RESIDENTIAL PARKS (LONG-STAY TENANTS) AMENDMENT BILL 2018

Second Reading

Resumed from 21 November.

MR S.J. PRICE (Forrestfield) [10.00 am]: I rise to contribute to the debate on the Residential Parks (Long-stay Tenants) Amendment Bill 2018. I would like to acknowledge my mother and my sister, who are in the Speaker's gallery today. It is lovely for them to join us.

The ACTING SPEAKER (Ms M.M. Quirk): Member, she is too young to be your mother!

Mr K.M. O'Donnell: All the way from Forrestfield!

Mr S.J. PRICE: No, from Harvey actually.

I start by thanking the Minister for Commerce and Industrial Relations and his staff for the great work they have done on this bill. Unfortunately, it has been hanging around for quite a while. A lot of constituents in my electorate have been very active in lobbying me to ensure that we make the changes from the review as quickly as possible, and we have certainly tried to do that with the bill before the house today.

A number of facilities within my electorate are impacted by the Residential Parks (Long-stay Tenants) Act. This bill will go a long way to assisting future residents of those facilities. I will go back to when the original bill was first introduced in 2005 and read from the explanatory memorandum. It states —

> Residential park developments are particularly attractive to retirees and other groups in society that are looking for a shared community living lifestyle as an alternative to strata developments and retirement village options
>
> It should also be noted however that the newer style residential parks are in fact caravan parks also accommodating in some circumstances tenants often from vulnerable sections of the community, such as low-income families and the elderly.
>
> The purpose of the Residential Parks (Long-stay Tenants) Bill 2005 (the Bill) is to regulate the relationship between an owner of a residential park and a tenant, where:
>
> - the resident tenant owns a dwelling and leases a site in a park (via a "site-only" agreement) or
> - the resident tenant leases both a site and a dwelling in a park (via an "on-site home" agreement).

The Residential Parks (Long-stay Tenants) Act 2006 commenced operation on 3 August 2007 and there was a statutory obligation for it to be reviewed. Accordingly, the then Department of Commerce commenced the review of the operations of the act in 2012 and concluded it in 2014. Since the review had been undertaken, there had been no further movement on it by the previous government. That resulted in a delay in some important changes being made, and this has had a significant impact on people who have gone into these facilities since the review was completed. Changes will not be made to agreements currently in place, as the provisions of the bill are prospective.

According to the minister's second reading speech, the purpose of this bill is to amend the 2006 act and to implement the recommendations of the statutory review of the act that was undertaken by the previous government. The act regulates tenancy agreements between park operators and long-stay tenants in residential parks. The act covers both tenants who rent a site and an on-site home and tenants who rent only a site from the operator and own the relocatable dwelling positioned there. One of the key elements of the review, and a key concern of the residents of the parks, is the certainty of contracts, and that has been addressed in the bill. Certainly, the ability of people to have a longer tenure of contract in a residential park is extremely important to them. It is something that has been overlooked previously.

Essentially, parks may be on a piece of land that was, or still is, a caravan park. At the time it was established, it probably had a reasonably low land value compared with the value of other types of accommodation, and therefore the owners were able to purchase the land at a reasonable price and establish a business to generate an income. Over time, as the city has grown, these large plots of land have certainly increased in value and have become attractive items. A lifestyle village may have 300 relocatable houses, but those residents essentially lease the ground that those relocatable houses are on, so the ground beneath them can be sold. To highlight that point, I refer specifically to the National Lifestyle Villages Pty Ltd village in High Wycombe. I thank Terry Izzard, Noel Hunt and Richard Cleveland for their interest in this area. They have provided me with a brief history of National Lifestyle Villages Pty Ltd. It was founded in 1999. In 2008, NLV borrowed $40 million from Navis Capital Partners, which is a Malaysian equity group. On 25 November 2014, private equity giant Blackstone invested $150 million in NLV and all the sites that it owned. On 23 May 2018, Navis and Blackstone sold NLV to Serenitas, which was a newly formed New South Wales–based private equity group that comes under the banner of Tasman Capital Partners.

Serenitas is in partnership with GIC, which is the sovereign arm of the Singapore government, and Serenitas and GIC are the only two shareholders. Members can see that large international equity funds are looking at purchasing these properties and I do not believe they purchase them to run the business; they are looking at the increasing value of the land on which these villages are established.

To highlight how long this has been going on, in 2014 there was an ABC News article on *The Drum* written by Alan Kohler titled "Complex contracts and the 'lifestyle village' swindle". It states —

> The latest boom is in what's called "over-55 communities", or "lifestyle communities" or "lifestyle villages". These are not actually retirement villages, as they often are portrayed to be: they are governed by state caravan park laws. They are essentially caravan parks, except you don't put a caravan on the plot of land—you buy a building that sits on it.

It continues —

> And of course, like body corporate fees in a normal strata title unit, the management fees are payable even if the unit is empty and waiting to be sold. Families are complaining that fees are demanded for months and sometimes years after the death because the unit can't be sold.

These issues have been highlighted for a very long time. The review identified the concerns of residents in this regard and has undertaken to address a lot of those issues.

The title of proposed section 10C is "Long-stay agreement binds park operator's successors in title". That has been included to deal with that issue. When the plot of land on which a park is situated is sold, the longevity of arrangement between the lessee and lessor cannot be expunged as a result of the sale of the park. That also links into other sections of the act by which agreements can be terminated for only particular reasons. The issue of security of tenure has been highlighted over a very long time. The way this bill has dealt with that has been welcomed. There is a theme running through all of these things that I will raise towards the end of my speech. For now, I will continue to highlight the benefits of the bill.

Another concern has been the complexity of the contracts. They are very legalistic and they are not all uniform. Within the same park there can be different contracts, with different terms and conditions applied on the residents through these agreements to stay in the park. The bill proposes to have a standard agreement with standard terms included to help alleviate that complexity and provide a bit of continuity across different facilities. Once again, that is very welcomed by residents of these parks. Another important aspect of the common terms and standard contracts covered in the bill is that there is to be no contracting out of the terms. That is important. Agreements in place at the moment have the ability for an operator to exclude certain terms and conditions. With standard contracts with standard terms, the operator will be an unable to contract out of them. That increases protections for residents of the park.

Flowing on from that is termination without grounds. This was essentially a method of removing people from their homes. If the land on which the park was situated was sold and someone wanted to use it for a different purpose, contracts could be terminated without any specific terms. A new provision in the bill prohibits the termination of contracts without grounds. Once again, that addresses a very current concern of residents.

A major thing being addressed is the ability to sell one's home. A lot of the current contracts have a restriction on the owner selling their relocatable house within a lifestyle village. That means that if someone's health deteriorates, for instance, and they have to go into a nursing home or an aged-care facility, they are still contracted to pay their weekly fees or outgoing costs associated with staying in a residential park until such time as the home is sold and the contract is terminated. Some contracts say that the resident cannot sell their park home; only the operator can sell the park home. The operator has no incentive to sell the home, because they still get their income from the empty house sitting there. Unfortunately, when someone dies or gets sick, as I mentioned, their empty house still generates income for the park operator, yet the owner or estate cannot sell it; they have to rely on the park operator to sell it. The bill amends section 55 of the act so that a tenant's right to sell a relocatable home on the site may not be excluded from the contract. That will give tenants the ability to sell their home. They can still appoint whoever they want to sell it, but they will have the choice. The operator will not be able to restrict the tenant from doing that. That also goes into the area of deceased estates. I will touch on that a bit more towards the end my speech.

There is also an improvement in the bill relating to disputes with residential contracts through the identification of matters that the State Administrative Tribunal may consider. Park home owners, the residents, now have a broader range of disputes they can take to SAT for arbitration. That then deals with tenants' ability to deal with unfair rules and requirements operating in the park. That is another area of concern that has been addressed. That will certainly be welcomed by tenants.

There is another area we touched on that may seem insignificant, but parks are being developed all the time. When a new park is developed, the proponent goes to planning with a proposal and they have all these beautiful

schematics and diagrams showing what this magnificent facility is going to look like, and then they fail to deliver. There is a provision in the bill that deals with park operators' representations. If they fail to deliver on what they propose to build, proposed section 62D sets out orders that may be made by SAT. That is a very current and real issue with some of the lifestyle villages. This ability to hold the park operator accountable for what they say they will deliver versus what they actually deliver is once again a very welcome improvement.

Earlier, I touched on disputes with agreements, but SAT can also assist with disputes about park rules.

[Member's time extended.]

Mr S.J. PRICE: An area that is troublesome and difficult to deal with is the death of a tenant. The bill touches on that. There are provisions to deal with the park operator obstructing the sale of a relocatable home upon the death of a tenant. It is quite a complex issue. Unlike a usual house or unit, if the resident unfortunately dies and they bequeath their park home to family, the issue gets quite complicated, because the agreement to live in the park home is with the deceased. Therefore, the new owner does not have an agreement to live in that lifestyle village. The operator has a certain set of requirements but can refuse to provide a new residential agreement for that person. It gets a little bit complicated. Proposed improvements in the bill will help deal with some of these issues. If the estate or the new owner of the property wants to sell it, they will now have the ability to do so, as opposed to the operator selling it. If they want to move in, they will have grounds to appeal to SAT if the operator is being difficult, to enable the new residents to move into the home. A number of provisions in the Residential Parks (Long-stay Tenants) Amendment Bill will help to deal with that, but it is still a very complex issue.

Fees and charges, and rent reviews are ongoing concerns for residents also. Retired people, whether self-funded or living on other means of income, have restricted and set incomes. Unaffordable rent reviews and rent increases are ways that owners try to force people out of this type of accommodation when they want to use the land for alternative purposes. The bill also proposes to restrict rent reviews, which residents certainly welcome.

A lot of the bill refers to new agreements between operators and residents. The conversation about retrospectivity and prospectivity is alive and well. There are a lot of prospective benefits in this agreement for new tenants, which has come about through the great advocacy of the current tenants, but, unfortunately, they will not get to benefit from all of it. A lot of the bill will apply retrospectively to standard terms and improved ability to go to the State Administrative Tribunal on particular items. However, a lot of the key issues that concern the tenants of today are ones that tenants of the future will have to deal with it. This issue is very complex and difficult to deal with because tenancies are essentially commercial agreements between a tenant and an operator, and government does not have a role to play to intervene in commercial agreements between two parties. What I can say to my constituents and constituents of other electorates, such as Baldivis—the member for Baldivis has also been approached on this issue—is that we are willing to assist when we can. That may involve us taking an advocacy role with the park owners to help them work through the transition to the new arrangements with a standard form of agreements, but also to help them deal the issues that will be created from having two different types of tenants within one park. There will be tenants under the new arrangements who will have different requirements in their contracts, and the current tenants. It will be very difficult for park owners to try to manage that. If we can find ways for them to engage with them and to get them to voluntarily update all agreements to the standard form, with some, I suppose, more financial implications of the old agreements carried over but with the new amendments included in it, that will benefit everyone and help to deal with a lot of the angst and anxiety within the industry and the tenants who stay in these particular facilities currently. That is a work in progress.

