating a clandestine drug lab. I have met dozens of people. I met some people in the member for Wanneroo's electorate in Banksia Grove. Those people were literally in tears as they described the impact on their lives. I have spoken before about the profoundly deaf couple whom I met while I was out with the member for Jandakot whose lives had been devastated through no choice of their own; they had been lawfully owning and renting properties. We are not going to stand for that. We have taken a firmer line on antisocial behaviour. I will touch on that in a second.

It is important for members to understand that this is a quite broad-ranging bill. Yes, there will be some debate around antisocial behaviour. I appreciate the opposition's broad support for the bill, although I understand and respect the points of difference around antisocial behaviour. It is a broad bill. The bill had its genesis from three sources—one being a statutory review of the act, which led to a range of recommendations and changes; one being the government's policy desire to take a firmer stance against antisocial behaviour, with changes required to the current act to assist in the fair implementation of those changes; and, finally, a very strong desire on behalf of the government and I think everybody in this place to help regulate the use of residential tenancy databases. We have all had people come to our offices who, for a range of reasons, some of which have later proved not to be reasons, have had their names put on a residential tenancy database, and that has made their lives very difficult. The member for Nollamara said that 24 or 25 per cent of people in dwellings in Western Australia live in rented accommodation. It is very important that the statutory framework that controls the relationship of these people with their landlords is as good as we can make it. It is very important that people are not denied access to accommodation through the inappropriate use of residential tenancy databases. A whole range of provisions in this bill are very positive. There has been a lack of debate about them, but we all support them because they help maintain in a very balanced way the relationship between landlords and tenants. I will quickly go over some of those provisions for members. We are talking about things like using prescribed forms to manage the relationship; making improvements to the production of property condition reports; making improvements in and

around bond administration; the provisions concerning the fact that property managers can represent landlords and representatives of not-for-profit organisations can represent tenants in legal cases; the issues around antisocial behaviour, which I will address in a second; and the issues around the regulation of residential tenancy databases. The point to make is that it is a very broad-ranging bill.

I will have a quick discussion about the policy. A lot has been said about the need to have a more holistic approach to antisocial behaviour. I will not argue with that at all. In this state we have a supported accommodation process. We also have been trialling early intervention teams in the south eastern region out of the Cannington office and in the southern metropolitan region out of the Fremantle office, which are designed to become involved—yes, member?

Ms J.M. Freeman: I understood that that trial had finished and that it is no longer happening.

Mr T.R. BUSWELL: No. As I understand it, that team of people has been rolled more broadly into the antisocial team that the Department of Housing has set up, but my understanding is that the engagement is still happening. In fact, I said to the department the other day that I would like to see the results now. I have seen periodic results. Where there is an engagement, the results are pretty good. Of course, we cannot force a tenant to engage. That is a bit of an issue. So I have asked the department to provide me with the results so that we can work up a business case to see whether we can invest more resources in that and roll it out more broadly. If the results look good, we definitely need to give that consideration.

Ms J.M. Freeman: Will those results be something that you could do a briefing on for other parliamentary members? I had a briefing on it when you first released the trial. I am quite interested in it. I know that the special housing assistance program funding has had no significant increases over the 20-odd years that it has been operating, so I am interested in getting a briefing. Is that possible?

Mr T.R. BUSWELL: Yes, of course. As the member for Victoria Park would have found out, I provided him with a range of breakdowns of evictions of Aboriginal versus non-Aboriginal tenants. Outcomes will be delivered by this that we have to grapple with. It is pointless my trying to hide from them. I am just trying to come up with some decent policy answers. Of course, people may disagree, but I think it is incumbent on all of us to be open about it because it is a huge social issue.

I will go back to what I was saying. In and around that more holistic approach, we have trialled, and I am very keen to see how we can expand, the early intervention teams. There is the process for the supported housing assistance program; that is happening. There are the 200-plus dwelling units that the department is building this year specifically for people with mental health issues, disabilities and drug and alcohol issues. Accommodation will be provided in those houses with a range of services wrapped around the individual. I think that is very important. I said to the member for Warnbro the other day that one of the most difficult decisions I had to make as housing minister—this was previously—was about accommodation for one Gary Narkle, who was supposed to have been in prison until he dropped dead but who, unfortunately, was out of prison and living, I think, in a park in Gosnells or Armadale; I did not know exactly where. The department came to me and said, "We recommend to you that we provide a house for Gary Narkle." I said, "I think Gary Narkle has lost his right to have a house in Western Australia, to be frank." However, the argument was put to me, and I accepted the argument, supported by the police, that it is much better to have Gary Narkle in a house—he had a lot of support around him; unfortunately, he reoffended, which I think is probably a reflection on the individual —

Mr M. McGowan: I'd say so.

Mr T.R. BUSWELL: Yes, I think so too. But it was better to have a house there with some support around him to try to lessen the impact of him interfering with, or engaging in some disgusting act with, a young person in a park.

Mr P. Papalia: The danger in the discussion is that we isolate and focus on the Narkles of this world. It is my view and your view probably that he should stay in jail, but there is a larger group of people whom we should be focusing our energies on and trying to target with whatever response we devise.

Mr T.R. BUSWELL: Yes. I was not trying to sensationalise it.

Mr P. Papalia: No, I know that.

Mr T.R. BUSWELL: I was just trying to say that there are these extremes. Now, that did not work. But the reason we agreed to give Gary Narkle a house was not for Gary Narkle; it was for the person whom he may next have interfered with when he was living in the park. That is the reason. In my view, he lost his right to be a free person a long, long time ago, and for us to have to provide him with a house was a very difficult decision to make, but I think it was right. I was very offended. Unfortunately, if the former Attorney General had got it right, he would never have been out of prison, but that is a story for a different day.

We are making efforts in that area. The houses that will come on stream, especially those homes for people with mental health issues, will have that support wrapped around them. We have to deal with some pretty difficult circumstances. At the moment there is a person who has a mental illness—I do not think we need names—and who caused a lot of problems in a housing unit. He assaulted two police officers with an implement, and we have to deal with that. It has not worked through the court process yet, as I understand it, but, quite clearly, they are the challenges that we have. The best spot for that person is not in a standalone Department of Housing property; it is in a place where that person has support.

Ms L.L. Baker: They followed him into the hospital, though, minister, and got his signature on an eviction notice while he was in hospital.

Mr T.R. BUSWELL: Again, that is a matter we are working through in a way that reflects the concerns of all the people who live where he was living and of that individual. I am chronically aware of these types of sensitivities and trying to come up with a balance, and it has been difficult. It has been difficult for me and it has been difficult for the department. The Department of Housing has a long history of sustaining tenancies. My view is that we are trying to put a bit more policy balance in that pendulum. That is a government policy decision; it is nothing to do with this legislation—there are some bits about how you evict people in this legislation. It is an ongoing discussion that I have with the Director General of the Department of Housing.

Mr J.E. McGrath: What has happened with public housing is that 30 years ago young families went into public housing, and that was the stepping stone to maybe being lucky enough to buy your own house. Today you don't find many of those families in public housing. It is more people with issues who have problems in their lives and need support.

Mr T.R. BUSWELL: Yes. I will quickly point out—it is not specifically to do with the bill—that it is also a reflection on some of the policy decisions that were made. We are now engaged in some partnerships; for example, with St Bartholomew's House with its Lime Street development, with Anglicare WA—I heard Mr Carter's name mentioned—with the Foyer Oxford development, and with a couple of others that will be announced soon. These are really positive initiatives in trying to deal with people who are at the acute end of the housing spectrum and who are homeless for a whole range of reasons. This is saying that we have to focus on more than four walls and a roof; we have to focus on people coming out with the capacity to be sustainable tenants. If people have a chance to meet with Lynne Evans and understand what is being done at St Bartholomew's House with the Lime Street project, they will see that it is fantastic. We have put more than $20 million into that development, and it really is a great model for dealing with a subset of people who are at the acute end of the housing spectrum.

I do not want to take too long on this, but I will deal with some of the issues raised by some members opposite during the debate. A number of members raised the issue of the new penalties in the legislation. There are, as I understand it, some new areas where penalties will apply, but also some new penalties. The advice I have—we can flesh this out further—is that the penalties in this bill have been set to be equivalent to the penalty provisions currently in the Residential Parks (Long-stay Tenants) Act. I suppose the view taken as part of the process was that if it was a good enough penalty to apply to an owner of a caravan park if they were trying to illegally or improperly turf out a tenant, it was probably a fair thing to apply to a landlord in a non–caravan park situation for those types of activities. It was just designed to deliver some parity, as I understand it, with those two acts.