This bill will address some of the key concerns that I outlined earlier but, as with everything, it will not make everyone happy. There will always be a need for further changes and there will always be another review. I am not sure when the five-year mark starts for the next review, but there will be an opportunity for another review and for more amendments to improve the living arrangements of those people. The idea of a lifestyle village is very attractive to a lot of people. It is an alternative to going into a standard retirement village, whether it be a small bespoke 10 or 15-property arrangement or a very large 100-plus arrangement. Lifestylers are not retirees. They have a very strong opinion that they are not retirees. They do not live in a retirement village; they are lifestylers and they get on with life. They are certainly very passionate and defensive about how they are referred to. The idea of a lifestyle village is one in which a person is still part of the community. They still have their own facilities—it could be a pool, bowling green or a community hall where regular functions are held. They are still part of a community, but they are not isolated and living by themselves. It is something that appeals to a great number of people. Another key element to it, of course, is affordability. When compared with a retirement village, it is a little more affordable. The reason for that, of course, is that a person does not own the land on which their house sits. That is probably the number one concern people have about the longevity of their tenure based on the sale of the land. That is being dealt with in this bill and it would certainly deal with every person's anxiety about this issue.

I once again thank the minister and all his staff for bringing this bill to the Parliament as quickly as they have. I thank Terry, Noel and Richard once again for their continued advocacy on behalf of the residents of lifestyle villages. I commend the bill to the house.

MR T.J. HEALY (Southern River) [10.26 am]: I also rise to make a contribution to the second reading debate of the Residential Parks (Long-stay Tenants) Amendment Bill 2018. This bill will bring peace of mind to people in my community and will help to treat them like humans. It is about respect and treating people equitably. I am very proud that Riverside Gardens Estate is in my electorate. It was formerly in the Gosnells electorate, the member for Thornlie's former electorate, and he did an outstanding job representing the interests of that community. I am very proud to now represent that community. Tales of respect, bullying and stress have come out of the delayed process of this review and legislation. This matter is also personal for me. My grandfather Bob McGregor used to be a resident of Riverside Gardens. He lived in Thornlie for many years and retired to Riverside Gardens. My family was involved in exit fees and all these processes that we have talked about. We had to live through that process and the stress when his situation escalated and he had to go to a higher level of care. I can personally identify with what a lot of families and tenants go through in the process of transferring out of Riverside Gardens. Regardless of my personal experience, I am very proud to say that I will always stand up for the residents at Riverside Gardens and throughout my community.

I extend my appreciation to a number of people. I thank Chris Tallentire, the current member for Thornlie, for his advocacy over multiple terms of Parliament. I thank Nigel Dickinson, Di Meakins, and the team at that office who have dealt with so many families and their stress. I commend Hon Kate Doust, the current President of the upper house, the former shadow commerce minister. I commend Hon Margaret Quirk, the current member for Girrawheen, the former shadow seniors minister, who was a great advocate. Of course, I also thank our current Minister for Commerce and Industrial Relations, Hon Bill Johnston, the member for Cannington, for bringing this together. I also thank former minister Troy Buswell. That is something I would not usually say, but part of my frustration with this matter did not arise during the time Troy Buswell was commerce minister; it arose during the time that Michael Mischin was commerce minister. When a grievance was raised, Troy Buswell was a man—one could almost say a working-class man—who understood how disaffected families —

Mr W.J. Johnston: Past tense.

Mr T.J. HEALY: Past tense, as the minister says. He understood how this matter really rocked families and he actually did his best. I really do commend Minister Buswell for his part in taking up the matter as the then minister for this portfolio until 2013.

Members and members of the public may not be aware that most people in my community own their house and land. Residents in Riverside Gardens and applicable properties own their houses, but they do not own the land, and that creates another set of circumstances. Minister Buswell raised that set of circumstances for people who own the land but do not have as much control and are often bound by how park operators run their business, which is difficult. I quote from the grievance that the member for Thornlie raised in 2011. The reply from then Minister Buswell in August 2011 states —

> It is worth reflecting on the residential parks act for a second. I was in the chamber when that was passed in the Parliament the first time. … It would be fair to say that experiences that have been brought to this house by a number of members over time have shown that what the bill promised to deliver has not been delivered.

The minister then sought to correct that wrong.

Riverside Gardens Estate is owned by an eastern states group named Hampshire Village, but for a time that was quite conflicting; it was owned by Fourmi, a company run by a gentleman named Billy Walker. Billy Walker's business practices caused a lot of stress to the 300-plus —

The ACTING SPEAKER (Mr I.C. Blayney): Member, I might just mention what was said yesterday—that if this individual is involved with current court cases, it is probably better that you do not mention him.

Mr T.J. HEALY: I will not refer to the Supreme Court. It was referred in March 2014 and it is still in that process. I will not refer to that, because it is currently mired in that court process, but I am just going to discuss the individual who owned the property. As per the standing orders, I will steer clear of the court proceedings, if that is acceptable.

The ACTING SPEAKER: I will be guided by the Clerk.

Mr T.J. HEALY: The company invented exit fees and entry fees that were not in the contract. The fees went from $5 000 up to $10 000, $15 000 and $20 000. It was a take-it-or-leave-it approach. When a person lived in the lifestyle village and sought to move on with a partner, to move to another lifestyle village or to a different level of care—as I said, my grandfather's care escalated and he needed a fast resolution—the approach was to take it or leave it.

The company would not sell that person's property until they agreed to pay the $20 000 exit fee. It was not written in a contract; it was not written and provided. I move away from that to say that my residents signed contracts coming in. They knew that they did not own the land; they owned the house. They knew what they could do. Over time there were queries about whether they could put solar panels on roofs, and how the council could deal with them. They understood all of that. What was frustrating for my residents was that legislation existed, but there was no written exit fee, and because it was not written down, residents wondered why they had to pay it. The owner would say, "Take it or leave it. We won't sell your property. You can't leave." There was an opportunity to go to the State Administrative Tribunal, but my residents could not afford the $20 000-plus legal fees to make a claim. My grandfather's escalating care meant that my family needed to pay the next bond, the next level of care. Even for families that did not have a worsening health situation, good hard-working, working-class families are not in a position and do not have that spare amount of money to mount a court case and see that through. They approached Consumer Protection. The previous government did not give Consumer Protection the teeth that it needed to prosecute the law. It was quite clear that the rules were there that a company could not invent an exit fee, but again, if a person did not have the funds, they were not able to do that.

I will quote the former Parliamentary Secretary to the Minister for Commerce, the current member for Carine. I will refer to the member for Thornlie's statements in proper later. The former parliamentary secretary acknowledged in a 2016 grievance that Consumer Protection received a number of complaints that the new owners—after Fourmi had moved on—Hampshire Villages, were trying to force the existing residents to sign new contracts that included these things. He also acknowledged that the laws were not clear. I am acknowledging *Hansard* from the former parliamentary secretary, that these new contracts would include the $20 000 exit fee. These were very frustrating again for residents in my community.

Leading into the state election, I was a Gosnells councillor and a candidate for Southern River. With Chris Tallentire, the then member for Gosnells, now Thornlie, we held a forum for Riverside Gardens residents at the Gosnells Bowling Club. The current Premier, Mark McGowan, attended. We made a promise that we will fulfil today. We did not promise that everything would be fixed; we promised that we would introduce this long-delayed legislation. The residents were sceptical because the legislation had been delayed for so long under the previous government, but the current Premier, the member for Thornlie and I promised that if we were elected in March 2017, we would begin a process to introduce legislation to address this. I commend the Premier and the minister for doing the legwork and the work to bring this together. We fulfil that promise today, and tomorrow and always we will fulfil our promises to Riverside Gardens residents.

My residents should know that this bill contains a number of provisions. It does not address all the things that we need, but it is a good move forward to deliver voluntary sharing arrangements—the more formal term—not necessarily exit and entry fees. My residents should know that through this legislation, the State Administrative Tribunal will be given the power to make directions and orders, which was lacking before. This bill will provide certainty of contract. If it is not written down, it is not written down. After signing a contract, new provisions cannot be created. This bill will improve the disclosure obligations of a park operator. A new resident moving in cannot necessarily be given a thick piece of paper and asked to sign on the dot right then. They must take a minimum of five days for families to read and understand what they are getting into. There will be clarity on exit fees.

I do not believe that Hampshire Villages is a bad operator, but I understand that some operators may choose to make questionable operational decisions. Here is a warning to those park operators: the State Administrative Tribunal will determine when there is a breach of disclosure. It will determine if a party, a resident or a park operator engages in unconscionable, misleading or deceptive conduct; makes false or misleading statements or representations; or when there is physical force or harassment. I do not like bullies, and for operators that choose to be bullies, this bill assists vulnerable residents. I acknowledge the 2011 grievance, and I acknowledge the 2016 grievance, which I was here for. We hired a bus for people to come in and hear the then member for Gosnells give his grievance to the parliamentary secretary. We had a wonderful bus full of residents who have endured this for years. Unfortunately, there were so many residents, like my grandfather, who have since moved on, who were subject to the provisions of the contracts and the operators of the day. We had a great group of activists and residents who came with us on the bus and sat in the gallery. We were all so proud to hear the member give his grievance and stand up for us.

I do not mean to disparage Hon Michael Mischin, but by that stage he had been the minister since 2013, and it would not be uncommon for us to hear that that minister would generally stall and delay the process. I will quote some of the statements made by the fantastic member for Thornlie, the then member for Gosnells, in that grievance —

> The Barnett Liberal–National government has allowed the Department of Commerce to be so under-resourced that it cannot run reviews of important legislation, cannot draft amendments to that

> legislation, and it cannot even look after vulnerable people who are being done over by powerful landlords such as Fourmi. This is an outrageous situation!
>
> We have had five years of inaction and a failure to do the job of government, which after all must be about stamping out sharp and dodgy practices. Exit fees of $20 000 have been charged and we do not know how many people have been charged this fee. … Individuals cannot take these sorts of matters to the Supreme Court knowing that they have to pay about $20 000 to get in there and recover $20 000. Government should have stepped in but it has not.

Again, there is a consensus that under Minister Mischin as Minister for Commerce, the process was stalled. There was a statutory review in 2012 and, of course, post the March 2013 election, Hon Michael Mischin became the Minister for Commerce. The member for Girrawheen often tells an interesting story about Hon Michael Mischin's approach as a minister. Hon Michael Mischin and the member for Girrawheen were walking in the courtyard and the member for Girrawheen saw a snail crawling along. The member for Girrawheen stamped on the snail and killed it. Hon Michael Mischin went, "Thank God! It's been following me for months!" The process of government is really important in this sort of legislation that deals with vulnerable people. Government needs to act. It does not have to be tomorrow or next week, but a process with years and years of delays is frustrating.

I believe that this bill balances the interests of tenants and park operators. I was very happy to doorknock. I doorknocked about 100 doors a week. I doorknocked about 150 homes, about half of Riverside Gardens Estate, earlier this year and had discussions. The objects of this bill are very, very welcomed. Residents are very pleased that the McGowan Labor government has kept its promise. We have delivered on our election promise. However, residents acknowledge that we still need to address what happens when residents pass away or seek to move out and they cannot sell their house and rent is still charged. They are still slightly frustrated at the process and their representative groups' ability to deal with the park operators about other charges and fee increases. Residents are also very interested in having more flexibility on who can sell their home and not having to go through only the park operator.

Again, members, we have delivered on our election promise. We will always do that. I am very proud to be part of a government that does that. I will always stand up for Riverside Gardens residents. I want to put on record that I will always work with park operators. I look forward to working with Hampshire Gardens and Riverside Gardens once this bill has passed. I want to talk to all the residents, because they will be in different stages because of when they arrived and different parts of contracts. It is important that we can all sit down together. I invite the operators and residents of Hampshire Gardens to a public meeting. I am happy to sit down with them, talk it through and make sure that we are all aware of all the new obligations, so that everyone is protected.