A few members raised the issue of the extent of consultation. The member for Mandurah raised the issue of the extent of consultation on behalf of the Property Owners' Association of Western Australia, and I think the member for Victoria Park on behalf of the Tenants Advice Service. In relation to the Property Owners' Association of Western Australia, I can advise the house that there was a two-stage review of the act. The first was a review conducted by Stamfords consultants, which called for written submissions and which had focus groups and public forums. Then the department released the Stamfords' report and engaged in a second round of consultation. The Property Owners' Association of Western Australia made written submissions to each stage of the review—so it had an opportunity to participate formally—and its views were noted throughout the review report. In addition, the Department of Commerce has advised me that it met with the Property Owners' Association of WA on a number of occasions during the drafting of the bill to ascertain its views, and the POAWA was invited to, and did attend, an informal session regarding residential tenancy database provisions. It would appear to me that that the Property Owners' Association of WA has been reasonably heavily engaged in this process, notwithstanding its recollection of that engagement.

I am advised that the Tenants Advice Service was engaged in the consultation, particularly regarding the antisocial behaviour provisions. Indeed, it corresponded on 9 February 2010. I will not read out the whole letter, but it says, in part, that the TAS welcomes the opportunity to comment on the proposed legislative changes

sought by the Department of Housing in managing perceived disruptive behaviour in public housing tenancies. Again, I respectfully suggest that those organisations have had an opportunity to participate.

The member for Mandurah raised issues regarding activity in the courts and bond disposals. My advice is that in 2010–11 there were 5 184 applications to the court for an order for the disposal of a bond and that approximately 569 of those were disputed. I am assuming that people get to the point at which they get a bit frustrated that they cannot get their bond back, they apply to the court, and in the vast majority of cases the bond is given back. There are a handful of cases in which there is a dispute. My advice is that court action represents about five per cent of all bond disposals. As a snapshot, between 11 and 15 July 2011, the Department of Commerce disposed of 961 bonds. We hold about 60 per cent of all bonds. Ninety-one of those were by consent of the parties, and nine per cent were by court order. I am not sure where Mr Wild obtained all of his data or whether the member for Mandurah got a bit overexcited in his reading of it. I have never known him to get overexcited in this place! However, I think that is a very good snapshot of the levels of activity in those areas.

I will touch on a couple of other issues that were raised. The member for Nollamara raised the issue about protection from excessive rent increases. My advice from the department is that under section 32 of the Residential Tenancies Act a tenant can make an application to a court about a rent increase in only two circumstances—that is, when there has been a significant decrease in the chattels provided with the premises or the landlord is motivated to increase the rent by a desire to end the tenancy. Our reading of clause 30 of the bill is that it removes those two qualifiers, which means that a person's reasons for disputing rent and going to court can be more than just those two issues; it is pretty much open. We can tease that out a little more in consideration in detail, but that is certainly the reasoning behind the drafting of those two provisions of the bill.

The last area I will quickly touch on, because I am pretty keen to get on to the consideration in detail stage, is the changes we want to make to the way in which people can be evicted. The member for Gosnells raised some fair issues around some changes to section 64 of the Residential Tenancies Act. It is important to understand that section 64 of the act gives people—not only the department, but also others—the right to terminate a tenancy without grounds.

Ms J.M. Freeman: Minister, is it not the case that some magistrates have told the department that they cannot use section 64 for public housing —

Mr T.R. BUSWELL: I do not know. It could well be the case. I know one thing: generally speaking, all else being equal—ceteris paribus, as I think the Treasurer would probably say; is that right, Premier?

Mr C.J. Barnett: All other things being equal.

Mr P. Papalia: It's the economists' catchcry, isn't it? You used that all the time.

Mr T.R. BUSWELL: That is the reason that things did not happen as anticipated. What were we talking about?

All other things being equal, it is harder for the department to evict public housing tenants than it is for private landlords to evict private tenants.

Mr M. McGowan interjected.

Mr T.R. BUSWELL: Sorry?

Mr M. McGowan: You're a well-known Latin scholar!

Mr T.R. BUSWELL: That is right, and poet; reader of Henry Lawson—no, who were we talking about yesterday? Banjo Patterson. *The Man from Ironbark* is a great piece. Sometimes when I look at some of the opposition members, they remind me of a line from *The Man from Ironbark* —

> There were some gilded youths that sat along the barber's wall.
> Their eyes were dull, their heads were flat, they had no brains at all;
> To them the barber passed the wink …

And so on. Anyway —

Ms J.M. Freeman: We are debating a serious issue.

Mr T.R. BUSWELL: Sorry, it was the Premier's fault!

We can tease that out. I am not aware of that, but it may well be the case. I am getting some nods from my advisers at the back, so it is the case. Getting back to the issues the member for Gosnells raised, new section 64 can actually soften some of those provisions because it gives the opportunity for the tenant to go back to the court and seek an extension for another 60 days. It does not take that away. Historically, section 64 is recognition of a property owner's right to have possession of their premises if required. It would be fair to say that the

department has not liked using section 64. Certainly the Commissioner for Equal Opportunity made some comments about that in the report, which the member for Nollamara referred to. The department will use it a little more frequently now.

Ms J.M. Freeman: You've tried to use it under the three-strikes policy, but there are some magistrates that will not allow you to use it.

Mr T.R. BUSWELL: Effectively, the new sections we seek to introduce in this bill—we will talk about this in consideration in detail—are to give the department the capacity to address what we see as being a shortfall at the moment in implementing the three-strikes policy. We have issues with section 62 and with using section 64. I think in cases of antisocial behaviour, section 64 is a recipe for disaster. If we say to people, "We're going to evict you because of antisocial behaviour, and you have got 60 days", sometimes the outcome of giving the tenant that 60 days—and I am not sure this has happened, but it is conceivable—could be a complete disaster for everybody, including the tenants.

Ms J.M. Freeman: But it never actually goes to the court. In most cases when the notice of breach is issued, I think you will find, if you looked at your stats, probably about 85 per cent of homes are vacated at that time. The difficulty then is that they vacate in such a manner that leaves the house —

Mr T.R. BUSWELL: I do not think that is right. I gave some interesting figures yesterday to the member for Victoria Park. I might be able to get them back again, if we go through the lunchbreak. There are three points at which people leave: some leave when we issue the notice; some leave when we go to court and get the court order; and others leave when we get the bailiff. I gave to the member for Victoria Park yesterday a pretty detailed breakdown of information for Aboriginal and non-Aboriginal tenants. I told him that I am happy to keep providing that information, because we cannot hide from the facts. If people are being evicted, they are being evicted. I do not want to hide from who we are evicting because, as a number of members have pointed out, it highlights some broader issues we have to get our heads around. I do not know the answers yet, but I remain quite firm in my conviction that we have to take steps to protect communities. Frankly, the opposition's amendments gut what we are trying to achieve with this legislation. They will basically take away our right to use new section 75A—to implement the three-strikes policy. We are just not going to accept that. We will talk about that a bit more in consideration in detail.

Hopefully I have covered most of the more substantive issues that have been raised. I thank members opposite for their participation in the debate. I enjoyed listening to the speeches and some very important points have been made. Appropriately, a lot of the points that have been raised highlight that some of the issues confronting people in houses are much broader than what is being tackled by this bill. However, this bill is a small but important part of what we think we need to do in government. It supports the policy decisions and directions that we have made on antisocial behaviour. Is there more to be done more broadly? Absolutely. Is housing a complex issue? It most definitely is. I say again that, from the point of view of the Department of Housing having to deal more broadly with housing issues, we simply have to move our focus away from just building homes for people. Yes, that is important, but we have to focus more on the sustainability of the tenancies and, at the other end, on affordability issues. Fundamentally, if we do not address affordability issues, we are going to have continuing and sustained pressure on social housing in Western Australia. I look forward to the consideration in detail stage of the bill.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clause 1: Short title —

Mr M. McGOWAN: I rise as the shadow Minister for Housing to put on the record our view of this legislation so that anyone who may not have been here for the second reading debate is aware of it. We will support this legislation because it contains a range of good and balanced measures that have been the basis of a considered review that has consulted all sides of the housing industry as to what is right, appropriate, fair and just. We will support the bill because the majority of it is good. But there is one part of this bill that is bad, and that is the part that discriminates against social housing tenants over private tenants. We will not support discrimination against people living in public housing over those living in private housing. One of the amendments that we will move seeks to remove that discrimination from the bill. The second amendment we will move seeks to ensure that when there are cases of serious illegality, it becomes easier to evict a tenant. We have had a rush of clandestine laboratory explosions in rented properties around Western Australia, and we think that the courts should have an

easier capacity to evict people in those cases. However, the government has included in that provision the capacity to evict someone for what has been termed "interference" and the capacity to evict a tenant for permitting what has been termed a "nuisance".

The ACTING SPEAKER (Mr P.B. Watson): Member for Rockingham, we are talking about the short title of the bill. It is not a debatable matter, apart from the short title of the bill.

Mr M. McGOWAN: The short title of the bill is the "Residential Tenancies Amendment Act 2011". I want to talk about residential tenancies for a moment. Maybe the bill should be renamed in light of what the government is doing—that is, discriminating against social housing tenants. Maybe the bill should be called the "Residential Tenancies Amendment (Discrimination against Social Housing Tenants) Bill".

Mr T.R. Buswell: Why don't you move that as an amendment?