MR W.J. JOHNSTON (Cannington — Minister for Commerce and Industrial Relations) [10.44 am] — in reply: Firstly, I thank all members who have participated in the debate on the Residential Parks (Long-Stay Tenants) Amendment Bill 2018. It has been one of those excellent opportunities when Parliament is at its best and it is not a matter of politics, but rather a matter of dealing with important legislation. Even though only about 20 000 people in long-stay caravan parks are impacted by this bill, which is a small number of people compared with the 2.5 million Western Australians in total, it is nonetheless very important.

I want to reflect quickly on a couple of things. The first is the report of the Economics and Industry Standing Committee, which was chaired by the Leader of the Opposition. I was the deputy chair of that committee and the member for South Perth, the member for Scarborough and, as he was then, the member for Collie–Preston were participants in the committee; the member for Mandurah was co-opted to participate in the committee. We went the length and breadth of the state and spoke to park residents. It was a great inquiry. The terms of reference were probably a bit broad, so it ended up being a very long report so it is a bit hard to read. However, the sections in there on long-stay arrangements were very well thought out. I would say that, would I not? Again, it was a bipartisan committee and, as I said when I interjected on the member for Hillarys yesterday, the contribution of Troy Buswell has to be noted because he responded to the inquiry. For example, there were issues about land tax treatments, and he quite quickly brought legislation to Parliament and had that dealt with. He amended the 2006 act and provided additional protections to people. He responded to the inquiry very well and I thought he did a good job. Unfortunately, I cannot say the same continued after the re-election of the Barnett government in 2013. I think things slowed down and there was none of the push that we had seen from Hon Troy Buswell when Hon Michael Mischin came to the position.

One of the recommendations of the Economics and Industry Standing Committee was that when we introduce new regulations, we need to think about the impact on the park owners. One thing that was pointed out was that residents in Queensland had much more extensive rights, but when those more extensive rights came in, the number of opportunities for long-stay tenancy was reduced because park owners got rid of long-stay tenancies because it became

too complicated for them. One of the challenges is that if we introduce regulation that is overly onerous, we can end up cutting off the opportunities for park homes, because the owners may simply use the time between the introduction of the legislation and its enactment to act under the existing legislation and remove tenants. That is one of the challenges, because we need a balance. That is the symbiotic relationship between the resident and the park operator.

I want to go through some of the issues raised by members. The member for Hillarys asked about the timing of the bill and getting it done now and in the upper house later. I make the point that the "Decision Regulatory Impact Statement: Statutory review of the Residential Parks (Long-stay Tenants) Act 2006", from which this legislation arises, was released in July last year. The community has had a lot of opportunity to give feedback through that process, and stakeholders were kept up to date during the drafting process. I note that there has been a number of questions in the upper house about where the legislation is at. It is true that the parliamentary drafting process is often much slower than I would expect. Nonetheless, we have been trying to get this done as quickly as we can. Yes, I assume it will be passed today. It will not be passed in the other chamber before Christmas, so that is a bit of a further delay and it is an opportunity for any further discussion. But, as I said, we have had the statutory review, we have had the regulatory impact statement process, and now we have the bill in Parliament. There has been extensive opportunity for consultation.

The member for Hillarys asked about the timing of commencement and dealing with regulations. He is basically right. It will take six to 12 months for everything to be complete, because new disclosure materials, standard contracts dealing with permitted fees, the requirements for selling agency agreements, the requirements for content and the manner in which park rules may be made and amended and a whole lot of other forms, notices and other things will have to be prepared. The Consumer Protection division of the Department of Mines, Industry Regulation and Safety is onto that already, but we will need time to draft all those new activities and regulations. We will push it along as quickly as we can, but the member is quite right—that is about how long these things take. If we get this legislation through the upper house in March, it might be September or perhaps a little later before the new regime is fully in place. The member is quite right—getting drafting priority is also an issue as it will have to go back to the Parliamentary Counsel's Office for the drafting of the regulations. Some steps will still need to be taken. We can explore that further in the consideration in detail stage if the member wants to.

The member for South Perth raised the question of the termination of agreements on the sale or redevelopment of the park. It is fair to say that there will be different arrangements depending on whether a person has a fixed-term or a periodic contract agreement. At the moment, the park operator can terminate a fixed-term long-stay agreement before the end of the fixed term on the grounds that the park is to be sold with vacant possession. Although compensation will be payable to tenants, it will not necessarily be much comfort if they have put a lot of money into the park home in the expectation of being able to stay for the full duration of their occupancy. It may well be quite difficult. They will also have to find another park home to take their relocatable house to. Under this legislation, a fixed-term agreement will not able to be terminated on those grounds before the end of the term of the agreement. This will apply to only long-stay agreements entered into after the commencement of the amendments. If that was not the case and if the park were quite valuable, operators would be incentivised to terminate agreements prior to the passage of this legislation. Not recognising the interests of the landlord as well as those of the tenant could have unintended consequences. Of course, there are already protections about the length of time—180 days for park home owners and 60 days for people who are renting accommodation as well as the land.

Arising from what happened at Kingsway Tourist Park all those years ago, Consumer Protection and the Department of Communities have protocols for assisting tenants in the event of park closures. The bill also requires operators to notify the Commissioner for Consumer Protection if the park is to be closed for redevelopment, to allow the government time to prepare and assist tenants. Again, as these agreements roll over, increased protections will be available and both parties will understand the conditions of the agreement they are entering.

The member for Vasse raised some interesting issues on the opposite side to those raised by most other members. The first was the application of this legislation to existing tenants. She raised that on behalf of the Park Home Owners Association of Western Australia. Let me make it clear that some of these provisions will apply immediately to existing agreements. For example, the removal of the right to contract outside the standard terms will apply to all agreements, including existing agreements, and operators will no longer be allowed to contract out of those requirements, as they can do at the moment. That will apply to all agreements—even existing agreements. As I mentioned before, protection of the term of agreements from redevelopments will apply as agreements are entered into, rather than to existing agreements. However, protection from the termination of long-term agreements, such as the removal of without-grounds terminations, is a benefit that will apply to existing residents. Some transitional elements will have to be dealt with.

Having raised that issue on behalf of residents, the member for Vasse then raised contrary arguments on behalf of the park owners about without-grounds terminations. Let me make it clear: we are removing the right for without-grounds termination. It is very important, because residents say that that device has been used to undermine their capacity

to negotiate through the residents' committee and directly with park home operators. Requiring operators to have a reason to terminate the agreement is a significant improvement for the rights of tenants. I have met with the park operators group and visited park owners at a number of sites. My staff have visited even more and Consumer Protection is regularly in contact with them, so we understand the issue that they are raising. They have used this provision to deal with unruly tenants who make life hard for other tenants. They say that sometimes other tenants ask them to use these arrangements However, other provisions already allow operators to deal with unruly tenants, so operators should use those provisions. We are trying to make that process as streamlined as possible. It is imperative that we provide protection to people who live in long-stay caravan parks who are often vulnerable, and to give them the right to be treated fairly. I think the obligation to provide a reason for the termination of an agreement is pretty fundamental. This has been raised regularly by residents. They say that this provision is used to intimidate residents so that they will not stand up for themselves and not take the rights that they have under the existing legislation.

The member for Darling Range asked for some clarity about the introduction and amendment of rules. I asked some questions by interjection to try to get to the bottom of what she was trying to say. The act already has a provision about rules. Those rules are created by park owners. This legislation will limit the capacity for those rules. This provision is entirely in the interests of the residents, because under the legislation we currently have, rules are set unilaterally. We are providing a process that will allow residents to have input into them. I make it clear that the rules are still imposed by the operator, but they have to allow residents to be included in the decision-making process. The legislation will also allow the State Administrative Tribunal to deal with these matters and to make orders if they are considered unreasonable or in breach of the act. This is an important benefit for residents. The point I make again is that, yes, these rules are made by the landlord, but for the first time ever they will have to take account of the residents' interests. It is a significant improvement to the current arrangements.

Mrs L.M. Harvey: How would that liaison happen?

Mr W.J. JOHNSTON: It is set out in the Residential Parks (Long-stay Tenants) Amendment Bill 2018 and will go into the appropriate section of the act—the member should read proposed section 54D if she likes.

The next thing the member for Darling Range raised was the question of capping rents in line with the consumer price index. I will make an offer to the member: if the Liberal Party agrees with CPI capping for residential tenancies and park homes, the Labor Party will bring in the legislation as quickly as it can. Is that the Liberal Party's proposal?

Mrs L.M. Harvey: I cannot speak for everyone. I am just asking the minister's position.

Mr W.J. JOHNSTON: I am just trying to clarify things. The member has raised it as an issue. If the Liberal Party says that we should cap residential tenancy rent to CPI, I will get that legislation prepared as quickly as possible. Is that what the member is saying?

Mrs L.M. Harvey: I will have to come back to the minister on that one.

Mr W.J. JOHNSTON: All right.

Mrs L.M. Harvey: Am I not allowed to ask if the government is interested in this? These are questions that have been raised with me.

Mr W.J. JOHNSTON: As I say, if that is the Liberal Party's position, I will introduce the legislation as quickly as possible and get it through the Parliament. The member just needs to come back and let me know if that is what she wants. I look forward to hearing back from the Liberal Party on that issue.

This bill does not cap rent increases to CPI, but it requires the park owner to specify the mechanism by which rents will increase at the time the agreement is entered into and does not allow them to swap from one style of rent review to another. They cannot say in the agreement that it will be, for instance, five per cent or CPI; they have to make a decision at the time they sign the agreement with the tenant. If they choose, for example, a three per cent increase, they have to tell the tenant what the impact of that rent increase will be over time. That is a matter of disclosure. Let me make it clear: the reason the Liberal Party will come back and reject CPI rent increases is because that would completely undermine current arrangements about investment in rental properties in Australia. There are capped rentals in other parts of the world. Every time I have had a discussion with anybody who represents investors in the residential tenancies industry, the first thing they say is, "Don't look at that stuff they do in Germany, Berlin and New York because that will destroy the rental industry." I imagine the member for Bateman would come in here and say that if we cap rents, we will undermine the whole rental industry in Western Australia. Going by the argument that he is currently having with the Treasurer about whether we support the changes to negative gearing, imagine what he would be yelling at us across the chamber if we imposed CPI caps for rentals on residential tenancies! I would be very happy to do it because I understand the merits, but I would only do that if we were able to do it across all residential tenancies, because it would be unfair otherwise. People oppose it for a range of reasons.

Mrs L.M. Harvey: Is the minister saying that it would go further than our seniors?

Mr W.J. JOHNSTON: I am saying that it is not done in Australia because investors do not want it. If the member is changing sides and she is not going to support the Liberal Party's position of the last —

Mrs L.M. Harvey: The minister is now blurring the line.

Mr W.J. JOHNSTON: No, I am not.

Mrs L.M. Harvey: We are talking about residential parks and seniors —

Mr W.J. JOHNSTON: Yes, residential parks and residential tenancies are the same.

Mrs L.M. Harvey: — who are on a pension.

Mr W.J. JOHNSTON: Yes, but I am saying to the member that there are some seniors on the pension who rent flats and there are others who rent commercial properties. In fact, if the member looks at the situation, the most vulnerable people in society are pensioners who live in private rentals. If the member is saying to me that we should extend that protection to the most vulnerable people in society, I agree with the member and I will come back into this place and introduce the legislation immediately. But I will do that only if the Liberal Party asks me to, because up until now, every time the Labor Party has talked about rent capping it has been the Liberal Party that has opposed it. If the Liberal Party is changing its position for the first time since 1945 and if it is asking us to go to rent capping, I will bring in the legislation, but the member has to ask for it because I do not want to be caught out arguing for rent capping and then having an argument from the Liberal Party that we are undermining the interests of landlords. I look forward to the member coming back and telling me what she wants me to do, whichever way she chooses. At the moment, this legislation does not include CPI capping because it would be incredibly controversial. However, we are making it transparent so that people know what they are getting into. The member is quite right: a five per cent rental increase has a doubling period of—is it about nine years? Is that about right? No, it is 18 years, because a 10 per cent increase would take eight years, so the five per cent increase is going to be double in about 16 or 17 years. If there is an above-inflation increase of three per cent, rent is going to increase by 50 per cent after about 15 years. It is a real issue and residents need to take careful account of it. We are not introducing a cap, but we want the landlord to tell the tenant what is going to happen so that they can see what the impacts will be. The member is absolutely right: if the rent increases faster than the pension, an increasing amount of the person's income will go to the landlord. Indeed, it has not happened here in Western Australia but there have been investment projects on the east coast that have put out prospectuses talking about their five per cent rental increase and showing the future income stream from the investment, which is based on the idea that pensioners are going to pay 60, 70 or 80 per cent of their pension to the landlord. That is clearly not a successful business model. A person is going to end up in payment agony. I agree that this is inadequate, but if the Liberal Party is changing its position to support rent capping, I will bring the legislation back straightaway, but it is not in this legislation. What is in this bill is proper disclosure so that tenants can make a decision on whether they can afford those future rent increases.

There was a question about GST. GST applies under commonwealth legislation and the rules for commonwealth GST will continue to apply. There is no change to that in this legislation; it does not impact GST at all. The development of these lifestyle villages without any overnight accommodation is something that has happened over the last 10 years, but this actually interacts with the Caravan Parks and Camping Grounds Act—that is the way it is. It is not unusual, as the Leader of the Opposition explained. One of the findings of the inquiry was that with regard to mixed-use villages, it is very important to their business model that there are some long-term tenants, particularly in the south west, because business is very peaky. Nobody uses a caravan park in Albany in the winter to have a holiday, but the parks are quite busy in summer. The park owners need a regular income to carry them through the winter months, so they let out some on-site vans to long-term tenants. There is no GST impact on that; it is exactly the same today as it will be tomorrow. It is not covered by this legislation in any way.

The member for Darling Range then raised the question of what happens on exit because of death or other permanent vacancy of a site. In the notes given to me, the words the member used were about retirement villages. I just make the point that although long-stay parks often have retirees in them, they are not, as the member for Forrestfield pointed out, retirement villages. Retirement villages are covered by separate legislation. We will come back as quickly as we can to amend the retirement villages legislation, but this is the Residential Parks (Long-stay Tenants) Amendment Bill 2018.

There are two separate issues here, because there are two different types of long-stay arrangements. One involves the land only, and residents own their own building, which they place on the land. The other is an arrangement in which the building and the land is rented to the resident by the park operator. With regard to the first arrangement, let us assume that I move into a lifestyle village and I own the house that sits on the land that belongs to the landlord. I am paying rent for that, but then I die. The problem for the landlord is that even though I have died, my

house is still sitting on their land and they cannot rent it to someone else. There is an interest for the operator in obtaining rent for the vacant property because it is their land to which the late tenant was contracted to gain access, on a particular basis that was understood by the tenant. It can be seen that the operator has an interest in what happens to the land. The landlord has a legitimate interest in continuing to charge rent while the home remains on site, so automatic termination on death is not actually an option. That would be to say that only the interests of the tenant are important in the transaction, whereas of course we have to accept that the interests of the landlord are also important. If we ignore the interests of the landlord, they will make their investment decisions on that basis, which will make their investment harder.

On the other hand, there have to be strong obligations on the operator to ensure that the deceased tenant's building can be dealt with. There will now be new obligations on the operator to not obstruct the sale of the deceased's home and to make sure that that transaction can happen as quickly as possible. We are going to give access to the State Administrative Tribunal so that it has new powers to help with that, including the power to end the agreement if it considers that to be appropriate. We are also giving SAT much broader powers than it currently has to allow it to make orders in respect of hardship. We cannot ignore the interests of the landlord or it will lead to a reduction in investment in this sector, and that will not be good because it will mean that there will be fewer places available for vulnerable people to live.

The member for Darling Range also asked whether there would be opportunities for outside real estate agents to sell homes for tenants in parks. The right of residents to choose their own real estate agent will be clarified by the legislation and there will also be very detailed disclosure obligations. We do not want outside real estate agents not informing potential purchasers about the actual conditions surrounding the purchase, because there are two separate things: there is the purchase of the building and then there is the tenancy arrangement with the landlord. The legislation will also greatly strengthen the role, rights and processes of park liaison committees, including their functions and election processes.

Finally, I turn to the member for Thornlie. I am unable to update him on the action because it is still before the Supreme Court. I look forward to it being completed.

I acknowledge again the Leader of the Opposition, the member for South Perth, the member for Southern River and the member for Forrestfield.

The member for Cottesloe interjected yesterday, in answer to a hypothetical question, about how much it costs to go to SAT. He said it was $230; it is actually $111.50, or $33.45 concession for people on government benefits or whatever.

I will finish on this issue: there is no question that SAT can be an intimidating tribunal for anybody, particularly vulnerable people. The problem is that that is the way we solve disputes in Australia: we solve them through a process, and believe it or not—I am sure the member for Hillarys will agree with me—no matter how intimidating the tribunal might be, it is less intimidating than a court.

Mr P.A. Katsambanis: It is, and it is because of the culture of the tribunal. The whole idea is to sit down with parties and come to an arrangement. Yes, it does sound intimidating, but I agree with you: it's the best we've got.

Mr W.J. JOHNSTON: Yes, it is one of those things. This is about disputes over property rights. I often meet people through my mining portfolio who complain about costs, and when I get to the bottom of it, it is actually about their neighbours' property rights, and that is the same. There is the property right of the tenant and the property right of the landlord, and they conflict. We need to have a way of resolving that dispute. Some people ask, "Can't the government solve it for me?" Actually, it cannot, because that would mean the government making a judgement as to facts, and we do not want politicians —

Mr P.A. Katsambanis: It offends the separation of powers.

Mr W.J. JOHNSTON: Indeed. We do not want that to happen. We do not want politicians making judgements on these things, because that is the courts' job. Of course, the courts can become even more legalistic—naturally—which is why we developed SAT to provide a more friendly jurisdiction. Of course, if I were a vulnerable person getting into a dispute with the landlord, there is no question that SAT would still be a real problem. Indeed, there is currently an argument around the residential tenancies legislation about where disputes go, because at the moment they go to the Magistrates Court, not SAT, but in this legislation we have the reverse. The point is that SAT is the best we have; it is not perfect, but it is better than the alternative, which would be to take all matters to court. As the member for Hillarys rightly says, the concept is that we have a process for coming to an agreement, aside from having a hearing and a determination.

I thank all members for their contributions. This is a very important piece of legislation and I am very pleased that, on behalf of the McGowan Labor government, I am able to bring it to the house.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clause 1 put and passed.

Clause 2: Commencement —

Mr P.A. KATSAMBANIS: Clause 2 is the commencement clause. It is fairly typical and states —

> This Act comes into operation as follows —
>
> (a) Part 1 — on the day on which this Act receives the Royal Assent;

We had a discussion about the likely time that that might be. The minister mentioned in his summing up that it would be around March next year, which is when the bill is likely to get through both houses and then get royal assent. Paragraph (b) states —

> the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Again, that is relatively standard, although not ideal. I seek some clarity from the minister about the commencement date of the operational parts of the legislation—all parts other than part 1. Specifically, is it intended that some parts—I know that the provision allows for all or some to be proclaimed on different days—will be proclaimed on different dates from others; and, if so, which parts and what is the reason they would come into force on different dates? The second part of my question is about the need to have the regulations ready before the legislation is proclaimed. Can the minister confirm that the regulations will be ready and publicly available, even if in draft form, before the rest of the legislation is proclaimed?

Mr W.J. JOHNSTON: In respect of the first part of the member's question, it is not intended that the legislation will come into operation on particular days. It is expected that it will all come in at the same time; however, there may be some detailed issue of transition that would mean it could not be done that way. That is the current expectation. In respect of the regulations, the normal practice is that parliamentary counsel does not draft regulations until after the legislation has passed the houses, so it is highly unlikely that we would be able to draft regulations in advance of the passage of the bill through the houses. However, the drafting instructions are obviously being contemplated and extensive consultation is already underway, as there has been since the statutory review, on the outline of the things that will be covered. I think that answers the member's question, but if it has not, I am happy to hear from him again.

Mr P.A. KATSAMBANIS: Just to clarify what the minister said in his summing up, he indicated that, with the best intentions, the time frame is around September 2019. What are the likely impediments to being ready to get started in September next year?

Mr W.J. JOHNSTON: It would be just the normal trouble of getting Parliamentary Counsel's Office time or particular issues coming up from the park owners during the detail of the regulations—those sorts of things. There is nothing that I can foresee that is particular other than those sorts of normal issues.

Mr P.A. KATSAMBANIS: Is there an intention that the regulations will be publicly released in draft form during that period, or is it really a matter of having consultation and drafting at the same time and then the final piece will be the regulations as prescribed, and then any other issues will be dealt with in the way we usually deal with prescribed regulations and their allowance or disallowance?

Mr W.J. JOHNSTON: That is correct.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 3 replaced —

Mr P.A. KATSAMBANIS: Clause 4 deletes section 3 of the principal act and replaces it with this new one. Some of the numbers mix and match a bit throughout the bill. The definition of "approved form" states —

> ***approved form*** means a form approved by the Commissioner and published on the Department's website;

It will not be a paper form; it will be published on the website and people can download it and use it—whichever form, because there will be a series of forms. That is all well and good; I have no problem with that. That is what is done in the modern environment. Members will not have a pile of forms available in their offices that people will have to fill out in triplicate. However, there are occasions when people like to personalise the approved forms into what looks like a version of their own. If ABC Residential Park printed the approved form on its letterhead,

for instance, would that still qualify as the approved form or would the printing on letterhead render it no longer the approved form?

Mr W.J. JOHNSTON: What a wonderful question from a lawyer!

Mr P.A. Katsambanis: But it happens in practice.

Mr W.J. JOHNSTON: Yes, I know, and that is why I am going to answer the member's question. Generally speaking, as long as the form was complete in the information provided to the client, it would probably be valid. However, it may be that a particular form needs to be in a specific manner prescribed by the commissioner, in which case it would not be. It will be approved by the commissioner and published on the department's website. Each form might be in a different format; therefore, it depends on the format that is published. Does the member see what I mean? It could say, "This is the form" or it could say, "The form contains this information" and the commissioner could make a decision about whether one or the other was required.

Mr P.A. KATSAMBANIS: I will move through these definitions; there are a lot of them. I have only a few questions. The definition of "Commissioner" states —

> ***Commissioner*** means the person designated as the Commissioner under section 84;

Who is that intended to be? I know names and titles change, but who is the current commissioner?

Mr W.J. JOHNSTON: David Hillyard is the public servant who currently has the role of Commissioner for Consumer Protection, and I very much look forward to David continuing in that role. I think he just got the 40 or 45 years of service award last week at the Department of Mines, Industry Regulation and Safety's service awards and I congratulated him on his excellent service to the public service and the people of the state.

Mr P.A. KATSAMBANIS: I add my congratulations to Mr Hillyard on that award. It is well deserved.

The definition of the term "enter into" states —

> ***enter into***, in relation to a long-stay agreement, includes make, renew, extend, assign or otherwise transfer the agreement;

That is all well and good, but—again, maybe this is the lawyer in me, but I do not think it is only because it is the lawyer in me—it appears as though one particular aspect has been left out, and that is variation. I would have expected that the word "vary" would be included. I raise that not just because I want to make a legal point, but I note that variations are permitted under the act and under this bill. The first reference I found in the bill, and there are others, is in proposed section 13A(3). Why is the ability to vary not included within the definition of the term "enter into"?