Mr M. McGOWAN: I will speak to it if the minister would like me to. Indeed, as the minister has challenged me, that might allow me to say what I am about to say. The next issue I want to talk about is discrimination. I also want to talk about the impact of these amendments on children. Yesterday the Premier stood during question time and talked about children. I heard him on national radio this morning talking about the children of asylum seekers and unaccompanied minors coming to this country as asylum seekers and railing against any federal government policy prescription about that problem to send those children overseas. I think he said words to the effect that it is to the eternal shame of the Labor Party that it supported it and did not have the courage of its convictions to stand up for children. We are going to put the Premier to the test. We are going to move an amendment to this legislation.

The ACTING SPEAKER: Member for Rockingham, we are talking about the short title of the bill. You will have a perfect opportunity to talk about this throughout the different clauses. I have to bring you back to talk about the short title of the bill; otherwise, I will sit you down.

Mr M. McGOWAN: Thank you, Mr Acting Speaker. The bill refers to residential tenancies. Maybe it should be amended to refer to the impact of the changes to residential tenancies on children. In that regard, we think that children should be taken account of. In terms of the short title of this bill, this is a test for the Premier to say whether he thinks children in Western Australia should be mistreated. He obviously has a concern about unaccompanied minors coming to this country, as do I. But we also have a concern about children living in tenancies in Western Australia. We are going to move an amendment to the bill to provide the Premier with an opportunity to say whether he thinks Western Australian children should be able to be thrown onto the street without any consideration by the court.

Mr T.R. BUSWELL: Just very quickly, given the nature of the debate around the short title, maybe we should change the title to the "Residential Tenancies (Protection of Neighbourhoods) Bill". If this is how members opposite want to hold the debate, I am happy to participate. As I said before, there is a lot of really good stuff in this bill. I am happy to talk about some of the issues that happen in neighbourhoods. I have met people whose children cannot go outside and play. I have met people who are living entirely lawfully in their own homes, but cannot allow their children to play outside and have to lock themselves in at night for fear of the tenants next door. I can give members an example of a disabled lady in a wheelchair whose home gets broken into because all sorts of rabble-rousers from next door think that the best place to have a fight is in her front room. I am happy to rename this bill—no, I am not, but if members opposite want to play those sorts of games, we could call it the protection of neighbourhoods bill, because that is what this is about. It is about a road to finding a balance. It is not always easy. It is not an easy policy area. Yes, kids will be affected. Some children will be the children of the tenants we evict. We do not have tenancy agreements with children; we have tenancy agreements with adults. If those adults behaved appropriately and respected their communities, they would not be evicted.

The ACTING SPEAKER: Minister, I did tell the member for Rockingham the same thing. Can we just get back to the short title of the bill?

Mr T.R. BUSWELL: Members will have people in their electorates and they will know of families whose children are locked in at night because of the impact of disruptive neighbours. For every example in this debate, there are plenty of other examples, and I am happy to share them. Members need to understand very clearly that we have a strong policy view around protecting neighbourhoods and restoring a bit of balance in this debate. I will get up in this place and defend that for weeks if I have to.

Mr P. PAPALIA: I share the member for Rockingham's concerns that perhaps the title of this bill should have some focus purely on social housing. The diatribe that we just heard from the minister suggests that he thinks the only antisocial behaviour that occurs in Western Australian neighbourhoods is perpetrated by social housing tenants alone. That is absolutely ridiculous. For every example he can give, which he suggested and just made up —

Mr T.R. Buswell: I didn't make it up.

Mr P. PAPALIA: For every example that the minister throws out there, I can throw him an example of residents —

The ACTING SPEAKER: Member for Warnbro!

Mr P. PAPALIA: — who are upset by the antisocial behaviour of people who own their houses —

The ACTING SPEAKER: Member for Warnbro!

Mr P. PAPALIA: — or people who rent privately.

The ACTING SPEAKER: Member for Warnbro, sit down, please!

Mr T.R. Buswell: You idiot.

The ACTING SPEAKER: Members, let me clarify this. We are talking about the short title of the bill. Anybody who gets away from that I will sit down. Members, the question is that clause 1 stand as printed.

Mr M. McGOWAN: I just want to talk briefly about the short title of the bill. It is indeed the "Residential Tenancies Amendment Act 2011". As I said before, I do not think the bill is appropriately named, because it discriminates against social housing tenants and could have an adverse impact on children. I think the title of this bill is perhaps not appropriate. That is why, during the course of this debate and perhaps even during debate on this clause, we will move to amend this bill so that it toughens up on illegality, it removes discrimination against social housing tenants and, when a tenant is being evicted, it takes into account the impact on the children at that property and the impact on children from surrounding properties. We want the impact on children to be taken into account in this bill. The short title should reflect the impact of these laws on Western Australian children. We have concerns about not only unaccompanied minors being sent to Malaysia, but also Western Australian children. Now is the opportunity for the government to vote on whether it cares about Western Australian children in the same way as the Premier yesterday said he cares about unaccompanied minors going to Malaysia. This will be a test for the Premier on whether he shares those concerns about Western Australian children potentially being thrown on the street and neighbouring children being affected, and whether a court can take that into account.

Ms J.M. FREEMAN: I rise to speak about the short title of the Residential Tenancies Amendment Bill. I also wish to question the minister about his contribution to this title and changing it to "Protection of Neighbourhoods". I put to the minister that the protection of neighbourhoods is available because people enter into agreements with their tenancies. Section 62 of the act ensures that if those agreements are breached in the ways raised by the minister, we have the procedural capacity to evict those tenants. Under this bill we are taking away the rights and the capacity of people to defend their tenancies. Therefore, the government is misleading us by calling this the Residential Tenancies Amendment Bill and then saying that it could introduce the bill as "Protection of Neighbourhoods". No-one in this place does not want to protect neighbourhoods or wants to be unable to deal with bad behaviour. This is about dealing with bad behaviour. This is about being a proper landlord who deals with people in a proper and procedurally appropriate way. These people do not need to be treated in a bad manner. The minister can groan and moan, but he is putting us in a cycle in which he does not protect neighbourhoods or our community. This bill takes away those protections and actions that ensure people are dealt with appropriately.

Mr T.R. BUSWELL: I am not sure whether we will deal particularly with section 62 of the act, but it is important. I will be very brief. The member needs to understand how section 62 works—14-day breach notice. Someone is given a breach notice and behaves for 14 days—finished. I have seen files that show people with dozens and dozens of breach notices. It is very difficult to evict for continual antisocial behaviour using section 62.

Mr M. McGowan: Why?

Mr T.R. BUSWELL: Because of the 14-day breach notice.

Mr M. McGowan: Look at one of our amendments.

Mr T.R. BUSWELL: We will deal with that point a bit later. These changes are needed to assist us in the implementation of the three-strikes policy. The point to be made is that the ultimate decision is not with the Department of Housing; the ultimate decision is with the court. As the member for Victoria Park and I discussed the other day, this will be an evolving space as courts deal with these particular issues. I anticipate that the court will look at a variety of factors in making its determinations. Time will tell, but the current framework does not work.

Mr M. McGOWAN: The minister made some reasonable points on the short title. I also want to make a few points on the short title. When the court takes into account those issues about the behaviour of a particular tenant and whether that tenant should be evicted, it should be expressed in law that the court takes into account the interests of the children in that property and surrounding properties. That is what we are proposing. If the minister wants to vote down expressly in the bill the interests of children who may be thrown in the street or may be living nearby, be that on his head. Our amendment is in the house. In light of what the Premier said yesterday, we are flagging this issue for the government so that it can look at the interests of Western Australia's children and see whether it regards them as seriously as it regards the interests of asylum seeker children.

Clause put and passed.

Clauses 2 to 4 put and passed.

Clause 5: Section 3 amended —

Mr C.J. TALLENTIRE: I am concerned about the definition of "property manager" in clause 5. In my contribution to the second reading debate I said how we find that the quality of property managers is highly variable. Some people overuse their authority and are generally unfair on tenants of properties. The definition of "property manager" in clause 5 provides that a person must be licensed under the Real Estate and Business Agents Act 1978. When we do a bit of searching and go to the Real Estate Institute of Western Australia website to find out how someone goes about getting a licence under the Real Estate and Business Agents Act 1978, we can see that all they need to do is a five-day course. I put to the minister that a five-day course is probably totally inadequate preparation for a property manager who often supervises complex situations that vary in nature from technical matters of home maintenance through to understanding the repayment schedules that might be possible for someone to tackle. I am concerned that the definition of "property manager" is inadequate and needs to be made much stronger. Furthermore, I am concerned that someone could do this five-day course and therefore meet the requirements of being licensed under the Real Estate and Business Agents Act, but then appoint someone else to be their agent to go out and—I think they would probably use the term—deal with tenants. Paragraph (b) of the definition of "property manager" reads —

> (b) In relation to a residential tenancy agreement, the agent of the lessor of the premises to which the agreement relates;

I am concerned about a loose interpretation of "the agent". I am aware that in some cases property managers take very heavy-handed approaches to tenants and sometimes use people who would normally be described as standover men. That is a very poor thing to have entrenched in this legislation. I am interested to hear what measures will be taken to ensure that this definition of "property manager" is not abused and that in the future we can have a system in place that ensures that property managers have done more than a five-day course. I note from REIWA that people can even do that course online. It is obviously a very lightweight course and it would probably be inadequate preparation for anyone doing this kind of work.

Mr T.R. BUSWELL: I thank the member for Rockingham for the amendments that he has just circulated. I am interested that these matters did not come to the member's attention when he put his other amendments on the notice paper —

Mr M. McGowan interjected.

Mr T.R. BUSWELL: No doubt.

Mr M. McGowan: There are other ones to do with children.

Mr T.R. BUSWELL: Yes, but it was not that one. That is okay. That is what we call political expediency over policy. I am assuming that if it was a major policy issue, it would have been identified at the time he submitted his other amendments.

Mr M. McGowan: You have never moved an amendment on the same day! We just got some of yours to the bill yesterday. It makes a difference as to whether it was yesterday as opposed to today!

The ACTING SPEAKER (Mr P.B. Watson): Members! We have a lot of clauses here. Let us get into it, please.

Mr T.R. BUSWELL: The member for Gosnells made a very good point. The issues concerning licensing of property managers, in our view, are matters for the Real Estate and Business Agents Act 1978 and that framework. I think the points the member raised about the relationship between property managers and tenants may well be valid; I am not disputing that at all. I suspect that some property managers are perhaps overzealous from time to time in how they deal with their tenants. One thing we do through this bill, we talked about fines,

and there are a number of fines for and requirements of property managers now as part of that relationship. I acknowledge the concern that the member raised about licensing, but there are a number of issues involved. I cannot recall them off the top of my head to be able to go through them now, but we certainly will as we go through the bill and the specific property manager requirements, with which fines are associated.

There is another important change. Historically, if I had had a problem with my property manager, I would write to Real Estate and Business Agents Supervisory Board, and I think its former chairman was Mr Cuomo, who may be known to some members opposite —

Mr M. McGowan: Known to you; he's your old buddy.

Ms J.M. Freeman: It was the Builders' Registration Board he was the chairman of.

Mr T.R. BUSWELL: It was REBA. I think when he lost to Bishop, the member's buddy, he suddenly became the chairman of all these boards.

Mr W.J. Johnston: He became state secretary of the Labor Party.

Mr T.R. BUSWELL: He is the one who sent it broke. He was on REBA for a while —

Ms J.M. Freeman: Builders' Registration Board.

Mr T.R. BUSWELL: — and on the Builders' Registration Board. Unfortunately, they were abolished, so he is not on that gravy train anymore, but anyway that is not that we are talking about. The important point —

Ms J.M. Freeman: Yes, let's talk about the point.

Mr T.R. BUSWELL: I do remember him, though. We used to have the uni ALP meetings —

Ms J.M. Freeman: Minister, just go to the point.

Mr M. McGowan: No, it's good; I want to hear it.

Mr T.R. BUSWELL: It is not done by REBA anymore; it comes straight through to the department.

Mr C.J. Tallentire: The training is provided by REIWA and it says that the five-day course with it is all you need.

Mr T.R. BUSWELL: "REBA" has ceased to exist.

Mr C.J. Tallentire: Oh, REBA.

Mr T.R. BUSWELL: Regarding REIWA, I do not dispute what the member is saying about the licensing issues. I think that that is beyond the gamut or the remit of this bill.

Mr C.J. Tallentire interjected.

Mr T.R. BUSWELL: Hop up again.

But the bill puts some requirements for what would be expected from property managers in that relationship. A large number of tenants never see the person who owns the property. Therefore, by extension, the property manager is their interface; they are a very important person in the link. I think we have identified this through the legislation, but it must be acknowledged that their licensing is done through the real estate agents licensing framework, because they have to have that licence. REBA is gone, and I do not say that REBA did not act on all complaints, but my personal view is that it is better that they are dealt with by the Consumer Protection Division. That potentially will be a more robust handling of complaints. People can make complaints, people have made complaints and people will continue to make complaints. When there are breaches in areas of this legislation now, we can rest assured that the Department of Commerce and the Consumer Protection Division —

Ms J.M. Freeman: Where do those complaints go? If the complaint is not upheld, do the complainants have an opportunity to go to the State Administrative Tribunal?

Mr T.R. BUSWELL: No.

Ms J.M. Freeman: So that's it? If the Consumer Protection Division says, "You've got no legitimacy to complain", that's it?

Mr T.R. BUSWELL: That is correct.

Ms L.L. BAKER: These questions were too detailed to be raised during the second reading debate. I would like to ask for some clarification with the term "property manager", the way it is specified in the bill, and what happens in strata complexes. Although this bill acknowledges the fact that property managers need to have at least a five-day training course, I am aware that with the Strata Community Australia (WA) and the strata title process, there is no form of registration of strata title managers or people who work on strata title premises. I am

not clear about what happens with strata title properties—I assume we have them in the public housing arena. Does that mean that there is a separate property manager who is trained on this five-day course and also a strata title manager, given that the strata title manager does not need to be trained? Can the minister explain that to me?

Mr T.R. BUSWELL: I know that there are a lot of issues with strata, but for the purposes of the relationship between the tenant and the owner, although those issues about strata may impact on the tenant via the owner's participation in the strata arrangement, the particular relationship between owner and tenant is really a separate matter to the issues with strata. There are issues with strata, but in this legislation we are really dealing with the relationship between the owner and the tenant.

Ms L.L. Baker: With your forbearance, I just want to get something clear, and it is probably just a personal matter that I do not understand this. With a public housing tenancy within a strata title complex, who is deemed to be the property manager in that instance? Is it someone separate to the strata title manager? Who is the person?

Mr T.R. BUSWELL: Let us say that the Department of Housing owned 10 units in a 20-unit strata development. We would have responsibility for the management of our tenants and that relationship, but the common grounds and the normal things a strata would look after would be dealt with in a relationship between the department and the strata management company.

Ms L.L. Baker: Okay.

Mr T.R. BUSWELL: Therefore, there are really three links in the chain. I understand some of the challenges with stratas that do not work.

Ms L.L. BAKER: In the definition of "reasonable grounds" that follows that of "property manager", there are a series of events listed as (a), (b), (c) and (d). Again, for my clarification, and probably for that of *Hansard* and for those that follow, the definition states —

> reasonable grounds, for suspecting that a tenant has abandoned residential premises, means that the tenant has failed to pay rent under the … and that at least one of the following has occurred —

And then there are events (a), (b), (c) and (d). Only one of the listed events needs to occur. It has been my experience working in these areas for some years now that it is very common for people who are less stable but still have a public housing tenancy to absent themselves for a time—maybe to visit relatives or because of a death in the family. That would mean that there would be uncollected mail, newspapers and other material or it may mean event (d)—that there is a disconnection in services to the premises. However, that does not mean that the tenant necessarily wants to have their public housing tenancy ceased. The "reasonable grounds" definition is a bit nebulous. Although I understand that the department would need to have some flexibility in implementing this legislation, for the sake of tenants, this is another opportunity for this legislation in the area of public and social housing to push the balance against tenants and put more power in favour of a property manager.

Mr T.R. BUSWELL: I assume the member refers to issues broader than just social housing.

Ms L.L. Baker: I refer to public and social housing.

Mr T.R. BUSWELL: In relation to public housing —

Ms L.L. Baker: Both.

Mr T.R. BUSWELL: Yes, in relation to public housing, I can reflect on the department's point of view. If a person happens to go away for cultural reasons, as highlighted, or a death in the family or the illness of a relative, or they go on a long holiday, or other issues mean that the person cannot be at their house, and they keep paying rent, there is no problem with the tenancy being maintained.

Ms L.L. Baker: Therefore, it is the two events combined—the cessation of rent payments and one of those listed events.

Mr T.R. BUSWELL: Yes, and that is an important point to note. From the department's point of view, historically, non-payment of rent is probably the largest cause of eviction. It is an issue. Effectively, if tenants do not pay rent, they eventually lose their tenancy. I do not think that that argument is unreasonable. The causes for not paying rent might be a bit more complicated, but to be evicted, a couple of other things must happen as well.

Ms J.M. FREEMAN: I take the minister back to the interplay between a lessor and a property manager. I want two clarifications. First, I want clarity that the definition of "lessor" includes "owner"—I want that on record just to ensure that that is clear, because "lessor" is the new term that has replaced the term "owner". As the minister knows, in my previous incarnation as an advocate in the workers' compensation jurisdiction —

Mr T.R. Buswell: I am very familiar with that, following the passage of the workers' compensation bill.

Ms J.M. FREEMAN: Yes. One of the difficulties often faced in that jurisdiction was when insurance companies took over almost all the legal capacities of employers, by the agreement that they reached in terms of managing their insurance. My question to the minister is: how do we ensure that property managers do not do that in the same way to lessors? A lessor could say, "I want to get something fixed or done in a certain way." The owner is happy to comply with that, but the property manager may say, "No, if you do that then we will be saying that we have some liability in terms of this and we don't want to have that liability in that area because we're having a fight with the state government about liabilities for footpaths", or whatever the context of those things are. I am speculating here: that relationship between property managers and lessors, how do we ensure that the owner of the property still has the right, in terms of the full management of the property, and not necessarily the property manager being able to override that right?