Mr W.J. JOHNSTON: Firstly, the definition uses the word "includes"; it does not exclude other interpretations by the court. The other thing is that this is about disclosure obligations. When a new agreement is created, there is a whole series of disclosure observations. What we are attempting to do here is to link it to those disclosure obligations. The member is right: there may be a variation to an agreement at a later stage, but that does not necessarily trigger the disclosure obligations. However, that is not to say that the court would not necessarily say that the disclosure obligations are not triggered, if it determined that was the case. It is about entering into the agreement, and then there is a whole range of disclosure obligations that we will find elsewhere.

Mr P.A. KATSAMBANIS: We will obviously see how that goes in practice. I am going down the terms alphabetically. We have just discussed "enter into" and the next term is "long-stay agreement or agreement". I noticed one omission in between. I seek from the minister why the term "exit fee" has not been defined in new section 3. It may be because "exit fee" has its own specific definition, but in good drafting in a definitions clause it should say "this particular term is as defined by clause whatever". In this definition clause, the term "exit fee" is used in the definition of "voluntary sharing arrangement". Paragraph (c) of the definition of "voluntary sharing arrangement" reads —

> an amount as an exit fee payable if the relocatable home is sold or removed from the site …

Why would there not be a brief mention of "exit fee" in the definitions clause—"terms used" in modern drafting parlance—so it is crystal clear what we are dealing with?

Mr W.J. JOHNSTON: As the member quite rightly pointed out, the definition of "voluntary sharing arrangement", which includes the term "exit fee", goes beyond just exit fees; therefore, the regulatory activity that the legislation in the scheme creates makes sure the other things, not just exit fees, are covered. It includes exit fees, but goes beyond that.

Clause put and passed.

Clause 5: Section 5 replaced —

Mr P.A. KATSAMBANIS: Clause 5 deletes existing section 5 of the act and replaces it with a new section. It also adds section 5A, with the heading "Reasonable grounds for suspecting abandonment of premises". It spells out those grounds —

> In this Act there are ***reasonable grounds*** for suspecting that a long-stay tenant has abandoned the agreed premises if —
>
> (a) the tenant has failed to pay rent in accordance with the long-stay agreement; and
>
> (b) one of the following applies —

I assume one or more of the following, but at least one —

> (i) there is uncollected mail, newspapers or other material at the agreed premises;
>
> (ii) another long-stay tenant of the residential park or another person has told the park operator that the tenant has abandoned the agreed premises;
>
> (iii) there are no goods at the agreed premises;
>
> (iv) services (including gas, electricity and telephone services) to the agreed premises have been disconnected.

In the vast majority of cases I think that would be relatively straightforward, but we can foresee that a person who has a long-stay tenancy agreement may choose to depart for a period of time. They might go on a holiday, they might go travelling around Australia or around the world, or they might need to depart for a period of time for long-term medical treatment or the like. We cannot guess what the circumstances might be. In that time, they may have disconnected the services, so paragraph (b) is enlivened. There may be uncollected mail, newspapers, junk mail and the like because that is just the nature of them not being there. It would enliven paragraph (b), so paragraph (a) outlining failure to pay the rent would be needed. There are situations in which the rent may not be paid because of a mistake, banking error or systems that have gone down. Sometimes people on fixed incomes rely on a fixed income to be paid by a certain date so there is enough money in their account for the banking system to automatically work so they can pay their costs, but the payment may not come through, which means the bank cannot process it. What would happen in those circumstances? For all other intents and purposes, clearly in the situations I have described, tenants did not have any intention of abandoning. They just have their homes, they are in there, they go away, a few things happen, and when they are away from the park, misunderstandings may occur. What would happen under those circumstances? Could there be reasonable grounds for abandonment and then would the provisions brought in later in the legislation start applying?

Mr W.J. JOHNSTON: This provision is consistent with the Residential Tenancies Act. It simply imports the arrangements of the Residential Tenancies Act so that landlords in both jurisdictions have the same rights. The member is right, because at the end of paragraph (a) it states "and (b)", so both paragraphs have to apply. As the member says, this enlivens a right elsewhere in the legislation to take action. This provision in itself is not the action; it just enlivens the right to take it. There would have to be notice or action through SAT. This does not mean that the landlord suddenly re-lets the place. It is just that their rights elsewhere in the act are enlivened. As I say, it is exactly the same as a residential tenancy.

Mr P.A. KATSAMBANIS: Would it not then make some sense to have a little provision that simply limits things by saying something like "unless the park operator is aware of circumstances to the contrary"? A tenant might go away for six months on a holiday or to visit family or friends in other places and simply say, "I am going to be gone for six months, but I am not running away, I am not abandoning the place, I will be back." If the park operator has knowledge, it seems that they still have the capacity to gather reasonable grounds, as defined in proposed section 5A, to enliven the abandonment process, which would be to the detriment of the tenant.

Mr W.J. JOHNSTON: I understand the point the member is making, but I again make the point that this is a provision imported into this legislation directly from the Residential Tenancies Act. A person under a residential tenancy is under the same obligations as is being provided for here. Let us assume that somebody was out of the country for six months and had taken all the goods out of the premises and then not paid rent. I am not quite sure what the member is getting to, because this enlivens the right to then do other things. It is not the right to end the agreement; it is the right to take action to end the agreement. There has to be a trigger so the agreement can be ended. There is still a process to be done, but the process cannot be started unless there are reasonable grounds.

Mr P.A. KATSAMBANIS: I raise it because, yes, it enlivens the process, but that process is predicated upon the tenant, in this circumstance, being around. They are given written notice. That can be put in their letterbox or slipped under the door. We have evidence of that—that is the written notice. Again, we are dealing with circumstances in which someone has gone away and there has been a mistake in the payment of the rent and that

has enlivened this proposed section. I realise that that is more unlikely than likely to happen, but it is still a possibility and we have to recognise the reality for people living in these parks. They consider it their home, but they are not home-bound. They do everything else that every other person does in society, including going away for long periods of time. It is true to say that all that does is enliven the process for using the abandonment process, but then that whole process seems to be based around proximity between the park operator and the tenant so that they can give notice and then things happen after that. It would be horrible—I recognise that it would be completely unintended, but it is possible—were someone to lose their right through no fault of their own through a mistake that happens whilst they are away for an extended period of time.

Mr W.J. JOHNSTON: If the member could come up with a suggested form of words, I would amend not only the Residential Parks (Long-stay Tenants) Act, but also the Residential Tenancies Act. We are not extending any further rights to a park operator that are not currently available to a residential tenancy operator. The whole point is to keep the alignment. The domestic violence legislation went through this chamber recently. That included amendments to this legislation to make sure that the rights of tenants are aligned in respect of domestic violence. What we are doing here is to try to have the same rights for landlords and tenants in residential parks as in other residential tenancies.

I am not sure whether the member has thought through the consequences of what he suggests, because it would be a radical change to the residential tenancies arrangements, unless he is saying that people should have different rights in the different forms of tenancy arrangements. Also I make it clear that this is the start of a process. The park operator needs to have a capacity to confirm their suspicions. There has to be two things: there has to be a failure to pay rent and these other things. Let us assume that I am going away—as the member rightly says, the person in a park home is not a disabled person necessarily; they are people who choose this lifestyle—and I get my caravan and go off around Australia. The member for Riverton is here. He would remember that these people are exactly the same people we talked to when the Economics and Industry Standing Committee inquired into the provision, use and regulation of caravan parks and camping grounds in Western Australia. One reason people like lifestyle villages is that they have parking spots for their caravans. But when we think about it, if a person is in this situation, would they empty their premises or disconnect all services? Would they not have made any arrangements to deal with mail? Does the member see what I mean? They have not told even their neighbours that they are going away. Look at the provision. There still has to be inspections and other things and there is still another process.

I am very, very happy to look at all reasonable opportunities to protect people in park homes, because I think it is important; but, equally, as I have made clear, we must balance that with the interests of park home operators. I would have no problem at all if we could come up with some words to increase the rights for the residents, but we would have to do the same in the Residential Tenancies Act because the idea is that the two things should be aligned.

Dr M.D. NAHAN: I support the minister's concern for parity and consistency. The minister knows that parks vary quite a bit in terms of their utilities and facilities. Some are houses; some are just beach shacks, if you wish. The Economics and Industry Standing Committee found that there are numerous variations. Often they are a bit run-down and people come back and forth to them. I acknowledge that the minister is saying that there must be a two-part failure—that the tenant has to not pay rent in the first place and other things. However, how do you verify all the other things, which can be quite nebulous, such as a build-up of newspapers? If people use these places just as holiday homes, newspapers will build up. Another provision is —

> another long-stay tenant of the residential park or another person has told the park operator that the tenant has abandoned the agreed premises;

What is meant by "abandoned"? Let us say the property is there and it is kind of dilapidated, but that is probably the norm. Are these things enforceable and are they a sound basis for justifying whether an owner of a caravan or property has actually abandoned it?

Mr W.J. JOHNSTON: The words mean what the words mean. It is not for me to tell the courts what words mean. I am sorry that I am not able to do that. If the member wants to know what the words mean, they are supposed to be interpreted by the average man on the Clapham bus—is that not the term? I am not a lawyer.

Dr A.D. Buti: The reasonable man on the Clapham bus.

Mr W.J. JOHNSTON: Learned Dr Buti tells me it is the reasonable man.

Mr A. Krsticevic: Can you define that, please?

Mr W.J. JOHNSTON: It is not for me to do that. It means what it means. I do not see any particular issue with the wording on the page. I draw the Leader of the Opposition's attention to clause 43 on the procedures that are enlivened by this provision.

Dr M.D. Nahan: What page?

Mr W.J. JOHNSTON: It is page 62.

Mrs A.K. HAYDEN: Maybe we could have clarification on this matter to ease peoples' minds. Does the legislation contain anything to ensure that, as part of this process, all attempts to contact the resident or their next of kin, family and so forth are made before an operator arrives at the theory that a site has been abandoned? What will happen if someone goes into medical care? The family may be in distress and may not even think about ringing neighbours or the park operator, because they are just focusing on the health of that individual. Is there something in the bill to ensure that an operator will contact everybody they possible can before determining that a site is abandoned? If someone is in, say, medical care or lucky enough to go on a very long holiday and they do not have family who can be contacted, will there be something to make sure that the operator does everything to the best of their ability to contact individuals before declaring a place abandoned?

Mr W.J. JOHNSTON: The same provisions apply to the 250 000—whatever it is—residential tenancies in Western Australia.

Mrs A.K. HAYDEN: Is that mirrored exactly in this legislation?

Mr W.J. JOHNSTON: Of course, each act relates to the circumstances, but I am saying that the rights of a landlord are mirrored, given that it is a slightly different environment. We are not trying to undermine the rights of a tenant in this legislation. The rights of the tenant are mirrored from the rights in the Residential Tenancies Act.

Dr M.D. NAHAN: I understand the first threshold is a failure to pay rent. That is important. I have problems with a couple of the others. One concerns uncollected mail, newspapers or other materials at the agreed premises. Let us say that they do not live there permanently; it is a holiday home in, say, Albany, where the two local newspapers are delivered to the door. They will build up, as they would at any holiday home, especially if we add junk mail. That seems to be quite a weak justification for suspecting abandonment. The other one is —

> another long-stay tenant of the residential park or another person has told the park operator that the tenant has abandoned the agreed premises;

The minister will remember, as I do, that some of those places are a bit like *Peyton Place.* Sometimes there is a lot of bonhomie and close relationships; sometimes there is not, as with every community, I suppose. Relying on hearsay is a pretty weak basis for reasonable grounds for suspecting a long-stay tenant has abandoned the premises. Built-up material and, if you wish, potential gossip by the neighbours is pretty weak. Are there other things that the government has considered but has rejected that could be added to this list of four supplementary factors?