Mr T.R. BUSWELL: Firstly, "lessor" includes owner. Secondly, in relation to the relationship between property manager and owner, there are some codes of conduct and the like that sit around the behaviour and performance of property managers. That is administered under the Real Estate and Business Agents Act that we discussed earlier. In relation to the practicalities, almost what the member is asking is: can the property manager basically run the show and only be pushed to the side? That is how I interpret the member's question.

Ms J.M. Freeman: I am sure insurance companies would not say that is what they do.

Mr T.R. BUSWELL: It is a country approach!

In workers' compensation, as the member knows, sometimes what the insurance company wants and what business wants, in relation to employees, are two completely different things. I do not think it is the same here. We almost have a customer–supply relationship between the property manager and the owner. If a property manager is not providing good service to the owner, I suspect the arrangement would terminate pretty quickly. It is a very, very competitive area in real estate. For some real estate agents, especially in the current market, when transactional activity is flat, it is probably the main form of growth and/or income. I cannot see it will ever be a problem simply because if an owner is cheesed off with his or her manager, they would get rid of them. I am not sure about the nature of the contract between the owner and the manager, other than they have to have a contract. I assume there are standard forms—Real Estate Institute of WA have standard forms for just about everything. There would be clauses in there whereby a person can get rid of a property manager if they are not happy with their performance: I understand the concern the member raises but I do not think it will ever be an issue.

Clause put and passed.

Clause 6: Section 5 amended —

Ms J.M. FREEMAN: I am using clause 6 as an indicator for clause 7 and subsequent clauses. I notice that in clause 6, proposed section 5(2)(c) will delete "as owner" and insert "as lessor", but I note that in many cases, as we go through the act, that has not occurred; in particular section 7(3)(c) and a few others that I have gone through. Frankly, I stopped after I noticed about three or four times that it had not been replaced. I am wondering whether that was with intent or a drafting error.

Mr T.R. BUSWELL: I have been advised that somewhere at the end of the bill—I will find out where—parliamentary counsel have put in a table. That is clause 89 on page 95. It effectively says "Various references to 'owner' amended" and it works through that. The advice from parliamentary counsel is that could not be done in all cases; in some cases it had to be done specifically through deletion in the act. Where it could be done, it has been done, let me call it in globo. That is the advice, and that is what we have done.

Clause put and passed.

Clauses 7 to 21 put and passed.

Clause 22: Part IV Division 1A inserted —

Ms L.L. BAKER: Proposed section 27A is the insertion the minister seeks to make. In the view of stakeholders I have spoken to, it is a very good section. A written residential tenancy agreement in a prescribed form should clarify a lot of murky dealings that might have been going on, which members might have heard about. One issue brought to our attention from the Tenants Advice Service is that it has received complaints from tenants in which the community-housing provider, or lessor, has requested tenants to sign backdated contracts. As the minister would be very aware, backdated contracts have a potential to see tenants liable for something that happened in the past and may also shorten the length of a tenancy. I would like the minister's comments on this. It might not be a frequent problem encountered, but it certainly is a problem. I am not seeking an amendment but I would like the minister's comment on the issue of backdating.

Mr T.R. BUSWELL: I think it would be fair to say that there may be the odd time when backdating is done. A person may be relocated for a whole —

Ms L.L. Baker: How do we protect people from things that happen?

Mr T.R. BUSWELL: Hang on; I will deal with that in a second.

Occasionally—I assume this would be very occasionally—it is just not practical to get a person to sign the tenancy agreement at the time they take occupation. It may be that an emergency situation arises and a person can be moved quickly; who knows? It may be that a place becomes available that they can move into and a tenant may need someone to provide them with assistance in reading the document. I am sure we can think of a few different examples. In that case, nobody would argue that backdating is for an inappropriate reason, but there are certain clauses in and around the Fair Trading Act around unconscionable conduct that should give people protection if they feel they are being required to sign a backdated lease; for example, when the lease extends to a period prior to when they went into the house.

Ms L.L. Baker: Does the minister think that is enough?

Mr T.R. BUSWELL: The very firm advice I have is that that is enough; I accept that.

Ms L.L. BAKER: I am still on clause 22, particularly the insertion of proposed section 27C(1), (2) and (3), and just about all of that really. This is an area in which I think it is particularly clear that unless we are extremely careful, this bill will put more in favour of the property owner, landlord or manager than it in fact puts on the tenant. Proposed section 27C(1) states in part —

> … within 7 days after a tenant has entered into occupation of residential premises under a residential tenancy agreement —
>
> (a) prepare a report describing the condition of the premises; and
>
> (b) provide 2 copies of the report to the tenant.

Proposed section 27C(4) states in part —

> A lessor must, as soon as practicable after the termination of a tenancy —
>
> (a) conduct an inspection …

The seven-day clause seems to favour the landlord more when it comes to what has to be completed by the tenant. There is a bit of an imbalance when a lease is terminated and a property inspection has to be done. At the front end, when someone moves in, it must be done within seven days.

Mr T.R. Buswell: Not at the moment.

Ms L.L. BAKER: That part is fine. But when the tenant moves out there is no requirement for the person to be provided with a copy of the report, yet the inspection must be done within seven days. Like many members in the house, I have been through this on a personal basis. If the inspection is conducted and the tenants are not immediately notified of an issue, the tenant could come back a month later and say, "I did not actually do any of that damage, it happened while the property was vacant." There is rather poor weighting in some of these clauses. Equal responsibility is not given to the landlord to allow the tenant a seven-day maximum or minimum to get back under these provisions.

Mr T.R. BUSWELL: I think the member has raised a reasonably valid point. So that I get it right: is the member saying that at the start, people get seven days in which to provide the report?

Ms L.L. Baker: Correct.

Mr T.R. BUSWELL: At the end, it is "as soon as practicable", which is not seven days.

Ms J.M. Freeman: By way of interjection, if it is expected to be within seven days at one end, does the minister believe that "as soon as practicable" should be seven days at the other end?

Mr T.R. BUSWELL: I am sure there is a mechanism to enable us to deal with this through the house. I am happy to get more advice from the minister. I think the member makes a valid point, but I would like to get a bit more advice before we discuss it further. I am sure we can come back and deal with that using the standing orders of the house if we want to. I will comment perhaps after lunch about that, because I am sure we will be going through to lunch on this bill.

Ms J.M. Freeman: I appreciate that.

Mr T.R. BUSWELL: I do not think what the member is saying is unreasonable, but we need to explore that a little bit further. This is the question I asked at the end: in a bond dispute, for example, the court can determine

that the bond be repaid within 14 days of the cessation of the lease. Sometimes these matters are quite fractious, especially if things have not always gone smoothly. I will get back to the member for Maylands on that issue; I do not have the advice here.

More broadly, we are introducing a provision under section 27C to make it mandatory to do the property inspection.

Ms L.L. Baker: That is good.

Mr T.R. BUSWELL: At the moment it is industry best practice, which is not always practised. Generally, people who do not practise best practice are the ones who probably should be practising best practice, if I can put it that way. I am happy to get more advice on the issue the member has raised and I will get back to her.

Mr C.J. TALLENTIRE: This clause adds proposed section 27C, "Property condition report at start and end of tenancy". I am curious to know why we have missed an opportunity here, because a condition report will simply be about the current standard of the premises. Given there is a property rental market in which many people are desperate to find a property, I think some people take a lease without looking at the standard of the property. We are missing an opportunity here to make sure the property condition report adheres to what minimum standards should be presented in a dwelling to be let. I am curious to know why we are missing that opportunity. The minister is as familiar as I am with the residential building mandatory disclosure provisions to come into Western Australia. Why have we not inserted something in the bill to make sure people adhere to minimum standards in the quality of property to be let?

Mr T.R. BUSWELL: The advice I have is that we are talking here about a prescribed agreement. Proposed section 27A is headed "Written residential tenancy agreement to be in prescribed form." I am advised that the regulations that prescribe that form will include mandatory disclosure. Section 42 of the act deals with the state and the repair of the premises when the tenant moves in, and the requirements generally on a landlord. But the issue the member is talking about is the disclosure of energy efficiency, which obviously will impact on the cost of maintaining a household. I understand that will be picked up through proposed section 27A as one of the requirements of the prescribed form.

Clause put and passed.

Clauses 23 and 24 put and passed.

Clause 25: Section 29 amended —

Mr T.R. BUSWELL: I move —

Page 20, line 34 — To delete "payment; and" and substitute —

payment.

Mr M. McGOWAN: I am keen to speak to clause 25 but presently the amendment is before the house. Can I speak more broadly to the clause?

The ACTING SPEAKER (**Mr J.M. Francis**): I will give you some leeway, member for Rockingham.