Mr W.J. JOHNSTON: Yes, and I suggest the Leader of the Opposition reads the legislation, because if he has a look at what I have pointed out to him, this is enlivening a right that needs to be exercised. If the Leader of the Opposition has a look at the provisions later in the bill, he will see the circumstance in which the activity takes place. He is missing the point. These are the conditions under which a landlord is able to protect their interests. They then need to take action to protect their interests, and that is later in the legislation. Of course the right to protect the landlord's interest is matched by rights to protect the interest of the tenant, but that is not what we are dealing with at this stage. We are dealing with the point at which the landlord is entitled to take action, not the result of the action the landlord takes, because that is a separate issue. I urge the Leader of the Opposition to read the rest of the legislation. He will then understand what that is about.

Dr M.D. NAHAN: I understand it. I am saying that the bill will give the landlord the right to start taking action on the basis of a build-up of mail in the mailbox and whispering in the community. Not paying rent is important, but if we apply this to non-caravan park owners, I think the lack of rent would be quite a strong basis for action. But if somebody allowed the neighbour, the landlord or the landlord's agent to start querying whether that person has abandoned the property on the basis of the build-up of junk mail and whispering from neighbours, that is a pretty weak basis for action. They then have to take action. There are other safeguards, I am sure, but I assume that this will give the landlord access to the property, the tenancy, the house or the dwelling—they will not have access to the land—and start pursuing this more thoroughly. These two appear to be very weak justifications for a landlord to start taking action against someone on the basis that the property has been abandoned.

Mr W.J. JOHNSTON: I am surprised, because the point here is that we are increasing protections for tenants. At the moment, under the legislation that was amended when the Leader of the Opposition was in government, there was a simpler process for the landlord. This is strengthening the position of a tenant. I am surprised that the member says that this is not strong enough, because it is an improvement in the rights of the tenant compared with the law at the moment. Through this legislation, we are balancing the rights of landlords and tenants. At the moment landlords have certain rights, and we are trying to put a ring around those rights. We are not trying to remove them; we are simply trying to improve the rights of the tenant. I am surprised that the Leader of the Opposition said that this is not strong enough, because at the moment the legislation is weaker.

Mr A. KRSTICEVIC: This clause is obviously about the reasonable grounds for suspecting abandonment. Can the minister tell me what process a person would go through after suspecting reasonable grounds under these

points? Once they have determined that the rent has not been paid for potentially one fortnight and uncollected mail may be only a few days old, for example, firstly, what is the process? Secondly, is it easier, as opposed to a normal tenancy arrangement with a home as opposed to residential parks? Sometimes in the past we have seen that there has been an incentive or motivation for the owners of these parks to move people on and make the premises vacant. If the rent happens to be one or two weeks behind or if they happen to take a photo of some junk mail there—the junk mail may have been there for only a day or two—and then they say that they will deem the premises to be abandoned, what process would they follow and what are the safeguards?

Mr W.J. JOHNSTON: They would follow the procedures in the act.

Clause put and passed.

Clauses 6 to 9 put and passed.

Clause 10: Section 9A inserted —

Mr P.A. KATSAMBANIS: Clause 10 introduces new section 9A and the heading of that new section is "Modification of Act by regulations". We read that heading and already it rings an alarm bell. Clearly, this is a Henry VIII clause, and is it appropriate in all circumstances? The provisions of the section states —

> The regulations may prescribe that a provision of this Act does not apply to, or applies in a modified way to —
>
> (a) a long-stay agreement or class of long-stay agreement; or
>
> (b) a residential park or class of residential park.

Effectively, the bill itself will give any minister and the government of any persuasion at any time the ability to say that a provision—any provision and not limited to one; it can be all the provisions of this bill—does not apply. An act of Parliament can be rendered inapplicable by a decision of the government. It can be done for any type of agreement, a particular class of agreement, all of them or one—it does not limit it in any way. It can be done for any park—all parks, just one park or a particular class of parks. I seek clarification from the minister. Why is this here? If the justification is that it is done in other acts, that is not good enough. By passing this clause, as currently drafted, we are basically saying, "Who cares what we have done in here?"

Mr W.J. Johnston: I care what you do.

Mr P.A. KATSAMBANIS: We said all this great stuff and that the minister, finally, after a decade, has brought in a bill to amend the act. We can do all these wonderful things for certainty in the industry, for security of tenure for the tenants and for the understanding of park owners and operators and all their responsibilities, but with one stroke of a pen, a minister—I am not suggesting this minister, but any minister from now until this act is eventually revoked—could simply say that none of this applies, or does not apply in certain circumstances. Why is this clause drafted in this particular way and would the minister reconsider it? Otherwise, it seems to run roughshod over the whole process of parliamentary democracy, as good old Henry VIII tried to do back then.

Mr W.J. JOHNSTON: I point out that it is not a Henry VIII provision because it does not give the power to the minister that the member says that it does, because it is a power for regulations. Regulations are instruments that are disallowable by Parliament, as the member knows. I think he has sat on the Standing Committee on Delegated Legislation in the past.

Mr P.A. Katsambanis: I have some experience in disallowing regulations.

Mr W.J. JOHNSTON: I have never been on the Standing Committee on Delegated Legislation, but many people tell me that it is a great joy.

Ms M.M. Quirk: Your loss, minister.

Ms E. Hamilton interjected.

Mr W.J. JOHNSTON: The member for Joondalup, the deputy chair of the committee, is here in the chamber. It is not a Henry VIII provision. I emphasise that, because a Henry VIII provision would be "the minister may" and it does not say that. It says "regulations may", so it is not a Henry VIII provision.

In recent years, the residential parks sector has evolved significantly with the shift from mixed-use parks to purpose-built lifestyle villages. It is anticipated that further innovation will emerge in the market, particularly in the retirement housing sector. The inclusion of the power to vary the application of the act by regulation will allow for the act to be applied in an appropriate manner. As subsidiary legislation, any amending regulations will be subject to the scrutiny of Parliament through the Joint Standing Committee on Delegated Legislation. Provisions of this nature are included in other tenancy legislation, including the Residential Tenancies Act 1987, in which the

application of the act has been modified for tenancies provided by the Housing Authority, tenancy arrangements with government employees, employment-linked tenancy agreements, heritage places and rural land; and the Commercial Tenancy (Retail Shops) Agreements Act 1985, for which regulations have been made to exclude the application of the act to leases of premises for vending machines and automatic teller machines. Regulations have also been made to address an anomaly that arose with the application of the act to foreign-listed corporations following changes to membership of the World Federation of Exchanges.

It is not a Henry VIII provision and the member is quite right that it has been applied to other acts relating to tenancies to ensure that they remain relevant and up to date. In answer to why it is there, it has been recommended by the drafters of the legislation to ensure that we can keep the legislation properly up to date.

Mr P.A. KATSAMBANIS: I understand that it is intended to be a catch-all provision to deal with innovation, for want of a better word, in the future. We are aware that there is significant innovation in the provision of housing stock in this space and in other spaces, perhaps, that intersect with the space that we are dealing with here. Does the minister have any current intention to prescribe regulations pursuant to proposed section 9A; and, if so, what areas is he particularly focusing on? That is not limiting him to having to make the regulations, but I am asking whether he is considering making them.

Mr W.J. JOHNSTON: The answer from me was no, but I am advised by the department that it would like to look at a few issues. A small number of residential parks in Western Australia are strata titled. For these parks, the requirements of the act relating to the establishment of park liaison committees, with representation of the park operator and tenants, are inconsistent with the ownership structure in strata title parks. The power to make regulations to vary the application of the act will allow for modification of these requirements to suit strata parks.

Mrs A.K. HAYDEN: A Henry VIII clause, as the minister well knows, is not tolerated and is unwelcome in the other place. I am interested to see the upper house's determination on whether it is a Henry VIII clause. I think my colleague the member for Hillarys is doing the minister a favour by flagging this matter and giving him some warning. As we know, this legislation has taken some time and I am sure that we would all hate to see it going off to committee to be looked at and checked to make sure that it is not a Henry VIII clause. If the other place gets a whiff that there is a chance, it will go off to committee and it will get stuck there. Considering we are coming up to the Christmas break, it could be held there for some time, so I recommend that this matter be looked at properly. If the upper house gets one whiff, as I said, it will go off to committee.

The reason is that Henry VIII clauses grant excessive powers to someone else. That is the whole point. These regulations are excessive. The department could go into any part of this legislation and amend it without the minister's approval. It could make these things happen without it going through Parliament. I know from our briefing that the department was considering a long list of regulations and it concerns me that the minister said he was not aware of any regulations. If the department has been working on a list of regulations that the minister does not know about, that is the very reason that we have a Henry VIII clause in place.

Mr W.J. JOHNSTON: Firstly, the member is wrong about the upper house not tolerating Henry VIII clauses. If she is saying that it is a Henry VIII clause and she agrees it is in a number of pieces of other legislation that the upper house has approved, clearly, she is not right. Otherwise, the upper house would have rejected those other ones.

Mrs A.K. Hayden: Let us see how you go.

Mr W.J. JOHNSTON: I am just making the point that the member is not correct because legislation with this provision has been passed on a number of occasions by this Parliament. The member can say what she likes, but she is either right or wrong. Given that this provision is in other legislation that has been passed by the upper house, ipso facto she is wrong. I am not arguing with the member; I am just pointing that out. I said that members cannot expect me to know every detail of every operation of the department, and nor should I. If I worried about every administrative task of the department, I would not be able to do my job.

Just a few moments ago, I said to the member that I was not aware that there was this question about strata title properties. That is hardly a big deal. I rely on the agency to keep me informed of that sort of detailed matter. I am very lucky that I have a very professional organisation, the Department of Mines, Industry Regulation and Safety, that is recognised as a leading practice for regulatory affairs. I am very pleased and satisfied by the agency's activities. As the member knows, because she used to be a parliamentary secretary, to my memory, a whole set of procedures are gone through before regulations can be created and, of course, the minister has to approve them. Before a regulation can be created, I or whoever holds the future position in the ministry would have to agree to the regulations. When the agency brings forward suggestions for activities, I or any other minister would have to respond to those suggestions. That is the great thing about the Westminster system of government: the departments administer the system and the ministers make policy decisions. I do not have the power to direct the agency on the

performance of its duties and nor should I, other than to set policy objectives. It is up to the department to achieve those. If it brought forward suggested regulations, I would examine those and make a decision about whether I took them forward. Then it would be for Parliament to determine whether it supported them. This is not a Henry VIII provision. We know that because the upper house has passed similar provisions in the past.

Clause put and passed.

Clauses 11 and 12 put and passed.

Clause 13: Section 10 replaced —

Mr P.A. KATSAMBANIS: Clause 13 introduces the forms of long-stay agreements. Proposed section 10A refers to a prescribed standard-form agreement and proposed section 10B refers to the particular terms that must be included in a long-term agreement, regardless of whether there is a standard form. I note that proposed section 10A(1) says —

> A standard-form long-stay agreement … may be prescribed.

It states "may". We do not have to have a standard-form agreement and if there is not one, the terms in proposed section 10B are the minimum terms, effectively, but there can be a standard-form agreement. I ask the minister to clarify whether it is his intent that by the time the amended act and the regulations come into force, that there will be a standard-form agreement. Based on that answer, I will move on from there.