Mr M. McGOWAN: Thank you, Mr Acting Speaker. I am sorry I have not followed the —

Mr T.R. Buswell: Can I ask a favour? Can we just deal with those amendments quickly? They are just technical amendments. We can then deal with the broader issues.

Amendment put and passed.

Mr T.R. BUSWELL: I move my second amendment to clause 25 —

Page 21, lines 2 to 5 — To delete the lines and substitute —

(b) delete paragraph (d);

Amendment put and passed.

Mr M. McGOWAN: My question on clause 25 relates to penalties. I am not sure whether this issue has been raised; I missed the last 20 minutes or so.

Mr T.R. Buswell: No, it hasn't.

Mr M. McGOWAN: I refer to line 8 on page 21 of the bill where it states that the penalty is a fine of $20 000. I assume that is a maximum fine. Further down, there is another penalty of $5 000 for landlords. The bill is changing all the penalties. I think it is a considerable stiffening of the penalties for landlords for breaches that could be said to be quite technical; they relate to bond administration and so forth. I raised this issue of penalties

in the second reading debate in relation to a letter I had received from the Property Owners' Association of WA, and particularly from Mr Wilde. It would be fair to say that he was wild about the whole issue of penalties. I think he was very genuine in his concerns. He represents a group of landlords who own residential properties. As we know, it is not uncommon for Western Australians to own a second property. Indeed, I suspect that most members of this house own a second property. People in suburbia, and in towns and communities throughout Western Australia, own a second property. Mr Wilde's concern was that the penalties were being significantly stiffened in an unreasonable way. He wanted to know why: what was the methodology behind stiffening and increasing the penalties for what are often relatively minor breaches of the legislation? I do not think that it was an unreasonable request to ask those questions. I will ask it in relation to this clause—I could probably ask it on every clause if I wanted to, but I will stick with this one. Why is there a penalty of $20 000 for what appears to be a relatively minor infraction of the act that does not require any malicious intent or defrauding of a tenant or anything of that nature? It looks to be just an infraction of the act, which could really be almost an oversight on the part of a landlord. I think the minister gets the general gist of my question. He might be able to provide some answers on the penalties in the rest of the bill as well.

Mr T.R. BUSWELL: I am happy to. I think the member will find that this is probably the only $20 000 fine in the bill—there might be one other. This penalty relates to what is done with the bond. This penalty is specifically in place for people who do not do the right thing with a tenant's bond. It is not for a minor matter, in my view. Under this new framework, the bond has to be deposited with the Department of Commerce. I am aware of one case in which the owner of a large rent roll now resides in the Philippines. The money that people paid as bonds, or I suspect a little less of it, also resides in the Philippines. I think those people would say that a $4 000 fine when paid across in—what is the currency in the Philippines?

Mr I.C. Blayney: Peso.

Mr T.R. BUSWELL: I thank the member for Geraldton; he is a renowned dealer in foreign currencies.

I do not think the people who lost that money would view a $20 000 fine as being too steep.

Mr M. McGowan: What is the largest island in the Philippines?

Mr T.R. BUSWELL: Now, it is that big one.

Mr M. McGowan: Mindanao.

Mr T.R. BUSWELL: Is it Luzon?

Mr M. McGowan: Oh, no; it is Luzon. Mindanao is the second largest island.

Mr T.R. BUSWELL: The member for Rockingham has got us off track. I do not know whether it is Luzon. I only remember two—Mindanao and Luzon. Is that where the bases were?

The ACTING SPEAKER (Mr J.M. Francis): I am sorry, minister; I cannot help you with this debate. I would love to.

Mr M. McGowan: What is the capital of the Philippines?

Mr T.R. BUSWELL: The thriller was in Manila and the rumble was in the jungle! Anything else?

Mr M. McGowan: What was the name of the last Japanese soldier who emerged from the jungle in 1974?

Mr T.R. BUSWELL: I will have to take that one on notice. Arigatou gozaimasu; thank you!

I do not think the $20 000 penalty is a big issue.

Mr M. McGowan: I think his name was Lieutenant Ondiki.

Mr T.R. BUSWELL: It could be.

Mr P. Papalia: It does ring a bell.

Mr T.R. BUSWELL: It does ring a bell to me. I will get my people onto that promptly.

Ms J.M. Freeman: By way of interjection, minister, it is a maximum as well.

Mr T.R. BUSWELL: Yes. I am very comfortable with it. I thank the member for Nollamara for dragging us back to the bill; it was about to become a battle of attrition in terms of general knowledge.

Mr M. McGowan: Which island was he on?

Mr T.R. BUSWELL: Not the big one. I must admit that my recounting of bizarre facts has diminished somewhat over time.

Ms J.M. Freeman: Just not the doing of bizarre acts!

Mr T.R. BUSWELL: We all have our moments.

Ms R. Saffioti: If it has diminished over time, I would hate to have seen you 20 years ago!

Mr T.R. BUSWELL: The member would have hated to see me 20 years ago. I tell you what; it would fill up a few pages! Anyway, we will move on. I was a misguided member of the uni ALP then with Mark Cuomo, who lost the pre-selection to the guy from the shoppies.

Ms L.L. Baker: You talk more about the ALP membership you held than anything else!

Mr T.R. BUSWELL: I used to sit up the back.

Several members interjected.

Mr T.R. BUSWELL: I can barely put up with this.

Ms J.M. Freeman: You know, minister, I was a member of the ALP in those days and I have no recollection of you whatsoever.

Mr T.R. BUSWELL: Uni ALP—Robert Edel.

Ms J.M. Freeman: Yes, I was there at the same time. You were so uninspiring and completely not on the radar that I have no recollection of you whatsoever!

Mr T.R. BUSWELL: Robert Edel and I were joint branch secretaries. Beat that! He has gone on to greatness at some legal firm somewhere. He was McGinty's chief of staff when he was opposition leader.

Mr M. McGowan: Who?

Mr T.R. BUSWELL: Robert Edel—and Mark Cuomo used to sit at the back of the room and go, "Tovarich; comrades" and stuff like that that I did not understand. The biggest debate we had was what we would rename the uni ALP broadsheet. I think in the end they came up with "In the Pink" or something like that.

The ACTING SPEAKER: Minister, sorry, but I am going to have to do this.

Mr T.R. BUSWELL: Who asked me about fines? Can the member stand up and ask me again? I am going to run out of time. I have a sheet here and I want to go through some details. It was a good question about the penalties. I will give some background so that we hopefully do not have to go through it again. There are 22 new penalties in the bill. Of those, 10 penalties —

Ms J.M. FREEMAN: I am actually interested in knowing about the penalties. I understand that the act was formed in 1987. The penalties probably have not been adjusted since that time. As I said during my contribution to the second reading debate, penalties are always a difficulty in this area. As we know, they are maximum penalties; therefore, they would be applied fairly by a magistrate. I am interested to hear from the minister.

Mr T.R. BUSWELL: That was a good point; the member for Nollamara is right. I am sure the magistrate would use her or his good judgement to determine those outcomes on a case-by-case basis depending on the severity of the circumstances and the nature of the breach. As I was saying, the bill contains 22 new penalties. Ten relate to provisions around residential tenancy databases and 12 relate to things like prescribed lease agreements, property condition reports, prohibitions on requiring tenants to sign a blank bond disposal form et cetera. The penalties have been increased. The last time they were increased was in 1995. What do we lift them to? That is a good question. The review process and the department determined this. We could probably look at other legislation in Western Australia that governs the relationship between a landlord, or lessor, and a lessee. One is the Residential Parks (Long-stay Tenants) Act. That is generally looking at the relationship in caravan parks between long-stay tenants and the caravan park owner. We all know about that because we have talked about it, and some of its shortcomings, a bit. My understanding is that the penalties in this legislation have been benchmarked against the penalties in that act. Therefore, I believe there is a rationale for it. It would seem odd to have an arrangement under which the penalty that applies to the relationship between a caravan park owner and a long-stay resident in the park is different from the penalty that applies to someone in a house and their tenancy. I am pretty comfortable with where that has landed.

Clause, as amended, put and passed.

Clause 26 put and passed.

Clause 27: Section 30 amended —

Mr C.J. TALLENTIRE: Clauses 27 and 28 relate to the issue of rental increases and variation in rental amounts, and the process by which the calculations would be made to determine what increase could be imposed on a tenant. I think the minister will have received submissions from the Tenants Advice Service on this matter.

The obvious thing to say is that rental increases should be constrained in some way and that the logical way of constraining those increases would be in relation to the consumer price index. I am curious to know why there is no reference to that in either clause 27 or clause 28. By way of supporting information for the minister, I point out that in other states and territories there are such references to the CPI. One good example comes from the Australian Capital Territory and its Residential Tenancies Act 1997, under which some latitude is allowed. The CPI increases are used as the baseline, but if someone wants to go a bit further, latitude is allowed to the amount of 20 per cent. Beyond that, there is the opportunity for a tenant to take things to a tribunal for review. I think we need some clarification. I have mentioned this a few times in the course of this debate: clearly, we have a property rental market that is becoming very heated. There is, of course, an inclination for landholders to want to maximise the return on their properties, and they see that pushing up the rental is a way of doing that. However, when we look at the financial advantages given to landlords, we see that they receive amazing benefits in the negative gearing potential and the capital appreciation that they receive on properties. Those are the areas where they really make their money. I believe that very few landlords would be in the role of landlord purely for the revenues derived from the rent. In fact, in most cases it is because of the negative gearing scenario whereby they are happy to take a rent that is less than their outgoing expenses on their mortgage, maintenance and other costs associated with owning the property. We need to clarify what is going on when it comes to the provisions relating to rental increases.