Mr W.J. JOHNSTON: The whole purpose of this legislation is to provide for standard-form agreements. I draw the member's attention to the explanatory memorandum, which sets out that it may be possible to prescribe more than one standard-form agreement to take account of specific issues in particular circumstances. It is absolutely intended that there be a standard-form agreement.

Mr P.A. KATSAMBANIS: The minister mentioned earlier that discussions are already taking place at a departmental level about what the agreements and regulations and the like will look like. Is there any current intention that the terms included in the standard-form agreement will be different or in addition to the terms spelt out in proposed section 10B?

Mr W.J. JOHNSTON: The standard-form agreement will have to be sufficient to take account of issues that would otherwise be covered in, for example, a tenancy agreement. It may well be that it will contain provisions in addition to those in the proposed section that the member referred to. They will be the sort of normal operative matters but it is a broad power and will be able to respond to changing circumstances, which is something that residents have been calling for for many years. When the original legislation was passed in 2006, one of the complaints was that it did not take changed circumstances into account. Subject to the act, this provides a power to continue to update the standard form to reflect changed circumstances over time.

Clause put and passed.

Clause 14 put and passed.

Clause 15: Sections 11 to 13 replaced —

Mrs A.K. HAYDEN: Clause 15 deletes sections 11 to 13. Proposed section 12 is "Restrictions on amounts park operators may charge". If an agreement is in place that states that increases of up to six per cent per annum can occur, is there anything in place for the operator to determine and advise the tenant of why it has been increased up to six per cent and do they need to show proof of that? Are they able to just increase it by six per cent without justification?

Mr W.J. JOHNSTON: I am not quite sure of the meaning of the member's question—I will put it that way. In Australia, we do not regulate business peoples' activity. If they want to earn money, they are allowed to. Seriously, I do not understand the question. Is the member asking whether we are capping rents?

Mrs A.K. Hayden: I didn't ask that.

Mr W.J. JOHNSTON: What is the member asking?

Mrs A.K. HAYDEN: I am asking whether there is any requirement for the operator to justify rent increases to tenants?

Mr W.J. JOHNSTON: In the same way that other landlords do not have to justify rent increases, because of market forces, we are not suspending market forces in park activity either. I understand that many park residents would like us to cap rents. As I already said to the member in debate —

Mrs A.K. Hayden interjected.

Mr W.J. JOHNSTON: I am very happy to do that. I will make it clear. I will bring a bill back to cap rents to the consumer price index if the Liberal Party asks me to.

Mrs A.K. HAYDEN: I will reframe my question so the minister can understand it. The title of proposed section 12 is "Restrictions on amounts park operators may charge". Do these restrictions include justification to the tenant being required about the amounts charged by park operators?

Mr W.J. JOHNSTON: The member should not forget that the headings on clauses do not form part of the legislation. She should concentrate on the words in the clause. This is about the provisions they are allowed to include and what they are allowed to ask for. They are allowed to ask for the things specified. The member is asking a different question, which is whether they have to justify the level of any of those fees. The level of those fees is set by market forces. If the member would like, I 100 per cent support capping fees. If the member wants me to, she should let me know and I will introduce a bill immediately to cap rent at CPI.

Mrs A.K. HAYDEN: I will ask again because the minister is obviously struggling to understand his own bill. Proposed section 12(1)(e)(iii) states —

> the fee is for a service or facility

It continues —

> necessary to recover the reasonable costs of providing the tenant a service or facility for which the fee is charged or is a reasonable amount.

What is reasonable? How will that be marked reasonable and will tenants have any protection? Is the operator bound to explain to the tenant why they have increased the fees, the rent or the like? How will the tenant know that is reasonable?

Mr W.J. JOHNSTON: Reading the whole clause makes it clear that it is about cost recovery. Directly below, proposed section 12(2) states —

> A payment accepted in contravention of this section is recoverable by the person who paid it —
>
> (a) as a debt due in a court of competent jurisdiction; or
>
> (b) by order of the State Administrative Tribunal under Part 5.

The resident has the right to claim back moneys in accordance with that provision. Immediately below proposed section 12(1)(e)(iii), it states that a penalty for contravention of this subsection is a fine of $5 000. There is both a regulatory capacity to penalise the park operator and the capacity for the tenant to recover any excess moneys paid.

Clause put and passed.

Clauses 16 to 18 put and passed.

Clause 19: Section 20 replaced —

Mr P.A. KATSAMBANIS: Clause 19 will replace existing section 20 in the principal act with proposed section 20 and proposed section 20A. Proposed section 20 is headed "Age-restricted residential parks". It deals with parks that are to be occupied by people above a certain age, the same as occurs in many forms of retirement village. It deals with the issues allowing people under the specified age—the wording does not make it clear whether it is for people under a certain age or a restriction on how old someone can be before they have to get out.

The ACTING SPEAKER: Member, are you speaking about existing section 20?

Mr P.A. KATSAMBANIS: No, I am speaking about proposed section 20. Existing section 20 is being thrown out. It is gone, finished!

The intention is clear and well understood. I do not think anyone will debate that. This deals with people of a certain age living on the agreed premises. I am aware of experiences in other places—perhaps not in residential parks, but in retirement villages and the like—of grandparents who would like to have their grandchildren stay over for a day or week or over the school holidays. I am not necessarily sure that these provisions allow enough flexibility to deal with that circumstance. One thing that can happen is that it can be left to the park operator and the tenants to deal with it, but often that places the park operator in a really invidious position because the concerns are not coming from the park operator themselves but from other tenants who perhaps wanted to have only over-55s in those premises and no children. I seek an explanation from the minister about how that issue can be resolved within the framework of this clause for people in those circumstances such as grandparents who want to have their children staying over or even older parents who have older kids who need to return home for a period because of either financial reasons or simply because of overseas travel, divorce, separation or whatever the case may be. How will that provision operate in practice? Will it be unduly restrictive and will it also place park operators in that invidious position of playing referee between various tenants?

Mr W.J. JOHNSTON: As everybody is aware, there are these look-alike parks that look like a retirement village but are not. This provision allows that to occur. Proposed section 20(1) provides for an age-restricted park. The member is quite right: it could be that residents have to be between the ages of 18 and 32 years, I suppose, but one would imagine it is more for the parks that are for the—sad to say—over 55s. As a 56 year old, I can say that.

Mr P.A. Katsambanis: I am nearly there.

Mr W.J. JOHNSTON: Yes. This is about residents. Obviously people can have visitors and they could have a child visit. If the grandmother and grandfather live in an age-restricted village, this provision does not mean that they cannot have a child visit them. In respect of the challenge that the member has put to me, which is when the neighbours are complaining about the visiting grandchild —

Mr P.A. Katsambanis: That is what usually happens.

Mr W.J. JOHNSTON: Yes, I appreciate the issue raised by the member, but this is not intended to cover that arrangement. This is about a person under that age who seeks to live in the village. I hope that satisfies the member.

Mr P.A. KATSAMBANIS: Just to clarify things, I do not want to put capitals around the term that I am going to use, but it is really a provision that applies when someone turns that accommodation into their principal place of residence or something that resembles or looks like their principal place of residence. Will a grandchild still be able to stay over for the weekend or the school holidays or whatever it is in the ordinary circumstances?

Mr W.J. JOHNSTON: Yes, that is exactly true. There is the challenge, of course, when family circumstances change and a person has moved into one of these villages and then they have some obligation to grandchildren or something like that. I am not denying that this will not be an issue for people who move into these villages, but this is for those look-alike villages that are not retirement villages but want to accommodate the interests of older people. When the member for Riverton and I did our inquiry, we met many people in these lifestyle villages who really enjoyed living there. One of the reasons people moved to a lifestyle village was that they did not have to put up with the neighbours having parties. I understand the attractiveness of these villages, but this provision is not intended to exclude children from visiting during the school holidays.

Mr P.A. KATSAMBANIS: The same clause refers to proposed section 20A, which is headed "Park operator's continuing disclosure obligations about material changes in relation to residential parks". Proposed subsection (1) creates a definition of "material change" that is broad and not overly specific, but it then lists three examples of material changes. It states —

1. A sale or redevelopment of the residential park.
2. A change in a requirement of a licence a park operator is required to hold under a written law that impacts on the tenant's use of the park.
3. A change in the use of land for which an approval of development is required under the *Planning and Development Act 2005*.

I notice that one thing seems to be missing from the examples. I understand that other things can be included in the definition, but is a change of ownership or change in the structure of ownership where the company may stay the same but the underlying directors might change, considered to be a material change that requires a continuing disclosure obligation, or is that dealt with separately?

Mr W.J. JOHNSTON: It is very hard to go behind the corporate veil, as the member knows. I am struggling with this in another area of policy in my agency. If the directors of a company change but the company itself does not or if the shareholders change but the company does not, it is probably the corporate veil that protects that change.

Mr P.A. Katsambanis: No, it does not.

Mr W.J. JOHNSTON: It does.

Mr P.A. Katsambanis: It does not have to because it could be legislated for.

Mr W.J. JOHNSTON: One could do that, but I will talk to the member in a minute about another issue that I am dealing with.

The point is that this is about issues that will affect the residents of the park. There may well be a change in the capitalisation of the project but that does not have any impact on the residents. Clearly, this provision is directed to a change that is going to affect the interests of the residents and the owner is required to provide notice to the residents. That is the intention of the provision. We will see how it goes. If it is proven that we need something that is a bit different, let us have a talk and see whether we need to do that, but the idea is to increase the disclosure obligations.

Clause put and passed.

Clauses 20 to 24 put and passed.

Clause 25: Section 29 amended —

Mrs L.M. HARVEY: I will be guided by the minister on this. I understand that clauses 25 and 26 have been replaced by clause 29, so whether we do it under clause 26 or 25—I am not sure?

Mr W.J. Johnston: Sorry. I am not quite sure what the member is asking. Clause 25 of the bill amends section 29 of the act.

Mrs L.M. HARVEY: And so does clause 26, so would it be done —

The ACTING SPEAKER: We will deal with it under clause 26.

Clause put and passed.

Clause 26: Section 29A inserted —

Mr P.A. KATSAMBANIS: Clause 26 introduces proposed new section 29A, which deals with reviewing and varying rent under long-stay agreements. It is a very vexed area, which came out of the committee inquiry, and is a source of frustration for many people. The effect of proposed section 29A(1) is that rent cannot be increased for site-only agreements in intervals of less than 12 months. There are other provisions around the first review and things like that, but over the course of the agreement it can be done only once every 12 months or more. However, for an on-site home agreement, the intervals for reviews are every six months or less. Can the minister tell me why there is a difference?

Mr W.J. JOHNSTON: In the site-only agreement, the house itself belongs to the tenant, whereas the second example is much more analogous to a residential tenancy arrangement when the premises belongs to the landlord. If the member likes, we are mirroring the first one —

Mr P.A. Katsambanis interjected.

Mr W.J. JOHNSTON: Yes, because if there is a problem in the first example, the tenant has to pay $10 000 or $20 000 to move the house off the land, whereas in the second example they just have to move their chattels out. That is why there is better protection for the land-only tenant.

Mr P.A. KATSAMBANIS: Still on clause 26, which inserts new section 29A, proposed section 29A(2) refers to a "first review". I note that the term "first review" is not defined in the legislation. We could all apply our logic and sense to what we might deem to be a first review, but was any thought given to actually providing a definition for clarity and to ensure that people do not take advantage of this to circumvent the operations of the limitation on rent reviews?

Mr W.J. JOHNSTON: It would be the ordinary meaning of the term. I suppose we are saying in that provision that there might be an introductory rate for the rent, so for the first review after that —

Mr P.A. Katsambanis: Yes, I understand that.

Mr W.J. JOHNSTON: It is to take account of specific issues around particular parks. There might be a lower rent for the first three months or something because the park owner is trying to encourage new tenants, and then it goes up to a higher rate for a set period of time after that; it might be those sorts of arrangements. Once that first review is completed, it is only either every six or 12 months, as specified. My advice is that we do not have to define it.

Mr R.S. LOVE: Proposed section 29A(1) states —

> A term of a long-stay agreement that provides for rent to be reviewed and varied has no effect if —

It then goes through a number of reasons why. Proposed section 29A(1)(c) states —

> current market rent is the basis for calculating the amount of rent;

Does that mean that there is no need for an agreement if we are just going on the current market rate? What is the effect of that provision?

Mr W.J. JOHNSTON: I suggest the member talk to people in a retail plaza in his electorate, because rent reviews to market are among the most complicated issues to deal with and the greatest area of disputes in retail. The member for Hillarys is right in there, in the boat harbour, at his electorate office.

Mr P.A. Katsambanis: Not only that, but from long experience. Anyone who has been a lawyer in any form of commercial tenancy knows the wonders of dealing with market rent—just defining the market.

Mr W.J. JOHNSTON: Yes, it becomes such a complicated issue. A landlord can say, "Here is your rental. In two years' time we're going to take it to market." But then they define what the market is and there is a dispute about that—it is just a lawyers' picnic—so the easiest way is to cut it out and say, "There is no market for this. It's got to be on one of the other formulas that specify how the rent is set, and not to market." Otherwise the landlord can say, "You've been paying $200 a week, but now the market's $1 000." It is an opportunity for avarice and disputation, and we want to eliminate it.

Clause put and passed.

Clause 27: Section 30 amended —

Mrs A.K. HAYDEN: The minister has already answered the question I was going to ask in his reply to the member for Hillarys under the previous clause. With regard to the payment of rent, under this clause, is the operator able to designate the day of payment only, or are they able to say, "Pay by a certain date"? Examples have been given to me in which residents have been told that they can pay only on a certain day of the month and that is it. I understand that it does not come under this clause, but we missed the opportunity on clause 25. I just want some clarification. Can the operator nominate a certain day of the month as the pay-by date, and that is the only day on which payment will be accepted?

Mr W.J. JOHNSTON: If I understand the member's question, it is: can the operator say, "You must bring cash to my office on the twenty-fifth of October, and if you bring it on the twenty-sixth or the twenty-fourth, I won't accept it"? This legislation does not specifically deal with that, but I do not think it would be a valid action, because people can settle a debt in many different ways. I do not think we need to have a specific provision in the legislation to deal with that.

Mrs A.K. HAYDEN: If we get to a clause where that may be included, whether it be the park liaison or rules, can we get some clarification around that? I know it is currently occurring and I would like to know what residents can do to argue against or defeat that situation.

Mr W.J. JOHNSTON: I will be happy to have Consumer Protection contact the member's office, and she can give us any details and we will follow it up.

Clause put and passed.

Clause 28: Section 31 replaced —

Mr P.A. KATSAMBANIS: Clause 28 replaces the existing section 31 with proposed section 31. The heading of the proposed section describes what it is about: "Increasing rent due to significant cost increases". Those three words—"significant cost increases"—are used throughout the proposed section. I seek some clarity from the minister on what will be deemed to be "significant". I do not ask that flippantly; I do not mean it as a play on words, but this is a provision that someone is going to rely on to ask for an increase in rent, so we need some sort of framework around it. It is not good enough to say that it will be defined in time. Is there at least a list of potential circumstances that could be deemed to be a significant cost increase, or will that be included in regulations or whatever?

Mr W.J. JOHNSTON: This is one of those problematic clauses because we are trying to provide flexibility to the landlord so that we do not ruin their business. If we do not have a provision like this, the result might be that the operator will go broke and nobody will be satisfied. Given that we have restricted the capacity for the landlord to increase the rent, regardless of the interests of the tenant, this is, I suppose, the mirror image. When I talk to people in the Park Home Owners Association Western Australia, I always say that I am not going to satisfy everything they ask for, in the same way as when I talk to the park operators; I tell them the same thing. We have to have a release valve if the operator is out of money, otherwise they will go broke and then everyone will be unsatisfied because the residents will also lose their accommodation.

The State Administrative Tribunal can deal with these matters under proposed section 31(4). This is a provision that helps the landlord; therefore, we need to provide protection to the residents, and that is covered under proposed section 31(4). There is only one caravan park in my electorate, but I imagine the member for Darling Range might have four or five. We can see that a situation like this could conceivably end up in disputation, so as the local member she would be helping them to get down to the SAT, because that is the solution. It is a steam release valve; without it, there would be difficulties for the landlord, but we have to recognise the interests of the tenant, so that is why we have included this provision.

Mr P.A. KATSAMBANIS: I appreciate that, and sometimes we can try to define things that just have no definition. I recognise that a body of knowledge will build up over time through both ordinary business operations and the intervention of the State Administrative Tribunal, which will rule on what is significant and what is not

significant. However, I highlight it as an area in which I think there may well be some conflict. I am sure that if there is an indication that it is being abused or that it is clearly having unintended consequences through no fault of anyone, the minister will revisit it.

Mr W.J. JOHNSTON: Yes, absolutely. There is no question that I can conceive of this leading to disputation, but that is why the SAT provision is there, and it is modelled on the clause in the Queensland legislation.

Clause put and passed.

Clause 29: Part 2 Division 4 replaced —

Mr P.A. KATSAMBANIS: Clause 29 removes the existing division 4 of part 2 of the act and replaces it with a new division 4 of part 2. The clause is quite lengthy and goes over a number of pages of the bill. I have questions about a series of proposed sections, but I will kick off with proposed section 32G, "Long-stay tenant's conduct on premises". It refers to not causing or permitting a nuisance, and that is fair enough. It is not restricted to just the premises, but applies also to the residential park. That makes sense. It is about noisy parties, shared premises and all of that if a friend comes along and causes a nuisance to somebody else's property or the manager's hut. It then refers to not using the agreed premises or the shared premises, or causing or permitting them to be used, for an illegal purpose. I combine that provision with some of the rights of long-stay tenants under proposed section 32O, which is also contained in this clause and deals with assignment and subletting. The question that springs to mind, because it is topical and we know the issue extends beyond the CBD and various areas, is: how would that interact with a subletting arrangement, such as Airbnb or any of those other short-stay providers? What control would a park owner have over the intentions of tenants in that space? For instance, would a park owner be able to restrict tenants from using Airbnb or other types of short-stay booking services at all and would that term be acceptable under the standard form agreements?

Mr W.J. JOHNSTON: That is an interesting question. I do not know that Airbnb is actually illegal. I am not sure that it is lawful, but I am not sure that it is illegal. Proposed section 32O states —

> (1) A long-stay agreement may provide that the long-stay tenant —
>
> (a) may assign the tenant's rights …
>
> (b) may assign the tenant's rights … only with the written consent … or
>
> (c) must not assign the tenant's rights …

The landlord would be able to make that decision at the start. Under paragraph (a), they could probably do an Airbnb in a lifestyle village as long as they were all over 55 years of age; otherwise, they would be able to do it only with the agreement of the landlord or not at all. As I say, I am not sure that Airbnb is actually illegal. I do not know.

Mr P.A. Katsambanis: I don't know either.

Mr W.J. JOHNSTON: It may well be unlawful, but this does not cover unlawful conduct.

Mr P.A. Katsambanis: It may contravene various planning scheme or local government provisions.

Mr W.J. JOHNSTON: But that is about lawfulness, not illegality.

Mrs A.K. HAYDEN: Proposed section 32N, "Levies, rates, taxes and charges to be paid by park operator", provides that the operator must bear the cost of all rates, taxes or charges. Will that in any way hinder the operator from using that as justification for any increases in rent or is that just saying that it is up to them to pay the bill? Will it have a limitation on forwarding on an increase in rates?

Mr W.J. JOHNSTON: As I am sure the member is aware, commercial tenancies pass on these costs to the tenant, whereas in residential tenancies they are not passed on. Of course they form part of the cost of doing business and therefore are included in the calculation of how much rent they need to charge, but they are not directly passed on to the tenant in the way they are in commercial tenancies. If it was a commercial tenancy, there would be a bill for rent and then a bill for outgoings, and the outgoings would specify all these things. But that cannot be done with a residential tenancy.

Clause put and passed.

Clause 30: Sections 32Q and 32R inserted —

Mr P.A. KATSAMBANIS: Proposed section 32R, "Notice of intention before end of fixed term long-stay agreement", applies when there is a fixed-term long-stay agreement between an operator and a tenant and the

agreement does not provide the long-stay tenant with an option to renew, so it says that the agreement expires on a certain date in the future, obviously. Then there are obligations in proposed subsections (2) and (3) for the park operator to give notice to a long-stay tenant before the expiry of that agreement. If it is an agreement between a park operator and a tenant and they both know that it will expire on a certain day and there is no other option, why should the obligation be on the park operator to provide this sort of notice? Why should it not be a case of everyone working on the basis that the expiry date is the expiry date, unless the tenant and the park operator get together and chat about it?

Mr W.J. JOHNSTON: Many fixed-term contracts are renewed regularly and there is an expectation. As we all agree, these are often vulnerable tenants, so we want to provide a higher level of protection to them. Again, this is about balancing the interests of the resident and the landlord, and this is one that we are trying to balance towards the interests of the resident.

Clause put and passed.

Clause 31 put and passed.

Clause 32: Section 35A inserted —

Mr P.A. KATSAMBANIS: Clause 32 inserts new section 35A. It provides that unless there is an agreement to the contrary, at the expiry of a fixed-term long-stay agreement, the agreement does not convert to a periodic tenancy. What does it convert to if it does not convert to a periodic tenancy? Is it an over-holding? Is the tenant occupying illegally? What is the situation?

Mr W.J. JOHNSTON: Under the legislation, there is a difference between periodic and fixed-term agreements; therefore, it does not become a periodic agreement, even though—as a lawyer, the member might know this—the agreement continues. The agreement continues but it is not covered by the periodic provisions in the legislation; it is still defined as a fixed-term agreement and therefore attracts the benefits of a fixed-term agreement.

Mr P.A. KATSAMBANIS: The minister said that it does not simply become a periodic tenancy under the legislation, but there is no definition of periodic tenancy in the act and certainly not in the new definitions clause, which we spoke about earlier. Again, I ask: what sort of tenancy does it become? It is probably the case that this would apply when a park operator and a tenant have agreed that they will enter into a fixed-term agreement at some point in the future but they just have not got around to it. No-one is going to pick up the transportable home and move it and then bring it back in a couple of months' time. It just seems to create that grey area. Common law in this area has not been used for a long time in tenancy law; that is why I am seeking a bit of clarification.

Mr W.J. JOHNSTON: My understanding is that although they are not defined—I know we are about to run out of time—there are provisions for periodic terms and for fixed terms. This is simply to continue the rights that apply for a fixed term rather than moving to the rights that would apply for a periodic term.

Mr R.S. LOVE: If it becomes a fixed-term contract, how long is the term?

Mr W.J. JOHNSTON: This is to create not a legal fiction, but a legal fig leaf. It is to make sure that it continues to be regulated by the fixed-term provisions of the act. It is not a question of what the term is.

Debate interrupted, pursuant to standing orders.

[Continued on page 8592.]