Mr T.R. BUSWELL: I respect the right of the member for Gosnells to hold that view. It is not the government's view. Our view is that rents are set in the market. I will talk about that a bit in a second. I need to point out one thing, though, in this bill, and that is that a little later in the bill, in clause 30, we propose some changes to section 32 of the act. Section 32 deals with the reasons for which a person can go to court to pursue issues around excessive rent increases. At the moment, as I understand it —

Ms J.M. Freeman: To go to court before that, you have to go to the Magistrates Court, and the Small Claims Tribunal, is it? So what sorts of costs are involved?

Mr T.R. BUSWELL: It is $21.60.

Ms J.M. Freeman: For an application. So you would not be in a situation in which it is almost cost-prohibitive to be able to pursue something like that.

Mr T.R. BUSWELL: I am not trying to say that $21.60 for someone is not a lot of money, but I think it is pretty reasonable.

Section 32(2)(a) of the act currently has a couple of qualifiers regarding why a person can go to court. They are being removed, so it makes that a little easier. However, there is a broader policy position. Our view, and certainly a view that came through in the review process, is that the policy position is that it is not the role of government to set rents and it is not the role of government to set the price of houses. Rents are set in the market. I appreciate that the ACT has done something different. That is not our policy position. I do not think it is the policy position of the Labor Party, although it may well be.

Mr M. McGowan: What is that?

Mr T.R. BUSWELL: To cap rents. It is a very difficult area.

Mr M. McGowan: It has been tried before.

Mr T.R. BUSWELL: Yes. It seriously does not work.

Ms J.M. Freeman: What—it doesn't work in the ACT?

Mr T.R. BUSWELL: I do not think it is going to work, and our policy position is that it will not work. There is absolutely no way that we would consider capping rents using, for example, measures such as the CPI. People invest in properties to generate a return. The returns—let us take out tax treatment, because everyone's tax position is different—come from depreciation, capital growth and rent, less expenses. If a person maps residential returns in Western Australia—I cannot remember the exact figure—there is a sort of historic level that they bounce around at. What happens, unfortunately, is that there is capital growth, which happened between 2004 and 2006, and inevitably there is rent growth. We are seeing that, I suppose, now, and we have seen it perhaps over the last couple of years. We are not going to say to people in the market that we will put a limit on the rate of return on their property, because what will happen, in my view, is that people's investment dollars will move out of residential property into other areas. The member may have a completely different view, and I am not being disrespectful of that, but this is my view and this is the government's view. So there will be no cap on rents. There is a process by which people can go to court if they think that the rent increase is excessive. However, we are not going to interfere with the market outcomes on rent, in the same way that we are not going to interfere with the market outcomes on house prices directly, although there are some broader policy

areas that the government can get active in to help, and that is really with land supply and a range of other broader affordability issues.

Ms J.M. Freeman: If you do it by land supply, you undermine the most important aspect of your rented property, which is appreciation, because income from your rentals is offset by the fact that you can negative gear it. If you bring in more property, you undermine one of the most fundamental economic benefits of having rental properties—that is, the appreciation—whereas if you put a cap on it, you can actually look at the affordable housing aspect of it.

Mr T.R. BUSWELL: I do not agree with the member. If we accept what happened in Perth between 2004 and 2006 and what has historically happened, we have to be active in making sure we can keep the land supply loosely matched to the demand.

Mr C.J. TALLENTIRE: I thank the minister for that explanation. However, he has really pointed out a gross inconsistency, because under the Residential Parks (Long-stay Tenants) Act, which we have discussed at length in this place, there is a linkage to CPI. Therefore, the minister's argument that we have a government policy that we do not link rentals to CPI does not stack up. The minister has already pointed out in the course of this debate that the idea for penalties is that they have to be consistent from one act to the other, so why would this be any different?

Mr T.R. BUSWELL: One of the reasons we are losing caravan parks is that people are not getting the rate of return on them, so we are now faced with the conundrum of trying to find a caravan park in, for example, the member for West Swan's electorate. It is a slow process.

Ms R. Saffioti: How is that going?

Mr T.R. BUSWELL: Slowly, to be frank. Housing is still working with the Department of Planning. That is as an aside; I will go back to the issue. It is looking at this lifestyle village stuff as well. One of the reasons people are getting out of caravan parks is exactly as I highlighted—that it is not economical. Brian Morris, who ran Green Acres caravan park in Dunsborough, said to me, "Troy, I do not want to sell my caravan park." Green Acres is gone. It was on the beach; brilliant. He loved it—driving around, yapping to everybody. Brian could chew the leg off a chair; a great bloke. He said, "I can take the money I am going to get paid for my caravan park, put it in the bank, live on part of the interest and let a bit more of the interest offset inflation, and I am killing the pig." That is what is happening in caravan parks. It is exactly the issue I am talking about. I have a very strong view about this. We will not be capping rents and interfering in the market process.

Mr C.J. Tallentire: But you are in another piece of —

Mr T.R. BUSWELL: Yes, and look at the outcomes. Soon caravan park regulation —

Ms J.M. Freeman: No, the outcome is only because there is an appreciation in the land. What you were talking about previously was you were happy to undermine appreciation of land values.

Mr T.R. BUSWELL: The member is right, but ultimately someone has to buy the land. If the price of land goes up, and someone buys it and the return is capped, people will put their money somewhere else. There is no doubt in my mind that the outcomes of capping rent would be disastrous. Not only would it be disastrous around supply, because capital will move, but a whole lot of other issues would arise around maintenance and all of the other things around rental properties. We are not doing that. There are a lot of other things we are doing, but capping rent is not one of them. I am happy to keep talking about it. I respect the member's right to hold that view, but it is most definitely not our view.

Ms J.M. FREEMAN: I just want to ask whether the minister has taken Treasury advice on this. My understanding is that about three or four years ago Treasury's advice in a minimum wage case in Western Australia was that the amount of rent that could be received from rental income and properties was always going to be significantly less than the costs of the property investment.

Mr T.R. Buswell: Can you just state that for me again?

Ms J.M. FREEMAN: Treasury's advice on rentals was that, to actually meet the costs of the property—because of the loans and the interest rates—and to be able to make any considerable income out of rents, it would mean that rental had to increase, I think, threefold. Treasury was talking about a massive increase in rental. It was in answer to a question by the commission as to whether Treasury believed rents would increase any more. The answer was that rents are not considered in increases about property costs. What property owners consider, in terms of rents and having properties that they rent, is the appreciation of their properties, and that rents are set based on other factors—basically what it is being gained out in the market. If some sort of market limit is put on that, it would have an impact on affordable housing in a manner that does not disadvantage property owners, because property owners are already advantaged by appreciation and negative gearing.

Mr A.J. Waddell interjected.

Ms J.M. FREEMAN: At the present time. But over the long term, appreciation. If we look at the long-term average of appreciation of property, that is why people do it.

Mr A.J. Waddell: Negative gearing is about making a loss.

Ms J.M. FREEMAN: It is about making a loss in the short term, but in the long term, it is appreciation. Anyway, I am not going to have an argument with my colleague to decide. In terms of the review, did the minister talk to Treasury about the impacts of that, because I think that for some reason we get caught up in the idea that this is some sort of holy grail that we should never go near. We have to have a proper and considered debate that does not say that the market is the best thing to dictate these things. If we want affordable rentals, that may be a way of doing it. Flooding the market with other properties is actually going to undermine the provision of rentals in our community. That is a way of looking at it in a manner that is economically and socially responsible in delivering affordable rentals in our community.

Mr T.R. BUSWELL: I am going to make one more comment on this, because I sense that if I were to throw a blanket over the different members of the Labor caucus, I would probably see why it has factions. I am not insinuating that all the missos are on the left —

Several members interjected.

Mr T.R. BUSWELL: I love Labor factions.

Several members interjected.

Mr T.R. BUSWELL: We have personality cults in the Liberal Party, not factions. We gather behind inspirational leaders.

Ms J.M. Freeman: Minister, just stay on the point. Was there any economic analysis of it or was it just simply dismissed? That was my question.

Mr T.R. BUSWELL: Technically, Treasury commented on this. There is no way under the sun that Treasury would have advised a rent cap in Western Australia. It would not have happened. Government does not flood the market with houses. We do our bit. Private people make decisions to invest in houses. Where we have a policy role around affordability is to make sure that, when there are surges in demand for property or surges in demand for new construction in particular, there is land available. Whether that is through 2031 or opening up new land, I do not care. We do not have a policy role in setting rents. That is for individuals to determine. I do not accept the argument that the thousands of Western Australians who own properties do not care about the rent. I have had investment properties—they are a little bit light on now.

Ms R. Saffioti: About 50 per cent lighter!

Mr T.R. BUSWELL: It is part of life's journey. I have had them. Do you know what? I actually like getting the rent cheque, because it helped do a whole lot of other stuff over and above maintaining the property.

Mr C.J. Tallentire: Did the rent cheque pay for the mortgage?

Mr T.R. BUSWELL: I do not necessarily think I need to be divulging my exact personal status.

Ms J.M. Freeman: Why use it as an example if you are not going to divulge it?

Mr T.R. BUSWELL: What I am trying to say is that people who invest in property like the rent. One of the reasons people buy an investment property is so that they can rent it to somebody. The tenant pays rent to the owner, who then uses that for stuff. Part of that stuff is paying the costs. Some of it is kept by the owners. The bit that is kept is the rate of return on the investment. There is also a capital appreciation. It is what happens. With shares, people get a dividend and they get some capital growth; they get some devaluing from time to time. If people invest in a government bond or stick their money in the bank, they get a rate of return. The rate of return is important, member for Nollamara. It is perhaps not important to everybody.

Ms J.M. Freeman: But your rate of return is your appreciation. That is what you are overlooking.

Mr T.R. BUSWELL: I am not getting up again on this issue, because I seriously think on a policy spectrum here, this is not something we are going to do. I can also tell the member for Nollamara that the state Labor Party would never put this forward as a policy direction—not in a pink fit is it going to happen. We are getting to that part of the bill at which we start having these peripheral arguments about stuff that is never going to happen in WA. I do not think they are ever going to happen. Whether it is the existing Leader of the Opposition or any of the people who may potentially replace him in due course after the next election, I cannot see that changing. I just do not think it is going to change.

Ms L.L. BAKER: Minister, I ask for some detail. Because this is such a fraught area about such vulnerable people, I would like to ask an explanation. This is again an issue that I genuinely do not know how long these things take. The minister referred to when a tenant wants to complain that a rent increase is astronomical, as indeed we saw during the last boom. I was at the Western Australian Council of Social Service then, and tenants were coming to us and telling us that the landlord had increased their rent by 200 per cent or 300 per cent in one three-month period. These increases were happening every six months during that time frame. The minister has referred me to a couple of other ways that a tenant might choose to complain about this or put something forward. Can the minister explain to me how long it is likely to take a tenant to lodge a complaint with the Small Claims Tribunal and have a decision taken? Depending on that answer, what would the tenant do; would they stay in the house until such time as a decision was taken? By that time, both the landlord and tenant would probably be pretty cranky because neither would have an answer. Can the minister explain that? It sounds a bit the same as when he said that it is dreadful to leave someone in a tenancy for 60 days if they have been given a warning because they might trash the house. It sounds as though it has the potential to do the same thing if we are not careful. Can the minister enlighten me on how long that is likely to take; that is, whether he has done some risk assessment of it?

Mr T.R. BUSWELL: I will deal with that issue first, because then I want to deal with that part of clause 27 that relates to section 30 of the act. If the rent gets put up and the tenant is of the view that it is unfair and they want to have that matter dealt with, they can lodge a complaint straightaway, pay $21.60 and get it done. The advice I have received is that, through the Magistrates Court sitting, I assume, as the Small Claims Tribunal, it will be two to three weeks.

Ms L.L. Baker: That's good.

Mr T.R. BUSWELL: That is what I think. It will be two to three weeks roughly speaking, with the capacity for any order to be backdated. I assume that if a tenant's rent goes up, it is done. The tenant might not pay it as a protest, but inevitably it will be dealt with by the court pretty promptly one way or the other. It can be backdated.

With our wonderful policy wanderings around rent fixing, we got a bit caught up with a couple of other aspects of clause 27 and what section 30 of the act does. Clause 27 seeks to insert in section 30(2) the words —

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

That is for fixed-term agreements. A lot of the agreements are fixed-term agreements. This provision is effectively saying that when a tenant signs an agreement, either the amount of the increase or the method for determining the method of the increase is to be established in that agreement.

Ms L.L. Baker: Is that for the period of that tenancy?

Ms J.M. Freeman: For 12 months.

Mr T.R. BUSWELL: It depends on the length of the fixed-term tenancy. Some tenancies might be for six months; some might be for two years.

Ms J.M. Freeman: Usually, the maximum period of most fixed-term tenancies is 12 months; isn't that the case?

Mr T.R. BUSWELL: No. I know people who have 18-month tenancies. I know people who have six and seven-month tenancies. I think it really depends on the circumstances of the property. From a tenant's point of view, there are advantages around rent to taking a longer term fixed tenancy. However, there are disadvantages around changing circumstances—that is, if a tenant wants to nick off, they are stuck with an agreement. I think this perhaps highlights some of the balancing issues that we have talked about previously.

Clause put and passed.

Clause 28: Sections 31A and 31B inserted —

Ms J.M. FREEMAN: Just briefly, clause 28 seeks to insert proposed section 31A. I probably should know this, but is this for social housing or for general housing, or have I just read it wrongly?

Mr T.R. Buswell: It is for both.

Ms J.M. FREEMAN: Can the minister give me an explanation behind it?

Mr T.R. BUSWELL: An example may be someone who has employment-related housing. The person is provided with a house and a percentage of their income is the rent.

Ms J.M. Freeman: It's for social housing. Is that for social housing so that you can amend rents that you have not previously been able to amend?

Mr T.R. BUSWELL: No; it has always been possible. It is not about that; it is about making it clear that it can be every six months and that 60 days' notice must be given.

Clause put and passed.

Clauses 29 to 31 put and passed.

Clause 32: Section 34A inserted —

Ms L.L. BAKER: Clause 32 raises a number of issues for me. It is about the manner of paying rent. People who make regular payments may have left in the bank what they think is the right amount of money to cover their regular payment, but then something goes horribly awry and they end up with $5 less than there was meant to be and the bank sends them a text message saying, "We've charged you $15 because you've overdrawn your account and we can't make this payment." The extra bit of money is then refunded so that they can make the payment, but then they realise it is the payment plus $15, so they still do not have enough money in the account to pay the rent. This happens to people quite frequently, and very frequently to vulnerable people on low incomes as they struggle to balance their very tight budgets. Clause 32 seeks to insert proposed section 34A, which provides that tenants may pay their rent in the form of cash or a cheque or by agreement with the lessor. Currently, some forms of rent payments required by lessors result in fees and charges being incurred by the tenants, effectively increasing the cost of renting. In some cases that can be significant for people on low incomes. I am aware that members have received calls about tenants who have breached their tenancy agreement and have rent arrears when the fee or charge was not met—that is, the overdrawn fee or charge for not making the payment.

Mr T.R. Buswell: The fee or charge that the lessor incurs when a dishonoured cheque is presented?

Ms L.L. BAKER: Yes; that is correct. That charge has not been met and that is when they have lost the tenancy. That is an action that is currently not permissible under the act. The opinion I have been given is that the New South Wales Residential Tenancies Act provides a guide on rental payments. It states that a landlord or a landlord's agent must permit a tenant to pay the rent by at least one means for which the tenant does not incur a cost other than the normal bank fee usually payable for the tenant's transaction, and that this be reasonably available to the tenant. In short, after a long explanation, why can this bill not reflect a similar provision so that lessors provide tenants with at least an option of rent payment that has no cost to the tenant. I am sorry; it was a bit complicated, but I thought I should explain it in some detail.

Mr T.R. BUSWELL: That was a good question. Basically, the act provides that the tenancy agreement is to stipulate the form of payment. Proposed section 34A will basically provide that the manner of payment will be cash or a cheque, or anything else that is generally to do with electronic stuff. The member is saying that that does not prevent the tenant from being required to be in an arrangement whereby they may incur fees if they get in an awkward situation.

Ms L.L. Baker: That's correct.

Mr T.R. BUSWELL: I suppose my question is: what mechanism would protect them from getting in that circumstance?

Ms L.L. Baker: It clearly is available because the New South Wales Residential Tenancies Act 2010 provides that advice that there are alternatives.

Mr T.R. BUSWELL: I am trying to think it through. Let us leave the credit card aside; I do not think that is a good way to pay rent, but some people may do it that way. If people pay by direct deposit, they would not be able to move the money. So, it is really only a cheque. I reckon about the only way that this would happen—I am no expert on financial transactions—is if I wrote a cheque and gave it to my landlord and my landlord put it in the bank and it was dishonoured, because I would get charged a dishonour fee.

Ms L.L. Baker: Then you lose your tenancy.

Mr T.R. BUSWELL: This would arise only when the tenancy agreement requires the payment to be made by cheque.

Ms L.L. Baker: I believe you. That sounds logical.

Mr R.F. Johnson interjected.

Mr T.R. BUSWELL: Someone could give it a go. I am finding this a bit awkward to get my head around, but if the tenant does not want to pay by cheque, ultimately they do not have to sign up to the lease agreement.

Debate adjourned, pursuant to standing orders.